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RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Proclamation 8025 of May 25, 2006

Black Music Month, 2006

By the President of the United States of America

A Proclamation

African-American musicians have added to the rich culture of our country and of countries around the world. During Black Music Month, we recognize the African-American artists who have enhanced our lives and created some of our Nation's most treasured art forms.

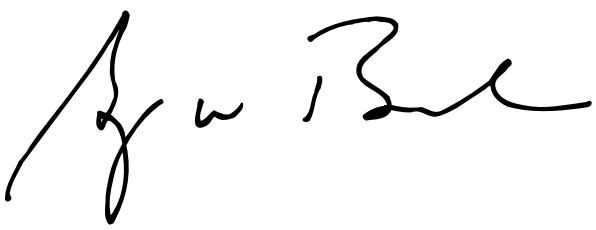
Throughout history, African-American artists have produced music with the power to change hearts and shape our national conscience. From gospel to blues, from jazz to rock and roll, the songs of America's black musicians have defined our times and enriched our culture. Performers such as Count Basie and Dizzy Gillespie and vocalists such as Lizzie Miles and gospel singer Mahalia Jackson have made their mark as great American musicians, strengthening our Nation's diversity and lifting the human spirit.

In 2005, Americans witnessed the power of music to help bring our country together. Following the devastation of the Gulf Coast by Hurricane Katrina, the musicians of that great region sought to preserve their unique musical style and culture and share it with the rest of the Nation. The soulful music of New Orleans and the Gulf Coast remains one of our national treasures, a symbol of creativity and hope.

Black Music Month recognizes some of the brightest lights of American creativity and honors the African-American men and women whose art entertains and inspires us. The incredible talents of black musicians continue to speak to every heart, reflecting the beauty and pride of our great Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 2006 as Black Music Month. I encourage all Americans to learn more about the history of black music and to enjoy the great contributions of African-American musicians.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of May, 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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Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–72–AD; Amendment 39–14620; AD 2006–11–16]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. T5311A, T5311B, T5313B, T5317A, T5317A–1, and T5317B Series Turboshaft Engines and Lycoming Former Military T53–L–11B, T53–L–11D, T53–L–13B, T53–L–13B/D, and T53–L–703 Series Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for AlliedSignal, Inc. T5317A–1 turboshaft engines. That AD currently requires repetitive engine fuel pump pressure tests of certain fuel control regulator assemblies to determine if both fuel pumps in the fuel control regulator assemblies are producing fuel pressure. That AD also requires replacing the fuel control regulator assembly, if necessary. This AD requires initial and repetitive visual and dimensional inspections of fuel control regulator assembly main and secondary drive shaft and pump gear splines, installed in certain fuel control regulator assemblies. This AD also expands the engine applicability, and includes certain engines installed on helicopters certified under § 21.25 or 21.27 of the Code of Federal Regulations (14 CFR 21.25 or 14 CFR 21.27). This AD results from several reports of loss of fuel flow from the engine fuel control regulator assembly due to failure of both main and secondary drive shaft and pump gear splines. We are issuing this AD to prevent in-flight engine failure and forced autorotation landing.

DATES: This AD becomes effective July 5, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 5, 2006.

ADDRESSES: You can get the service information identified in this AD from Goodrich Pumps & Engine Control Systems, P.O. Box 3306519, West Hartford, CT 06133, fax (860) 231–2718.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone: (562) 627–5245, fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Honeywell International Inc. T5311A, T5311B, T5313B, T5317A, T5317A–1, and T5317B series turboshaft engines and Lycoming former military T53–L–11B, T53–L–11D, T53–L–13B, T53–L–13B/D, and T53–L–703 series turboshaft engines. We published the proposed AD in the **Federal Register** on December 28, 2005 (70 FR 77073). That action proposed to require initial and repetitive visual and dimensional inspections of fuel control regulator assembly main and secondary drive shaft and pump gear splines, installed in certain fuel control regulator assemblies. That action also proposed to expand the engine applicability, and include certain engines installed on helicopters certified under § 21.25 or 21.27 of the Code of Federal Regulations (14 CFR 21.25 or 14 CFR 21.27).

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

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

The commenter, Honeywell International Inc., states that they issued or revised three service bulletins in response to the unsafe condition in the proposed AD. We note that they have issued the service bulletins. We did not change the AD based on this comment.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 592 engines installed on helicopters of U.S. registry. We also estimate that it will take about 8 workhours per engine to perform an inspection, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the cost of the AD to U.S. operators for one inspection to be $307,840. A replacement fuel control regulator pump assembly will cost about $18,000. We estimate that if all affected fuel control regulator pump assemblies failed inspection and had to be replaced, the total parts cost of the AD to U.S. operators will be $10,656,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD 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 No. 98–ANE–72–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 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 Amendment 39–10926 (63 FR 66741, December 3, 1998) and by adding a new airworthiness directive, Amendment 39–14620, to read as follows:

2006–11–16 Honeywell International Inc. (formerly AlliedSignal, Inc., formerly Textron Lycoming, formerly Avco Lycoming): Amendment 39–14620. Docket No. 98–ANE–72–AD.

Effective Date

(a) This AD becomes effective July 5, 2006.

Affected ADs

(b) This AD supersedes AD 98–22–11.

Applicability

(c) This AD applies to Honeywell International Inc., (formerly AlliedSignal, Inc., formerly Textron Lycoming, formerly Avco Lycoming) T5311A, T5311B, T5313B, T5317A, T5317A–1, and T5317B series turboshaft engines and Lycoming former military T53–L–11B, T53–L–11D, T53–L–13B, T53–L–13B/D, and T53–L–703 series turboshaft engines using Goodrich Pump & Engine Control Systems, Inc. (GPECS) (formerly Chandler Evans Control Systems) engine fuel control regulator assembly models TA–2S, TA–2G, TA–2F, TA–7, or TA–10.

(d) The T5311A, T5311B, T5313B, T5317A, T5317A–1, and T5317B turboshaft engines are installed on, but not limited to, Bell 204, 205, and Kaman K–1200 helicopters. Lycoming T53–L–11B, T53–L–11D, T53–L–13B, T53–L–13B/D, and T53–L–703 series turboshaft engines are installed on, but not limited to, Bell AH–1 and UH–1 helicopters certified under § 21.25 or 21.27 of the Code of Federal Regulations (14 CFR 21.25 or 14 CFR 21.27).

Unsafe Condition

(e) This AD results from several reports of loss of fuel flow from the engine fuel control regulator assembly due to failure of both main and secondary drive shaft and pump gear splines. We are issuing this AD to prevent in-flight engine failure and forced autorotation landing.

Compliance

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

Initial Visual and Dimensional Inspection

(g) Within 150 flight hours after the effective date of this AD, do the following:

(1) Remove the fuel control regulator assembly from the engine and perform an initial visual and dimensional inspection of the fuel control regulator assembly main and secondary drive shaft and pump gear splines for wear.

(2) Use paragraphs 2.A. through 2.D.(7) and 2.E. through 2.F.(2) of the Accomplishment Instructions of Goodrich Pump & Engine Control Systems, Inc. (TA series) Service Bulletin (SB) No. 73–42, Revision 1, dated August 12, 2004 to do the inspection.

(3) Do not install any engine fuel control regulator assembly that fails inspection.

Repetitive Visual and Dimensional Inspections

(h) Thereafter, within every 1,250 flight hours since-last-inspection, perform repetitive visual and dimensional inspections of the fuel control regulator assembly main and secondary drive shaft and pump gear splines for wear, as specified in paragraphs (g)(1) through (g)(3) of this AD.

Alternative Methods of Compliance

(i) The Manager, Los Angeles Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Honeywell International Inc. Service Bulletin No. T53–0138, Revision 1, dated May 5, 2005, also pertains to the subject of this AD.

Material Incorporated by Reference

(k) You must use Goodrich Pump & Engine Control Systems, Inc. (TA series) Service Bulletin (SB) No. 73–42, Revision 1, dated August 12, 2004, to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Goodrich Pumps & Engine Control Systems, P.O. Box 3306519, West Hartford, CT 06133, fax (860) 231–2718. You can review a copy at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on May 23, 2006.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 06–4908 Filed 5–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23478; Directorate Identifier 2005–NM–175–AD; Amendment 39–14602; AD 2006–10–18]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy and Model Gulfstream 200 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Gulfstream Aerospace LP Model Galaxy and Model Gulfstream 200 airplanes. This AD requires revising the Limitations section of the airplane flight manual (AFM) by incorporating revised takeoff performance tables. This AD results from a correction of the power setting logic and table limits in the performance model by the engine manufacturer. We are issuing this AD to ensure that the flightcrew is provided with correct information to ensure a safe takeoff at certain altitudes; inadequate takeoff performance tables used in such conditions could result in reduced control of the airplane during takeoff.

DATES: This AD becomes effective July 5, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 5, 2006.

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

Contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Gulfstream Aerospace LP Model Galaxy and Model Gulfstream 200 airplanes. That NPRM was published in the **Federal Register** on January 4, 2006 (71 FR 295). That NPRM proposed to require revising the Limitations section of the airplane flight manual (AFM) by incorporating revised takeoff performance tables.

Comments

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

Request To Withdraw NPRM

Gulfstream asks that, instead of issuing the NPRM, the FAA consider the release of a new AFM as the official mandatory method to incorporate the revised takeoff performance tables, after the revision is approved by the Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel. Gulfstream states that mandatory incorporation of Israel Aircraft Industries Gulfstream 200 Temporary Revision (TR) 7, dated August 18, 2003, may result in operator indecision when incorporating the TR. Gulfstream notes the reason for this is that TR 7 includes two manual changes, in addition to the revised takeoff performance tables: MOD 10023 aircraft effectivity change, and a revision to the caution message definition of the thrust reverser meaning and action sections. Those temporary changes were superseded with permanent revisions to the AFM; therefore, full incorporation of TR 7 could confuse operators by mandating incorporation of superseded information. Gulfstream adds that TR 7 has been distributed to all Galaxy/Gulfstream 200 operators, and has been incorporated into the AFMs for new production airplanes; therefore, issuing the NPRM would only serve to mandate that operators verify that the correct flight limitation tables are in place.

We do not agree to withdraw the NPRM since we have determined that an unsafe condition exists, and the actions required by this AD are necessary to ensure the continued safety of the affected fleet. In addition, without the issuance of an AD a new AFM cannot be made mandatory.

For the reasons provided by Gulfstream, we do agree to change the requirements in paragraph (f) of this AD to incorporate only Section V, ''Performance,'' as identified in Gulfstream TR 7. Section V contains the revised takeoff performance tables. We cannot delay the AD to wait for issuance of the new AFM; however, when the new AFM is issued and approved by us, operators may follow their standard procedures for incorporating AFM revisions. Additionally, paragraph (f) of this AD indicates that when information identical to that in Section V of TR 7 is included in general revisions to the AFM, the general revisions may be inserted into the AFM. No further change to the AD is necessary in the regard.

Clarification of Unsafe Condition

We have revised the statement of the unsafe condition in this AD to clarify the effect of using inadequate takeoff performance tables.

Conclusion

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

Costs of Compliance

This AD affects about 82 airplanes of U.S. registry. The AFM revision takes about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $5,330, or $65 per airplane.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.''

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–10–18 Gulfstream Aerospace LP (formerly Israel Aircraft Industries, Ltd.): Amendment 39–14602. Docket No. FAA–2005–23478; Directorate Identifier 2005–NM–175–AD.

Effective Date

(a) This AD becomes effective July 5, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Gulfstream Model Galaxy and Model Gulfstream 200 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a correction of the power setting logic and table limits in the performance model by the engine manufacturer. We are issuing this AD to ensure that the flightcrew is provided with correct information to ensure a safe takeoff at certain altitudes; inadequate takeoff performance tables used in such conditions could result in reduced control of the airplane during takeoff.

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.

Airplane Flight Manual (AFM) Revision

(f) Within 50 flight hours after the effective date of this AD: Revise the Limitations section of the Gulfstream 200 AFM, by incorporating the information specified in Section V, ''Performance,'' of Israel Aircraft Industries Gulfstream 200 Temporary Revision (TR) 7, dated August 18, 2003, as specified in the TR. Section V of TR 7 includes procedures for incorporating revised takeoff performance tables. Thereafter, operate the airplane according to the limitations and procedures in Section V of TR 7. This may be done by inserting a copy of Section V of Gulfstream TR 7 into the AFM. When Section V of TR 7 has been included in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in Section V of TR 7.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Israeli airworthiness directive 72–03–05–09, dated September 22, 2003, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Israel Aircraft Industries Gulfstream 200 Temporary

Revision 7, dated August 18, 2003, to the Gulfstream 200 Airplane Flight

Manual, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 9, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4910 Filed 5–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24875; Directorate Identifier 2006–SW–03–AD; Amendment 39–14618; AD 2006–11–14]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–92A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters. This action requires inspecting each main transmission assembly mounting bolt (bolt) for wear or corrosion, and if wear or corrosion is found, replacing the bolt, bolt barrel nut, and cage. This amendment is prompted by a report of a failure of a bolt that was discovered during a routine maintenance inspection. The actions specified in this AD are intended to prevent failure of a bolt, which could result in loss of support of the main transmission and subsequent loss of control of the helicopter.

DATES: Effective June 15, 2006.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 2006.

Comments for inclusion in the Rules Docket must be received on or before July 31, 2006.

ADDRESSES: Use one of the following addresses 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;
- Fax: (202) 493–2251; or
- 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.

You may get the service information identified in this AD from Sikorsky

Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386–3001, fax (203) 386–5983.

Examining the Docket

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

FOR FURTHER INFORMATION CONTACT: Wayne Gaulzetti, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7156, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: This amendment adopts an AD for Sikorsky Model S–92A helicopters with bolts, part number SS5211–10–47, installed. This action requires opening the No. 1 and No. 2 engine work platforms to gain access to the bolts and inspecting each of the 8 bolts for wear or corrosion. The inspections for wear or corrosion are required within 100 hours time-in-service (TIS), unless accomplished within the last 500 hours TIS. This action also requires, before further flight, replacing any bolt on which wear or corrosion is found, together with the bolt barrel nut and cage. This amendment is prompted by a report of a bolt failure, which was discovered during a routine 1,250-hours TIS maintenance inspection. Subsequent investigation and analysis of the failed bolt revealed damage from wear and corrosion. The actions specified in this AD are intended to prevent failure of a bolt, which could result in loss of support of the main transmission and subsequent loss of control of the helicopter.

We have reviewed Sikorsky Alert Service Bulletin (ASB) No. 92–63–003, dated February 1, 2006, which describes inspecting the 8 bolts to verify that each bolt has the correct torque, as well as inspecting for wear or corrosion on the bolt, and replacing any bolt on which wear or corrosion is discovered, together with the bolt barrel nut and cage. The ASB also describes reporting the condition of any damaged bolt and returning any removed hardware to Sikorsky. This AD does not require verifying that each bolt has the correct torque, reporting the bolt torque or bolt damage information, nor returning the hardware to Sikorsky. Sikorsky plans to make available a redesigned bolt that should eliminate the fretting that leads to corrosion and subsequent failure of the bolt. In light of that information, we anticipate that we will later issue further AD action to require repetitive inspections at intervals of 500 hours TIS until that bolt is made available by Sikorsky and is installed on helicopters.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to prevent failure of a bolt, which could result in loss of support of the main transmission and subsequent loss of control of the helicopter. Accomplish the actions by following the specified portions of the ASB described previously. The short compliance time is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Since the fleet has helicopters accruing 8 to 10 hours TIS per day, those helicopters could accrue 100 hours TIS in approximately 2 weeks of operation. Therefore, inspecting each bolt for wear or corrosion is required within 100 hours TIS and replacing any bolt on which wear or corrosion is found, as well as replacing the bolt barrel nut and cage, are required before further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 8 helicopters, and the inspections for wear or corrosion will take approximately 3.5 work hours to accomplish at an average labor rate of $80 per work hour. Required parts will cost approximately $197 for each bolt, $28 for each bolt barrel nut, and $4 for each cage. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $4,072 per helicopter, assuming that replacing 8 bolts, 8 bolt barrel nuts, and 8 cages is necessary.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–24875; Directorate Identifier 2006–SW–03–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the 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 AD. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. 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.*

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 the 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 an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to 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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2006–11–14 Sikorsky Aircraft Corporation: Amendment 39–14618. Docket No. FAA–2006–24875; Directorate Identifier 2006–SW–03–AD.

Applicability

Model S–92A helicopters, with main transmission mounting bolt (bolt), part number (P/N) SS5211–10–47, installed, certificated in any category.

Compliance

Required as indicated.

To prevent failure of a bolt, which could result in loss of support of the main transmission and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 100 hours time-in-service (TIS), unless accomplished within the last 500 hours TIS, open the No. 1 and No. 2 engine work platforms to gain access to the 8 bolts. Remove each bolt, one at a time, and visually inspect the bolt shank and threads for wear or corrosion in accordance with paragraphs 3.A.(6)(a) of the Accomplishment Instructions in Sikorsky Aircraft Corporation Alert Service Bulletin No. 92–63–003, dated February 1, 2006 (ASB). Reporting the condition of the mounting bolt, tagging the mounting bolt with location, and sending the removed mounting bolt and barrel nut to Sikorsky Aircraft Corporation are not required to satisfy the requirements of this AD.

(b) Before further flight, replace any bolt on which wear or corrosion is found, as well as the bolt barrel nut and cage, with an airworthy bolt, P/N SS5211–10–47, barrel nut, P/N RMLH2577–108, and cage, P/N NAS578–10B.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, ATTN: Wayne Gaulzetti, Aviation Safety Engineer, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7156, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

(d) The inspections shall be done in accordance with the specified paragraphs of Sikorsky Aircraft Corporation Alert Service Bulletin No. 92–63–003, dated February 1, 2006. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386–3001, fax (203) 386–5983. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(e) This amendment becomes effective on June 15, 2006.

Issued in Fort Worth, Texas, on May 18, 2006.

Judy I. Carl,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 06–4911 Filed 5–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30494; Amdt. No. 3167]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 31, 2006. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 31, 2006.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Ave., SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modifiedby the the National Flight Data Center (FDC)/Permanent

Notice to Airmen (P–NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on May 5, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
04/01/06	NC	Currituck	Currituck County	6/6278	GPS RWY 22, Orig.
04/14/06	MO	St. Louis	Lambert-St. Louis Intl	6/5525	ILS PRM RWY 30R (Simultaneous Close Parallel), Orig.
04/25/06	DC	Washington	Washington Dulles Intl	6/6219	Converging ILS RWY 19, Amdt 6.
04/25/06	GA	Augusta	Daniel Field	6/6221	RADAR–1, Amdt 7A.
04/25/06	GA	Covington	Covington Muni	6/6222	NDB RWY 28, Amdt 1A.
04/25/06	MA	Vineyard Haven	Marthas Vineyard	6/6211	ILS OR LOC RWY 24, Amdt 1.
04/25/06	MA	Hyannis	Barstable Muni-Boardman/Polan DO Field.	6/6224	RNAV (GPS) RWY 6, Orig.
04/25/06	NH	Berlin	Berlin Muni	6/6240	VOR/DME RWY 18, Amdt 1C.
04/25/06	NH	Keene	Dillant-Hopkins	6/6242	GPS RWY 2, Orig.
04/25/06	NJ	Atlantic City	Atlantic City Intl	6/6220	Copter ILS RWY 13, Orig.
04/25/06	NJ	Atlantic City	Atlantic City Intl	6/6223	ILS RWY 13, Amdt 6.
04/25/06	NY	New York	John F. Kennedy Intl	6/6230	Copter RNAV (GPS) 028, Orig.
04/26/06	NM	Taos	Taos Regional	6/6267	RNAV (GPS) RWY 4, Orig.
04/27/06	NY	Syracuase	Syracuse Hancock Intl	6/6384	ILS OR LOC RWY 10, Amdt 11.
04/27/06	OH	Akron	Akron-Canton Regional	6/6345	ILS RWY 1, Amdt 37.
04/27/06	OH	Akron	Akron-Canton Regional	6/6346	ILS OR LOC RWY 19, Amdt 7.
04/27/06	OH	Akron	Akron-Canton Regional	6/6366	ILS RWY 23, Amdt 10.
05/01/06	AR	Stuttgart	Stuttgart Muni	6/6648	VOR/DME–A, Amdt 1.
05/01/06	GA	Atlanta	Dekalb-Peachtree	6/6577	VOR/DME RWY 20L, Amdt 1D
05/01/06	GA	Atlanta	Dekalb-Peachtree	6/6576	ILS RWY 20L, Amdt 7D.
05/01/06	GA	Atlanta	Dekalb-Peachtree	6/6578	VOR/DME RWY 27, Amdt 1C.
05/01/06	NC	Raleigh/Durham	Raleigh-Durham Intl	6/6580	ILS OR LOC RWY 23L, Amdt 7.

FDC date	State	City	Airport	FDC No.	Subject
05/01/06	NY	White Plains	Westchester County	6/6586	Copter ILS/DME 162, Orig–C.
05/01/06	NY	Newburgh	Stewart Intl	6/6588	COPTER ILS 092, Orig.
05/02/06	KY	Mount Sterling	Mount Sterling-Montgomery County	6/6716	NDB RWY 21, Amdt 1B.
05/02/06	KY	Mount Sterling	Mount Sterling-Montgomery County	6/6717	GPS RWY 21, Amdt 1A.
05/02/06	KY	Hazard	Wendell H Ford	6/6718	VOR/DME RWY 14, Amdt 1.
05/02/06	KY	Covington	Cincinnati/Northern Kentucky Intl	6/6720	RNAV (GPS) RWY 36R, Orig.
05/02/06	MS	Jackson	Jackson-Evers Intl	6/6633	RNAV (GPS) RWY 16L, Orig.
05/02/06	OH	Marysville	Union County	6/6652	GPS RWY 9, Orig–A.
05/02/06	OH	Marysville	Union County	6/6654	GPS RWY 27, Orig–A.
05/03/06	OH	Freemont	Sandusky County Regional	6/6806	VOR/DME RWY 24, Orig.
05/03/06	TX	Palacios	Palacios Muni	6/6798	VOR RWY 13, Amdt 10A.

[FR Doc. 06–4472 Filed 5–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Trimethoprim and Sulfadiazine Oral Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The supplemental NADA provides for revised food safety labeling for trimethoprim and sulfadiazine oral paste, administered to horses as a systemic antibacterial.

DATES: This rule is effective May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 556 Morris Ave., Summit, NJ 07901, filed a supplement to NADA 131–918 for use of TRIBRISSEN (trimethoprim and sulfadiazine) 400 Paste, administered orally to horses as a systemic antibacterial. The supplement provides for revised food safety labeling. The supplemental NADA is approved as of April 25, 2006, and the regulations are amended in 21 CFR 520.2611 to reflect the approval and a current format. The basis of approval is discussed in the freedom of information summary.

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

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

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. Revise § 520.2611 to read as follows:

§ 520.2611 Trimethoprim and sulfadiazine paste.

(a) *Specifications*. Each gram (g) of paste contains 67 milligrams (mg) trimethoprim and 333 mg sulfadiazine.

(b) *Sponsors*. See sponsors in § 510.600(c) of this chapter:

(1) No. 000856 for product administered as in paragraph (c)(1)(i) of this section.

(2) No. 000061 for product administered as in paragraph (c)(1)(ii) of this section.

(c) *Conditions of use in horses*—(1) *Amount*. Administer orally as a single daily dose for 5 to 7 days:

(i) 5 g of paste (335 mg trimethoprim and 1,665 mg sulfadiazine) per 150 pounds (68 kilograms) of body weight per day.

(ii) 3.75 g of paste (250 mg trimethoprim and 1,250 mg sulfadiazine) per 110 pounds (50 kilograms) of body weight per day.

(2) *Indications for use*. For use where systemic antibacterial action against sensitive organisms is required during treatment of acute strangles, respiratory infections, acute urogenital infections, and wound infections and abscesses.

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

Dated: May 18, 2006.

Steven D. Vaughn,

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

[FR Doc. E6–8303 Filed 5–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Trimethoprim and Sulfadiazine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The supplemental NADA provides for

revised food safety labeling for trimethoprim and sulfadiazine injectable suspension, administered to horses as a systemic antibacterial.

DATES: This rule is effective May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 556 Morris Ave., Summit, NJ 07901, filed a supplement to NADA 106–965 for use of TRIBRISSEN (trimethoprim and sulfadiazine) 48% Injection administered to horses as a systemic antibacterial. The supplement provides for revised food safety labeling. The supplemental NADA is approved as of April 26, 2006, and the regulations are amended in § 522.2610 (21 CFR 522.2610) to reflect the approval and a current format. The basis of approval is discussed in the freedom of information summary.

In addition, FDA has found that a 1997 change of sponsorship for NADA 106–965 (62 FR 61625, November 19, 1997) is not reflected in the Code of Federal Regulations. Accordingly, § 522.2610 is being revised to reflect the correct sponsor drug labeler code. This action is being taken to improve the accuracy of the regulations.

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

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

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

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. Revise § 522.2610 to read as follows:

§ 522.2610 Trimethoprim and sulfadiazine.

(a) *Specifications.* Each milliliter (mL) contains:

(1) 40 milligrams (mg) trimethoprim suspended in a solution containing 200 mg sulfadiazine; or

(2) 80 mg trimethoprim suspended in a solution containing 400 mg sulfadiazine (as the sodium salt).

(b) *Sponsors.* See Nos. 000061 and 000856 in § 510.600(c) of this chapter.

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

(d) *Conditions of use*—(1) Dogs—(i) *Amount.* 1 mL of the product described in paragraph (a)(1) of this section (40 mg trimethoprim and 200 mg sulfadiazine) per 20 pounds (9 kilograms) of body weight per day by subcutaneous injection.

(ii) *Indications for use.* For the treatment of acute urinary tract infections, acute bacterial complications of distemper, acute respiratory tract infections, acute alimentary tract infections, and acute septicemia due to Streptococcus zooepidemicus.

(2) *Horses*—(i) *Amount.* 2 mL of the product described in paragraph (a)(2) of this section (160 mg trimethoprim and 800 mg sulfadiazine) per 100 pounds (45 kilograms) of body weight per day by intravenous injection as single, daily dose for 5 to 7 days. The daily dose may also be halved and given morning and evening.

(ii) *Indications for use.* For use where systemic antibacterial action against sensitive organisms is required during treatment of acute strangles, respiratory tract infections, acute urogenital infections, and wound infections and abscesses.

(iii) *Limitations.* Not for use in horses intended for human consumption.

Dated: May 18, 2006.

Steven D. Vaughn,

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

[FR Doc. E6–8309 Filed 5–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–06–009]

RIN 1625–AA00

Safety Zones: Fireworks Displays in the Captain of the Port Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its current regulations establishing additional safety zones on the waters of the Suislaw, Willamette, Columbia, Coos, and Chehalis Rivers, located in the Area of Responsibility (AOR) of the Captain of the Port, Portland, Oregon, during annual fireworks displays. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with these displays. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective June 30, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD13–06–009] and are available for inspection or copying at U.S. Coast Guard Sector Portland 6767 N. Basin Ave, Portland, OR 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Charity Keuter, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240–9301.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 28, 2006, we published a notice of proposed rule making (NPRM) entitled Safety Zone: Fireworks Displays in the Captain of the Port Portland Zone in the **Federal Register** (71 FR 15365). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Coast Guard is establishing additional permanent safety zones to allow for safe annual fireworks displays. The Coast Guard is also revising 33 CFR 165.1315 paragraph (a)(8) because the current event is no longer an event which occurs with any regularity. All

events occur within the Captain of the Port, Portland, OR, Area of Responsibility (AOR). These events may result in a number of vessels congregating near fireworks launching barges and sites. The safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays. These safety zones will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other Federal and local agencies.

This rule, for safety concerns, will control vessels, personnel and individual movements in a regulated area surrounding the fireworks event indicated in section 2 of this Final Rule. Entry into these zones is prohibited unless authorized by the Captain of the Port, Portland or his designated representative.

Discussion of Comments and Changes

The Coast Guard received no comments and thus has made no changes from the proposed rule.

Regulatory Evaluation

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

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

This expectation is based on the fact that the regulated areas established by the regulation will encompass small portions of the Columbia, Willamette, Coos, Chehalis and Siuslaw Rivers in the Portland AOR on different dates, all in the evening when vessel traffic is low.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only sixty minutes during the evenings when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please contact Petty Officer Keuter by phone at (503) 240–9301 or by e-mail at *Charity.S.Keuter@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and ''Categorical Exclusion Determination'' are required for this rule and are available for review in the public docket for this rulemaking.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In § 165.1315 revise the heading and paragraph (a)(8) and add paragraphs (a)(9)–(14) to read as follows:

§ 165.1315 Safety Zones: Fireworks displays in the Captain of the Port Portland Zone.

(a) * * *

(8) Florence Chamber 4th of July Fireworks Display, Florence, OR

(i) *Location.* All water of the Siuslaw River enclosed by the following points: 43°58′05″ N, 124°05′54″ W following the shoreline to 43°58′20″ N 124°04′46″ W then south to 43°58′07″ N 124°04′40″ W following the shoreline to 43°57′48″ N 124°05′54″ W then back to the point of origin.

(ii) *Enforcement Period.* This section is enforced annually on July fourth from 9 p.m. to 11 p.m. (PDT).

(9) Oaks Park July 4th Celebration, Portland, OR

(i) *Location.* All water of the Willamette River enclosed by the following points: 45°28′26″ N 122°39′43″ W following the shoreline to 45°28′10″ N 122°39′54″ W then west to 45°28′41″ N 122°40′06″ W following the shoreline to 45°28′31″ N 122°40′01″ W then back to the point of origin.

(ii) *Enforcement Period.* This section is enforced annually on July fourth from 9 p.m. to 11 p.m. (PDT).

(10) Rainier Days Fireworks Celebration, Rainier, OR

(i) *Location.* All water of the Columbia River enclosed by the following points: 46°06′04″ N, 122°56′35″ W following the shoreline to 46°05′53″ N 122°55′58″ W then south to 46°05′24″ N 122°55′58″ W following the shoreline to 46°05′38″ N 122°56′35″ W then back to the point of origin.

(ii) *Enforcement Period.* This section is enforced annually on the second Saturday of July each year from 9 p.m. to 11 p.m. (PDT). Except that when the first Saturday falls on July 1, this section will be enforced on the third Saturday of July.

(11) Ilwaco July 4th Committee Fireworks, Ilwaco, WA

(i) *Location.* All water of the Columbia River extending out to a 700′ radius from the launch site at 46°18′17″ N 124°01′55″ W.

(ii) *Enforcement Period.* This section is enforced annually on the first Saturday of July from 9 p.m. to 11 p.m. (PDT).

(12) Milwaukie Centennial Fireworks Display, Milwaukie, OR

(i) *Location.* All water of the Willamette River enclosed by the following points: 45°26′41″ N, 122°38′46″ W following the shoreline to 45°26′17″ N 122°38′36″ W then west to 45°26′17″ N 122°38′55″ W following the shoreline to 45°26′36″ N 122°38′50″ W then back to the point of origin.

(ii) *Enforcement Period.* This section is enforced annually on the third Saturday of July each year from 9 p.m. to 11 p.m. (PDT). Except that when the first Saturday falls on July 1, this section will be enforced on the fourth Saturday of July.

(13) Splash Aberdeen Waterfront Festival, Aberdeen, WA

(i) *Location.* All water of the Chehalis River extending out to 500 feet of the following points: 46°58′40″ N, 123°47′45″ W.

(ii) *Enforcement Period.* This section is enforced annually on July fourth from 9 p.m. to 11 p.m. (PDT).

(14) City of Coos Bay July 4th Celebration, Coos Bay, OR

(i) *Location.* All water of the Coos River extending out to 1200 feet of the following points: 43°22′12″ N, 124°12′39″ W.

(ii) *Enforcement Period.* This section is enforced annually on July fourth from 9 p.m. to 11 p.m. (PDT).

* * * * *

Dated: May 9, 2006.

Patrick G. Gerrity,

Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.

[FR Doc. E6–8218 Filed 5–30–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–NM–0003; FRL–8175–6]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving two separate State Implementation Plan (SIP) revisions submitted by the Governor of New Mexico. The first submittal, dated September 7, 2004, adopts local Ambient Air Quality Standards (AAQS) and incorporates by reference the Federal National Air Quality Standards (NAAQS) for the Albuquerque/Bernalillo County, New Mexico area. The second submittal,

dated July 28, 2005, revises the Variance Procedure for the Albuquerque/Bernalillo County, New Mexico area. We are approving these two separate revisions in accordance with the requirements of the Clean Air Act (the Act), section 110.

DATES: This direct final rule is effective on July 31, 2006 without further notice, unless EPA receives relevant adverse comment by June 30, 2006. If EPA receives such comment, EPA 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–R06–OAR–2005–NM–0003, by one of the following methods:

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

U.S. EPA Region 6 ''Contact Us'' web site: *http://epa.gov/region6/r6coment.htm* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.

E-mail: Mr. Thomas Diggs at *diggs.thomas@epa.gov*. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2005–NM–0003. 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 *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

The City of Albuquerque, Environmental Health Department, One Civic Plaza, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar of the Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733 at (214) 665–6691, or *shar.alan@epa.gov*.

SUPPLEMENTARY INFORMATION:

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B. 20.11.7 NMAC, Variance Procedure
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Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

I. Background

A revision to the New Mexico SIP concerning Title 20, Chapter 11, Part 8 of the New Mexico Administrative Code (20.11.8 NMAC) was submitted to us by the Governor of New Mexico on September 7, 2004. This SIP revision establishes and adopts local AAQS for the Albuquerque/Bernalillo County, New Mexico area. These AAQS are similar to the New Mexico AAQS adopted by the New Mexico Environment Department (NMED). It also incorporates by reference the Federal NAAQS at 40 CFR part 50, as amended through July 18, 1997.

The EPA approved the NMED-adopted state AAQS and incorporated Federal NAAQS in Title 20, Chapter 2, Air Quality, Part 3 Ambient Air Quality Standards on 09/26/97 (62 FR 50518) at § 52.1620(c)(66) and became effective 11/25/1997 for the State of New Mexico excluding the Albuquerque/Bernalillo County area. See our Technical Support Document (TSD) prepared in conjunction with this SIP revision for more information concerning our evaluation of this part.

Initially, EPA approved the New Mexico Regulation 24 Variance Procedure for the Albuquerque/Bernalillo County area on April 10, 1980. See April 10, 1980 (45 FR 24460) at § 52.1620(c)(11) to (c)(15). The Albuquerque/Bernalillo Board adopted and replaced its Variance Procedure rules on October 1, 2002 as Title 20, Chapter 11, Part 7 (20.11.7 NMAC) and adopted changes on August 1, 2004. A revision to the New Mexico SIP 20.11.7 NMAC concerning Variance Procedure for the Albuquerque/Bernalillo County area was submitted to us by the Governor of New Mexico on July 28, 2005. This SIP revision makes the Variance Procedure more stringent than the original SIP-approved rule. Among other things, it precludes issuance of variances from enumerated Federal emissions limitations and programs, and clarifies that approval or granting of a variance does not mean automatic approval by the EPA, for the Albuquerque/Bernalillo County area.

II. Evaluation of New Mexico's Submittal

A. 20.11.8 NMAC, Ambient Air Quality Standards

A revision to the New Mexico SIP concerning 20.11.8 NMAC was submitted to us by the Governor of New Mexico on September 7, 2004. This SIP revision establishes and adopts local AAQS for the Albuquerque/Bernalillo County. It also incorporates by reference the federal NAAQS as amended through July 18, 1997. The current Federally-approved SIP, for the Albuquerque/Bernalillo County area, does not contain the local or National AAQS for this area. As stated in section I of this document, the local standards we are approving today are similar to those that EPA has already approved for the remaining parts of the New Mexico State. See September 26, 1997 (62 FR 50518). The local AAQS are for hydrogen sulfide, total reduced sulfur, a 24-hour average for nitrogen dioxide, a 24-hour average, 7-day average, 30-day average, and annual geometric mean for particulate matter, and limitations more stringent than the Federal NAAQS for the 8-hour and 1-hour average for carbon monoxide, and the 24-hour average and annual arithmetic mean for sulfur dioxide. Approval of these local standards will lead to improved air quality. We are approving the incorporation of the Federal NAAQS because it will make the Albuquerque/Bernalillo County SIP consistent with the latest Federally-promulgated NAAQS.

This SIP revision will provide for consistency between the NMED-adopted SIP and the Albuquerque/Bernalillo County SIP. Thus, by approving the SIP revision, all sources within the County that are emitting, or wish to emit, any of the locally regulated pollutants and precursors are required to comply with the same AAQS as all sources anywhere within the geographical boundaries of the State. This SIP revision will enhance the County's air quality. This SIP revision will add more stringent requirements to the current Federally-approved SIP and ensure that the SIP contains the most up-to-date Federal NAAQS. For these reasons, we are approving, as a part of the SIP, the local AAQS for the Albuquerque/Bernalillo County, New Mexico area under sections 110 and 116, and approving the incorporation of the Federal NAAQS under section 110 of the Act.

B. 20.11.7 NMAC, Variance Procedure

A revision to the New Mexico SIP concerning 20.11.7 NMAC was submitted to us by the Governor of New Mexico on July 28, 2005. This SIP revision includes a rule that replaces and revises the previous Variance Procedure rule and imposes additional restrictions on the Variance Procedures for the Albuquerque/Bernalillo County area.

As stated in section I of this document, EPA initially approved the New Mexico Regulation 24 Variance Procedure for the Albuquerque/Bernalillo County area on April 10, 1980 (45 FR 24460). The Variance Procedure rule, adopted in 2002 and revised in 2004, adds more extensive public participation requirements, including several forms of public notification, newspaper publications, public comment periods, and adds a requirement for an evidentiary hearing versus a public comment hearing. The granting of a variance still cannot either result in a condition injurious to health or safety, or cause or contribute to an air contaminant level in excess of any primary NAAQS. The petitioner, however, now has the burden of proof in the evidentiary hearing to show the need for a variance and now must prove by a preponderance of evidence the facts relied upon to justify the requested relief. Another significant improvement is that there no longer is an automatic stay of enforcement pending the Board's decision. Sections 20.11.7.2 (Scope) and 20.11.7.6 (Objective) add the requirement to this SIP revision that variance from a limitation, order, or permit condition does not apply to enumerated Federally promulgated emissions standards and programs; *e.g.*, the requirements to obtain a minor preconstruction permit, a nonattainment preconstruction permit, a Prevention of Significant Deterioration preconstruction permit, or an operating permit and the requirements to meet the Federal acid rain program, the Federal New Source Performance Standards, and the Federal National Emission Standards for Hazardous Air Pollutants. Furthermore, section 20.11.7.2 (Scope) specifies that approval or granting of a variance to a source does not mean automatic approval by EPA. Our TSD prepared in conjunction with this SIP revision contains detailed information concerning our evaluation of this part. This SIP revision greatly improves the current Federally-approved SIP rule, adds many more safeguards to protect the existing air quality, *e.g.*, no automatic stay of enforcement, no variance from Federal programs, more stringent public participation, and evidentiary hearings. We find that approving 20.11.7 NMAC into the SIP meets section 110(l) of the Act. For this reason, we are approving, as a part of the SIP, the Variance Procedure 20.11.7 NMAC, as adopted in 2002 and revised in 2004, for the Albuquerque/Bernalillo County, New Mexico area.

III. Final Action

The EPA is approving the revisions to the New Mexico's Albuquerque/Bernalillo County SIP because the revisions are consistent with the Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the EPA views this as a non-controversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 31, 2006 without further notice, unless EPA receives relevant adverse comment by June 30, 2006.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 31, 2006, and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 19, 2006.

Richard E. Greene,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart GG—New Mexico

■ 2. Section 52.1620, paragraph (c), the second table entitled ''EPA Approved Albuquerque/Bernalillo County, NM Regulations,'' is amended by revising the entry for Part 7 and adding an entry for Part 8 to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/effective date	EPA approval date	Explanation
Albuquerque/Bernalillo County, Air Quality Control Regulations				
*	*	*	*	*
New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11-Albuquerque/Bernalillo County Air Quality Control Board				
*	*	*	*	*
Part 7 (20.11.7 NMAC) ..	Variance Procedure	09/07/04	05/31/06 [Insert FR page where document begins].	
Part 8 (20.11.8 NMAC) ..	Ambient Air Quality Standards	09/07/04	05/31/06 [Insert FR page where document begins].	
*	*	*	*	*

[FR Doc. 06–4921 Filed 5–30–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0487; FRL–8062–3]

Pesticides; Minimal Risk Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule reorganizes the existing tolerance exemptions for 12 chemical substances that are now classified as ''minimal risk.'' The Agency is shifting the existing tolerance exemptions for these chemicals to 40 CFR 180.950(e). The Agency is merely moving certain tolerance exemptions from one section of the CFR to another section. No tolerance exemptions are lost or added as a result of this action.

DATES: This regulation is effective May 31, 2006. Objections and requests for hearings must be received on or before July 31, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0487. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; fax number: (703) 305–0599; e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0487 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 31, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0487, by one of the following methods:

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

II. Background and Statutory Findings

A. What is the Agency's Authority for Taking this Action?

This final rule is issued pursuant to section 408(e) of the Federal Food, Drug, and Comestic Act (FFDCA), as amended by Food Quality Protection Act (FQPA) (21 U.S.C. 346a(e)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore, ''adulterated'' under section 402(a) of FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

B. What Action is the Agency Taking?

In the **Federal Register** of January 25, 2006 (71 FR 4087) (FRL–7754–8), EPA

issued a proposed rule under section 408(e) of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170). In that rule, the Agency proposed to shift existing tolerance exemptions for certain inert ingredients that have been classified by the Agency as List 4A, ''minimal risk,'' to 40 CFR 180.950(e).

One comment was received from the Washington State Department of Agriculture (WSDA). WSDA requested that ''EPA consider revoking the tolerance exemption for sperm oil'' since it is derived from the sperm whale, an endangered species. In light of this comment, the Agency will not shift the exemption for sperm oil to 40 CFR 180.950(e), and will consider in the future whether to take action to revoke this tolerance exemption. No other comments were received.

Accordingly, based on the reasons set forth in the preamble to the proposed rule, EPA is shifting the tolerance exemptions for the 12 chemical substances specified in the regulatory text to § 180.950(e).

III. Statutory and Executive Order Reviews

This final rule re-organizes the tolerance exemptions for 12 chemical substances. Such reorganization does not impose any new requirements, has no impact, and is therefore, not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that re-organizing these tolerance exemptions will not have significant negative economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IV. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 16, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 374

■ 2. In § 180.910, the table is amended by removing the entries for: Ascorbic acid (CAS Reg. No. 50–81–7); beeswax; carnauba wax; glycerol; isopropyl alcohol; soap (sodium or potassium salts of fatty acids); sodium benzoate; sodium bicarbonate; sorbitol, and sorbic acid (and potassium salt) and alphabetically adding the following entry to the table to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* * * * *		
Sorbic acid (CAS Reg. No. 110–44–1)		Preservative for formulations
* * * * *		

■ 3. In § 180.920, the table is amended by removing the entries for: Potassium carbonate and vanillin and adding the following two entries to the table to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* * * * *		
Carbonic acid, dipotassium salt (CAS Reg. No. 584–08–7)		Buffering agent
Carbonic acid, dipotassium salt, trihydrate (CAS Reg. No. 18662–52–7)		Buffering agent
* * * * *		

§ 180.930 [Amended]

■ 4. In § 180.930, the table is amended by removing the entries for: Carnauba wax (CAS Reg. No. 8015–86–9); glycerol (glycerin); isopropyl alcohol; and sodium benzoate.

§ 180.940 [Amended]

■ 5. Section 180.940 is amended as follows:

a. By removing from the table in paragraph (a) the entries for 2-propanol (isopropanol) and sodium bicarbonate.

b. By removing from the table in paragraph (b) the entry for 2-propanol (isopropanol).

c. By removing from the table in paragraph (c) the entries for 2-propanol (isopropanol) and sodium bicarbonate.

■ 6. In § 180.950, the table in paragraph (e) is amended by adding alphabetically the following 12 entries to read as follows:

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *

(e) * * *

Chemical Name	CAS Reg. No.
* * * * *	
Ascorbic acid (vitamin C)	50–81–7
Beeswax	8012–89–3
Benzoic acid, sodium salt	532–32–1
* * * * *	
Carbonic acid, monopotassium salt	298–14–6
Carbonic acid, monosodium salt (sodium bicarbonate)	144–55–8
Carnauba wax	8015–86–9
* * * * *	
D-Glucitol (sorbitol)	50–70–4
Glycerol (glycerin) (1,2,3-propanetriol)	56–81–5
* * * * *	
2-Propanol (isopropyl alcohol)	67–63–0
* * * * *	
Soap (The water soluble sodium or potassium salts of fatty acids produced by either the saponification of fats and oils, or the neutralization of fatty acid).	None
Sorbic acid, potassium salt	24634–61–5
* * * * *	
Vanillin	121–33–5
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[FR Doc. E6–8249 Filed 5–30–06; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0215; FRL–8057–9]

Terbacil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of terbacil in or on watermelon. The Interregional Research Project Number 4 (IR-4), on behalf of the registrant, DuPont Crop Protection, requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). EPA is also deleting an existing time-limited terbacil tolerance that is no longer needed as a result of this action.

DATES: This regulation is effective May 31, 2006. Objections and requests for hearings must be received on or before July 31, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0215. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0215 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 31, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0215, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of September 7, 2005 (70 FR 53180) (FRL–7731–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3E6640) by IR-4, on behalf of DuPont Crop Protection, P.O. Box 30, Newark, Delaware 19714–0030. The petition requested that 40 CFR 180.209 be amended by establishing a tolerance for combined residues of the herbicide terbacil, (3-tert-butyl-5-chloro-6-methyluracil) and its metabolites [3-tert-butyl-5-chloro-6-hydroxymethyluracil], [6-chloro-2,3-dihydro-7-hydroxymethyl 3,3-dimethyl-5H-oxazolo(3,2-a) pyrimidin-5-one], and [6-chloro-2,3-dihydro-3,3,7-trimethyl-5H-oxazolo(3,2-a) pyrimidin-5-one], in or on watermelon at 1.0 parts per million (ppm). That notice included a summary of the petition prepared by DuPont Crop Protection, the registrant. There were no comments received in response to the notice of filing.

EPA is also deleting an established tolerance in section 40 CFR 180.209(b) that is no longer needed, as a result of this action. The tolerance deletion under section 40 CFR 180.209(b) is a time-limited tolerance established under section 18 emergency exemptions that is superceded by the establishment of a general tolerance for terbacil section 40 CFR 180.209(a). The revision to 40 CFR 180.209 is as follow:

Delete the time-limiting tolerance for watermelon at 0.4 ppm under 40 CFR 180.209(b). Tolerance for watermelon at 1.0 ppm is established by this action under 40 CFR 180.209(a).

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

chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of terbacil on watermelon at 1.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by terbacil as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from available toxicity studies as summarized in Table 1 below:

TABLE 1: TOXICITY PROFILE FOR TERBACIL — SUBCHRONIC, CHRONIC AND OTHER TOXICITY

Guideline No.	Study Type	Assessment Results
870.3100	90–Day oral toxicity rat Dosage at 0, 8, 20, and 200 milligrams/kilogram/day (mg/kg/day)	NOAEL = 500 ppm (20 mg/kg/day) LOAEL = 5,000 ppm (200 mg/kg/day), based on focal necrosis and triaditis in females (F), vacuolization in males (M) and increased relative liver weight and hypertrophy of hepatocytes in both sexes.
870.3200	21–Day dermal rabbit Dosage at 0 and 5,000 mg/kg/day	NOAEL = 5,000 mg/kg/day LOAEL was not established. There were no clinical signs of toxicity, gross or histopathologic changes.
870.4100	Chronic oral 2–year dog Dosage at 0, 1.0, 5.0, 50, and 200 mg/kg/day	NOAEL = 250 ppm (equivalent to 5.0 mg/kg/day) LOAEL = 2500 ppm (equivalent to 50 mg/kg/day), based on increased relative thyroid weights and thymic involution in both sexes.
870.4200	Carcinogenicity mouse Dosage for M/F: 0/0, 6.5/8.0, 162/199, and 746/895 mg/kg/day	NOAEL = 162 mg/kg/day LOAEL = 746 mg/kg/day, based on increased liver weights, hyperplastic nodules, necrosis, and vacuolation in the liver in males. There was no oncogenic potential at the doses tested.
870.3700	Developmental toxicity rat Dosage at 0, 24, 104 and 392 mg/kg/day	Maternal NOAEL was not established Maternal LOAEL = 24 mg/kg/day based on decreased body weight gain. Developmental NOAEL = 24 mg/kg/day Developmental LOAEL = 104 mg/kg/day, based on decreased number of live fetuses/litter.
870.3700	Developmental Toxicity rabbit Dosage at 0, 30, 200, and 600 mg/kg/day	Maternal NOAEL = 200 mg/kg/day Maternal LOAEL = 600 mg/kg/day, based on mortality, clinical findings (anorexia, discharge), decreased body weight and body weight gain. Developmental NOAEL = 200 mg/kg/day Developmental LOAEL = 600 mg/kg/day, based on decreased body weight, increased incidence of skeletal malformations (fused ribs) and increase frequency of skeletal variations.

TABLE 1: TOXICITY PROFILE FOR TERBACIL — SUBCHRONIC, CHRONIC AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Assessment Results
870.3800	3–generation reproduction - rat Dosage at 0, 2.0, and 10 mg/kg/day	Parental NOAEL = 50 ppm (equivalent to2.0 mg/kg/day) Parental LOAEL = 250 ppm (equivalent to 10 mg/kg/day) based on decreased body weight, Reproductive NOAEL = 250 ppm (equivalent to 10 mg/kg/day) Reproductive LOAEL was not established Offspring NOAEL = 250 ppm (equivalent to 10 mg/kg/day) Offspring LOAEL was not established
870.4300	Combined Chronic Toxicity/Carcinogenicity rat Dosage M/F: 0/0, 0.9/1.4, 58/83, 308/484 mg/kg/day	NOAEL (M/F)= 58/1.4 mg/kg/day LOAEL (M/F)= 308/83 mg/kg/day, based on decreased body weight and body weight gain and increased absolute and relative liver weights in males and females. There was no oncogenic potential at the doses tested.
870.4300	Combined Chronic Toxicity/ Carcinogenicity rat Dosage at 0, 2.0, 10 and 100/400 mg/kg/day)	Systemic NOAEL = 250 ppm (equivalent to 10 mg/kg/day) Systemic LOAEL = 2,500/10,000 ppm (equivalent to 100/400 mg/kg/day) based on increased mean relative liver weights, hepatocyte centrilobular hypertrophy in males and females and vacuolation in females. There was no oncogenic potential at the doses tested.
870.5300	Mutagenic- (HGPRT) Dosage at 0, 2, 3, 5 and 6 mM (-S9); 0, 1, 2, 2.5, 2.75, 3.25 and 3.50 mM (+S9)	Did not induce mutation in chinese hamster ovary cells with or without metabolic activation.
870.5375	*In vitro* chromosome aberration assay CHO cells Dosage at 0, 20, 100 and 500 mg/kg	Negative for clastogenic activity in the rat bone marrow cytogenetic assay.
870.5500	Unscheduled DNA synthesis assay rat primary hepatocyte Dosage at 0, 0.010, 0.033, 0.10, 0.33, 1.0, 2.5, 5.0, 7.5, and 10 mM	Did not induce unscheduled DNA synthesis in primary rat hepatocytes.
870.5100	Mutagenicity study (bacteriophage assay)	Did not show the suspected (5-bromo-uracil metabolite) mutagenic action.
870.7485	Metabolism study rat Doseage at single doses of 6.5 or 500 mg/kg	Approximately 57–82% of the administered dose was absorbed in 24 hours. Ninety one to 103% of radioactivity was recovered within 5 days; with 70 to 86% in urine and 14–28% in feces. The major metabolites were glucuronide, sulfate and sulfate/N-acetylcysteine conjugates. The primary metabolic pathway is hydroxylation of the 6-methyl group to form the alcohol which is conjugated to form the glucuronide (35% of the dose) and the sulfate derivatives (11%). Terbacil is also metabolized to the 5-hydroxy intermediate, which is further conjugated to form a sulfate derivative (17%). There was no evidence suggestive of bioaccumulation.

B. Toxicological Endpoints

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

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

characterization at *http://www.epa.gov/pesticide/health/human.htm*.

A summary of the toxicological endpoints for terbacil used for human risk assessment is presented in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TERBACIL FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (General Population and Females 13–50 years of age)	NA	NA	An endpoint of concern attributable to a single dose for the general population or female 13+ was not identified
Chronic dietary (All populations)	NOAEL= 1.4 mg/kg/day UF = 100X Chronic RfD = cRfD= 0.014 mg/kg/day	Special FQPA SF = 1X cPAD = cRfD divided by Special FQPA SF = 0.014 mg/kg/day	Combined Chronic Toxicity/carcinogenicity - rat LOAEL = 83 mg/kg/day based on decreased body weight and body weight gain in females
Short (1–30 days) and Intermediate (1–6 months) Term Incidental oral	Oral NOAEL = 2.0 mg/kg/day (inhalation absorption rate = 100% oral equivalent)	LOC for margin of exposure (MOEs) <100 (occupational and residential)	3–Generation reproduction - rat LOAEL = 10 mg/kg/day based on decreased body weight
Dermal (any time period)	NA	NA	Quantification of dermal risk is not required; the lack of dermal or systemic toxicity at 5,000 mg/kg (5X the limit dose) in a 21 day dermal toxicity study in rats which indicates poor dermal absorption.
Short- (1 to 30 days) and Intermediate- (1 to 6 months) term inhalation	NOAEL= 2.0 mg/kg/day (inhalation absorption rate = 100% oral equivalent)	LOC for MOEs <100 (residential)	3–Generation reproduction - rat LOAEL = 10 mg/kg/day, based on decreased body weight
Long-term inhalation (> 6 months)	Oral NOAEL= 1.4 mg/kg/day (inhalation absorption rate = 100% oral equivalent)	LOC for MOE <100 (residential and occupational)	Combined Chronic Toxicity/Carcinogeni-city - rat LOAEL = 83 mg/kg/day based on decreased body weight and body weight gain in females
Cancer (oral, dermal, inhalation)	NA	NA	Classification: Not likely to be carcinogenic to humans

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.209) for the combined residues of terbacil, in or on a variety of raw agricultural commodities. Tolerances are currently established for the combined residues of terbacil, (3-tert-butyl-5-chloro-6-methyluracil) and its metabolites [3-tert-butyl-5-chloro-6-hydroxymethyluracil], [6-chloro-2,3-dihydro-7-hydroxymethyl 3,3-dimethyl-5H-oxazolo(3,2-a) pyrimidin-5-one], and [6-chloro-2,3-dihydro-3,3,7-trimethyl-5H-oxazolo(3,2-a) pyrimidin-5-one], calculated as terbacil, in/on alfalfa, apple, asparagus, blueberry, caneberry, peach, peppermint, spearmint, strawberry, and sugarcane ranging from 0.1–2.0 ppm. A time-limited tolerance at 0.4 ppm in/on watermelon is currently established under section 18 exemption of the FIFRA and scheduled to expire June 30, 2007. Tolerances in/on livestock are not currently established. There are no feed commodities associated with watermelon.

Risk assessments were conducted by EPA to assess dietary exposures from terbacil in food as follows:

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

An appropriate endpoint attributable to a single dose for the general population or females 13 years and older was not identified in the toxicological studies for terbacil; therefore, a quantitative acute dietary exposure assessment is not needed.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™ ver. 2.3), which incorporates food consumption data as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic dietary analysis incorporated tolerance level residues, 100% crop treated, and DEEM™ (ver 7.81) default processing factors for all registered/proposed crops. The chronic analysis also assumed the Screening Concentration in Ground Water (SCI-GROW) modeled water estimates for all water sources (direct and indirect). The ground water estimate was generated using the highest registered/proposed application rate. Although rotational crop tolerances are not currently established, the Agency concluded that the dietary analysis should incorporate residue estimates for rotated crops. Of the registered/proposed crops, alfalfa, mint, strawberry, sugar cane, and watermelon are crops which are rotated. Based on the field rotational crop data (residues <

= 0.19 ppm, 0.3–2.1 x the maximum application rate, 30–day plant-back intervals (PBIs)), the registered proposed PBIs, and the application rates, residues in/on crops rotated into alfalfa, mint, and sugar cane fields which were treated with terbacil are possible. Based on the field rotational crop data, the dietary analysis assumed a residue of 1.0 ppm for cereal grains and soybean (these crops are commonly rotated into alfalfa, mint, and sugarcane fields) Based on the tolerances for the primary crops (0.1–2.0 ppm) and the field rotational crop data, EPA anticipates that the 1.0 ppm residue for rotated crops is conservative.

The Agency notes that the assessment assumes, based on cultural practices, that only cereal grains and soybean are rotated into alfalfa, sugar cane, and mint fields while the registered application scenario for these crops permits the rotation of any crop. When the residue estimates used to generate the dietary exposure estimates are taken in total ((SCI-GROW) drinking water estimates, tolerance level residue, 100% crop treated for all registered/proposed crops, conservative residue estimates for cereal grain and soybean rotation crops), EPA concludes that chronic dietary exposure to terbacil is likely to be less than the estimates provided in this document.

iii. *Cancer*. Terbacil is classified as not likely to be carcinogenic to humans based on the lack of evidence of carcinogenicity in a carcinogenicity study in mice and two combined chronic toxicity/carcinogenicity studies in rats. Therefore, a cancer exposure assessment was not performed.

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

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and SCI-GROW models, the estimated environmental concentrations (EECs) of terbacil for acute exposures are estimated to be 123 parts per billion (ppb) for surface water and 111 ppb for ground water. The EECs for chronic exposures are estimated to be 25.4 ppb for surface water and 111 ppb for ground water.

The drinking water estimates are based upon the crop with the highest application rate (sugarcane). The use of terbacil on sugarcane has the highest single application rate at 3.0 pounds active ingredient/acre (lb ai/A), this application rate was used in the PRZM/EXAMS and SCI-GROW models to estimate the concentrations of this chemical in surface water and ground water, respectively.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM™ - FCID). For chronic dietary risk assessment, the annual average concentration of 111 ppb was used to access the contribution to drinking water.

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

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

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. There is no indication of increased susceptibility of rat and rabbit fetuses to *in utero* and/or postnatal exposure to terbacil.

3. *Conclusion*. There is a complete toxicity database for terbacil and exposure data are complete or are estimated based on data that reasonably account for potential exposures. Based on analyses of available exposure data, as outlined in Unit III.C.1.ii., the Agency believes that exposure to terbacil from existing and potential sources has been adequately assessed and is likely to be less than the estimates provided. EPA concludes that the FQPA SF can be reduced to 1x for the following reasons: (i) There is no evidence of increased susceptibility in rat and rabbit fetuses to *in utero* exposure to terbacil; (ii) there is no evidence of increased susceptibility to terbacil following prenatal exposure in a 3-generation reproduction study in rats; (iii) there are no residual toxicological uncertainties or concerns for increased susceptibility; (iv) there are well established NOAELs and LOAELs in the developmental and reproduction studies; (v) the environmental fate database is adequate to access the nature and magnitude of the residue in drinking water; (vi) the dietary exposure analysis assumed tolerance-level residues and 100% crop treated.

E. Aggregate Risks and Determination of Safety

The Agency currently has two ways to estimate total aggregate exposure to a

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

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

1. *Acute risk*. An endpoint of concern attributable to a single exposure was not identified in the hazard database and therefore no acute risk is expected from exposure to terbacil.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to terbacil from food and water will utilize 40% of the cPAD for the U.S. population, 99% of the cPAD for all infants <1 year old (subpopulations at greatest exposure), and 94% of the cPAD for children 1–2 years old. There are no residential uses for terbacil that result in chronic residential exposure to terbacil. Based on the use pattern, chronic residential exposure to residues of terbacil is not expected since there are no registered residential use. The Agency believes that exposure to terbacil from existing and potential sources has been adequately assessed and that chronic exposure to terbacil is likely to be less than the estimates provided in this document as discussed in Unit III.C.1.ii.

3. *Short-term and Intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Terbacil is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population*. Terbacil has been classified as ''not likely to be carcinogenic to humans'' based on the results of a carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in rats. Therefore, terbacil is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

There is a practical analytical method gas chromatography/electron capture detection (GC/ELCD) for detecting and measuring levels of terbacil in or on food with residues at or above the level set by the terbacil tolerance(Method II of PAM Vol. II). EPA has provided information on this method to the Food and Drug Administration (FDA). The method is available to anyone who is interested and may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd. Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits in or on watermelon.

C. Conditions of Registration

Data gaps exist as follow and are required to be satisfactorily filled as conditions of registration for this use.

1. Petition Method Validation (PMV) of the plant method(s).

2. FDA multiresidue testing of terbacil and its metabolites through protocol D.

3. Additional watermelon field trial, conducted with application after crop emergence, in Region 3 (n=1), 5 (n=1), and 6 (n=1).

V. Conclusion

Therefore, tolerance is established for combined residues of the herbicide, terbacil (3-tert-butyl-5-chloro-6-methyluracil) and its metabolites [3-tert-butyl-5-chloro-6-hydroxymethyluracil], [6-chloro-2,3-dihydro-7-hydroxymethyl 3,3-dimethyl-5H-oxazolo(3,2-a) pyrimidin-5-one], and [6-chloro-2,3-dihydro-3,3,7-trimethyl-5H-oxazolo(3,2-a) pyrimidin-5-one], calculated as terbacil, in or on watermelon at 1.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10,

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

May 16, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.209 is revised to read as follows:

§ 180.209 Terbacil; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the herbicide terbacil, (3-tert-butyl-5-chloro-6-methyluracil) and its metabolites [3-tert-butyl-5-chloro-6-hydroxymethyluracil], [6-chloro-2,3-dihydro-7-hydroxymethyl 3,3-dimethyl-5H-oxazolo(3,2-a) pyrimidin-5-one], and [6-chloro-2,3-dihydro-3,3,7-trimethyl-5H-oxazolo(3,2-a) pyrimidin-5-one], calculated as terbacil, in or on the following raw agricultural commodities:

Commodity	Parts per million
Alfalfa, forage	1.0
Alfalfa, hay	2.0
Apple	0.3
Asparagus	0.4
Blueberry	0.2
Canebserry	0.2
Peach	0.2
Peppermint, tops	2.0
Spearmint, tops	2.0
Strawberry	0.1
Sugarcane, cane	0.4
Watermelon	1.0

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

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

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

[FR Doc. E6–8275 Filed 5–30–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 06–57]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: In this document, the Commission addresses a petition (Petition) requesting clarification that a Video Relay Service (VRS) provider may not receive compensation from the Interstate telecommunications relay service (TRS) Fund (Fund) if it blocks calls to competing VRS providers from equipment it gives to consumers.

DATES: Effective July 31, 2006.

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

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Chandler@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document does not contain new or modified information collection requirements subject to the PRA of 1995, Public Law 104–13. In addition, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4). This is a summary of the Commission's document FCC 06–57, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CG Docket No. 03–123, adopted May 3, 2006, released May 9, 2006 addressing issues raised in the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH or Petitioner) Petition for Declaratory Ruling: Petition for Declaratory Ruling on Interoperability, CC Docket No. 98–67, CG Docket No. 03–123, filed February 15, 2005.

The full text of document FCC 06–57 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW.,

Room CY–A257, Washington, DC 20554. Document FCC 06–57 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *http://www.bcpiweb.com* or by calling 1–800–378–3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document FCC 06–xxx can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro.*

Synopsis

CCASDHH filed a Petition for Declaratory Ruling on Interoperability on February 15, 2005, requesting the Commission to declare that a VRS provider may not receive compensation from the Interstate TRS Fund (Fund) if it blocks calls to competing VRS providers from equipment it distributes to consumers. CCASDHH is a coalition of eight community-based nonprofit agencies providing various social services to deaf and hard-of-hearing consumers in California. *See* Petition at 1, note 1. The Commission agrees, and concludes that the practice of restricting the use of VRS equipment to a particular provider—sometimes termed ''call blocking''—is inconsistent with the TRS regime as intended by Congress, and raises serious public safety concerns.

Traditional TRS and VRS

When Congress enacted section 225 of the Communications Act, and the Commission implemented the TRS, relay calls were placed using a text telephone device (TTY) connected to the Public Switched Telephone Network (PSTN). In such a ''traditional'' TRS call, a person with a hearing (or speech) disability dials a telephone number for a TRS facility using a TTY. In this context, the first step for the TRS user, the completion of the outbound call to the TRS facility, is functionally equivalent to receiving a ''dial tone.'' *See, e.g.*, 47 CFR 64.601(1).

VRS allows persons using American Sign Language (ASL) to access the telephone system through a broadband Internet video connection between the VRS user and the communications assistant (CA). A VRS user may initiate a VRS call either via a VRS provider's Web site or directly through VRS equipment connected to the Internet. With VRS, the dial tone equivalent is when the VRS user establishes a video connection with the CA, who then places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the VRS user and by voice with the hearing person. As a result, the conversation between the two end users flows in near real time and in a faster manner than with a TTY or a text-based TRS call. VRS therefore provides a degree of ''functional equivalency'' that is not attainable with text-based TRS by allowing those persons whose primary language is ASL to communicate in sign language, just as a hearing person communicates in, *e.g.*, spoken English.

VRS Equipment and Provider Marketing Practices

VRS usage has grown rapidly. VRS first began in January 2002, with approximately 7,200 monthly minutes of use. By January 2004, there were nearly a half million monthly minutes of use. Most recently, in December 2005, the number of VRS minutes surpassed three million. *See* TRS Fund Performance Status Reports maintained by National Exchange Carrier Association (NECA), *http://www.neca.org* (under Resources, then TRS Fund). Further, there are now eight VRS providers, and more are expected.

VRS consumers can use a variety of equipment to communicate with the VRS CA in the video-to-video leg of a VRS call. Consumers generally use either a small camera that connects to a personal computer (generally called a ''webcam'') or a videophone that directly attaches to a television. Both must have a broadband Internet connection. Most commonly, VRS consumers use a videophone device that attaches to a television. These devices are popular because they do not require a computer and are easy to use. The D-link (also called ''i2eye'') videophone and the VP–100 videophone, both developed by Sorenson, are the most widely used videophone devices. Petition at 4, note 4. The D-Link i2eye is available for purchase on the retail market for approximately $200 and also is offered for free by some VRS providers. The D-Link is essentially a more basic model than the VP 100, with fewer user interface features and a slightly lower quality of video image. Both use the same proprietary video compression technology that enables these devices to work effectively with TVs. The VP–100 videophone has additional features that distinguish it from the D-Link and other videophones. Also, the VP–100 videophone is available only from Sorenson, with the restrictions Sorenson has placed on the use of device, as discussed below.

The popularity of VRS and the competition between the VRS providers to increase their share of the VRS market has resulted in the providers using a variety of marketing practices to gain new customers and a larger market share. These include the practice of distributing and installing VRS equipment at consumers' premises at no charge to the consumer. The Commission has made clear that the costs of consumer equipment that a provider may give to a consumer are not compensable from the Fund. *See* NECA, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CC Docket No. 98–67 at Appendix A (Relay Service Data Request Instructions), p. 4 (filed April 25, 2005) (stating that ''[t]he cost of equipment given to, sold to, and/or used by relay callers, and call incentives, are not to be reported as expenses'' (emphasis in original)); *VRS Marketing Practices Declaratory Ruling*, 20 FCC Rcd 1469, paragraph 8, note 30; published at 70 FR 9239 (February 25, 2005).

Sorenson distributes VP–100s to its customers free of charge, but presently Sorenson does not permit its customers to use a VP–100 to make an outgoing VRS call through any VRS provider's service except its own. *See* Sorenson *Ex Parte* (January 6, 2006) at 12 (''Sorenson has decided to offer users a VP–100 only in conjunction with access to its interpreters'').

Presently, a consumer who desires to obtain and use the Sorenson VP–100 can only make VRS calls through Sorenson's relay service, unless the consumer has a second piece of equipment and the ability to use his or her broadband Internet connection with either piece of equipment. *See* Sorenson Reply Comments at 4; *http://www.sorensonvrs.com/apply/index.php.* Sorenson allows customers to make peer-to-peer calls—*i.e.*, direct videophone-to-videophone calls—to other individuals free of charge even if the other party is not using a VP–100. These calls are not TRS calls and therefore are not regulated or compensated under section 225 of the Communications Act. Sorenson states that these calls constitute more than 80 percent of all Sorenson calls. Sorenson *Ex Parte* (January 6, 2006) at 10–11.

The Commission notes that on February 20, 2006, Sorenson issued a press release announcing plans to allow, by July 1, 2006, users of its videophones to use the services of other VRS providers. *See http://*

www.sorensonvrs.com. That announcement, addressing Sorenson's future marketing plans, does not preclude us from ruling on the Petition.

Another provider, Hands On, has engaged in a similar marketing practice that involves the distribution and installation of a free pre-configured router and videophone that restricts its customers to using its VRS service. The customers agreeing to this arrangement receive reimbursement from Hands On for their broadband access charge. *See* Sorenson *Ex Parte* (January 6, 2006) at 12–13 n.33; CSD *Ex Parte Letter* (November 7, 2005). Hands On asserts that it adopted the practice of blocking access to competitors over the broadband service it provides ''out of competitive necessity to prevent loss of market share.'' Hands On *Ex Parte* (November 11, 2005) at 13 (attachment). Hands On further asserts, however, that it does not block videophones supplied by competitors, and that in any event it ''believes all blocking of consumer access to competitors should be prohibited'' because otherwise other providers will do the same and ''balkanize the VRS market.''

The Petition

Petitioner requests a Declaratory Ruling that VRS providers receiving compensation from the Fund are prohibited from restricting VRS equipment from accessing other VRS providers, because that this practice violates the principle of functional equivalency. Petition at iii–iv, 8–10; *see* 47 U.S.C. 225(a)(3). Petitioner focuses in particular on Sorenson's practice of giving its VP–100 videophone to consumers for free but restricting its use to Sorenson's VRS service and blocking customers from contacting any other VRS provider. Petitioner asserts that this practice violates functional equivalency because Sorenson's customers are unable to use the services of other VRS provider for any incoming or outgoing calls. Petition at iii. Petitioner asserts that although consumers could access multiple providers by having two sets of equipment, ''having two sets of devices creates a considerable burden for consumers,'' who must, for example, ''keep separate lists of contacts, unique names and passwords, and learn how to operate two systems.'' Petition at iv. Petitioner states that ''just as hearing people are not expected to have two separate devices to make or receive calls * * * neither should VRS users be expected to have dual equipment.'' Petition at iv. The Petition also emphasizes that because it is not always possible to promptly reach an available CA, if VRS equipment is restricted consumers have no choice but to wait for an available CA; they cannot, instead, try to place a call through another provider. Petition at iv at 5. Petitioner also argues that a consumer's consent cannot justify compensating a provider from the Interstate TRS Fund, if that provider is restricting the use of its equipment. Petition at iv at 5. Petitioner also asserts that deaf VRS consumers accepting Sorenson's equipment often do not have a full understanding of restrictions placed on their use of the equipment. Petition at 10. Petitioner states that as ''the final arbiter of the [Interstate TRS] Fund, the [Commission] has a duty to ensure that all providers of VRS act in a manner that does not frustrate the purposes of section 225 of the Communications Act, or interfere with the other objectives of the Communications Act.'' Petition at 24.

Petitioner also asserts that requiring interoperability is in the public's interest. Petitioner emphasizes that blocking access to other VRS providers creates a serious danger for VRS consumers attempting to place a VRS call in the event of an emergency. Petition at 19–22. Petitioner notes that many videophone users have abandoned their TTYs and choose to use VRS exclusively for calls to hearing individuals. Petition at 19–20. As a result, in the event of an emergency, if a consumer cannot promptly reach a CA through the only VRS provider they are allowed to use with their equipment, they will not be able to call emergency services at all. Petition at 20. Petitioner contends that a ''practice that prohibits customers from accessing another VRS provider [during an emergency] conflicts with our nation's homeland security polices, which are designed to facilitate, not restrict, access to emergency support—especially when an emergency strikes a sizeable area.'' Petitioner also notes that there may be times when a provider's service is shut down or overwhelmed by an influx of calls, and that in such cases it is imperative that consumers have access to all VRS providers, as well as all available interpreters. Petition at 22.

Finally, Petitioner asserts that restricting the use of VRS equipment to a single provider is at odds with the Commission's emphasis on open and integrated telecommunications networks, including the Internet, and interconnection principles. Petitioner maintains that this practice is ''contrary to the Commission's overall efforts to achieve a seamless and integrated network of communications services, and inconsistent with national policies promoting competition, nondiscriminatory practices, and dialing parity.'' Petition at iii. Petitioner states that ''Congress and the Commission have consistently renewed their commitment to policies that promote the interconnection of services and equipment, in the interest of both furthering competition and facilitating use of the nation's public telecommunications networks by the broadest number of consumers.'' Petition at 8. Petitioner emphasizes that the requirement in the TRS rules that providers offer consumers their long distance carrier of choice ''is a form of interoperability designed to foster competition for relay calls made over long distance.'' Petition at 8. Relatedly, Petitioner asserts that requiring interoperability would level the playing field and foster competition by encouraging new providers to offer service. Petition at 22–23.

The Comments

On March 1, 2005, the Petition was placed on Public Notice. *See Petition for Declaratory Ruling filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) concerning Video Relay Service (VRS) Interoperability),* CC Docket No. 98–67, CG Docket No. 03–123, Public Notice, 20 FCC Rcd 4162 (March 1, 2005); published at 70 FR 12884 (March 16, 2005) (*Interoperability PN*). Six TRS providers and six organizations filed comments and reply comments. Of these commenters, only Sorenson opposes the Petition. Numerous individuals also filed comments and reply comments, most of which generally support the Petition. Many *ex parte* meetings and paper filings also occurred.

The Comments. Supporting commenters generally make the same arguments as Petitioner. They assert that because equipment restrictions limit the ability of the consumers to use their VRS provider of choice, the practice violates the functional equivalency mandate. The commenters argue that consumers should not be locked into using one provider's relay service simply because the provider gave the consumer free VRS equipment. Commenters further assert that this practice compels consumers who desire to have access to multiple providers to have more than one videophone device, which is burdensome and costly. Commenters state that it is inconsistent with functional equivalency to require consumers using VRS to use two or more separate video devices to ensure that they can promptly reach a VRS CA (the equivalent of reaching a dial tone when hearing people can use a single

conventional voice phone). Commenters also emphasize that restricting the use of VRS equipment can thwart a consumer's ability to contact promptly emergency services. If the consumer cannot promptly reach a CA (*e.g.*, because of long wait times), the inability to place a call through another VRS provider puts their safety at risk. Most individual commenters also express the desire to be able to call any of the VRS providers in an emergency.

Sorenson's Response. Sorenson opposes the Petition. Sorenson acknowledges that it presently does not permit a consumer to use its VP–100 device to place a VRS call through any other VRS provider's service. But Sorenson asserts that consumers using the VP–100 still remain free to use any providers' VRS service with any other equipment they may have.

Sorenson characterizes its VRS service as a ''total service platform,'' which it states it has developed at considerable expense. According to Sorenson, this platform includes provision of the VP–100 with its ''high-quality video imagery,'' access to highly trained interpreters, maintenance and repair of all elements of its service (including the VP–100), and unlimited point-to-point calling. Sorenson asserts that each provider ''should be free to offer whatever service packages it thinks will be most attractive to consumers.'' Sorenson also describes its total service platform approach as consistent with the approach used by most consumer communications today, such as wireless providers. Sorenson argues that if it were forced to ''unbundled its platform,'' *i.e.,* permit consumers to use its VP–100 with other VRS providers, the VP–100 would no longer be part of Sorenson's service and therefore, *e.g.,* Sorenson would not be responsible for maintaining and repairing the equipment.

Sorenson further asserts that if it is required to permit consumers to use its VP–100 to make calls through other providers' VRS service, ''much of the incentive to develop innovations will disappear because any new technology will be shared with all other VRS providers, thus precluding the inventor from recovering or profiting on any investment made.'' Sorenson Reply Comments at 11; Sorenson *Ex Parte* (January 6, 2006) at 17. Sorenson contends that under section 225 of the Communications Act, the Commission has the obligation to ensure that the TRS regulations encourage, not impair, the development of new technology and that it has a duty to make TRS available to all Americans in an expeditious manner as possible. Sorenson therefore argues that allowing a competitive VRS market without regulatory intervention—such as an interoperability requirement—will ''encourage providers to invest in advanced technology for VRS products and services, which will, in-turn, benefit the deaf and hard-of-hearing communities.''

Sorenson also maintains that its proposed solution for handling emergency calls made via their VRS service—identifying emergency calls that are in queue and routing them to a CA trained in facilitating the VRS caller in reaching an appropriate PSAP—negates the argument that providing access to emergency service requires interoperability. Sorenson *Ex Parte* (January 6, 2006) at 18–20. Sorenson asserts that they are implementing a process whereby incoming VRS customers calling 9–1–1 will automatically be moved to the front of the queue and that those incoming calls will be routed to CAs who are specially trained regarding proper handling of 9–1–1 calls. Sorenson explains that it ''plans to integrate software that automatically moves the caller, in an emergency situation, to the front of the queue for the next available operator.''

Discussion

The Commission concludes that a provider's practice of restricting the use of VRS as described herein—including by blocking calls to other providers or providing degraded service quality for connections to the service of other VRS providers—is inconsistent with the functional equivalency mandate, the public interest, and the TRS regime as intended by Congress. The Commission further concludes that all VRS consumers must be able to place a VRS call through any of the VRS providers' service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer. As a result, effective July 31, 2006, any VRS provider restricting the use of its service so that a consumer cannot use it to place or receive a call through any of the VRS providers' relay service will be ineligible for compensation from the Interstate TRS Fund. *See paragraph 43, infra* addressing effective date.

Functional Equivalency. The Commission concludes that restricting access to competing VRS providers is inconsistent with section 225 of the Communications Act's functional equivalency mandate. 47 U.S.C. 225(a)(3). Voice telephone users reach a dial tone almost instantaneously every time they pick up the telephone. For TRS users, the Commission has recognized that reaching a CA ready to handle the call is essentially the same as reaching a dial tone. *See*, *e.g., 2004 TRS Report and Order*, 19 FCC Rcd 12480, paragraph 3, note 18. Therefore, ''the ability of a TRS user to reach a CA prepared to place his or her call * * * is fundamental to the concept of 'functional equivalency.' '' *Call Handling Practices PN,* 20 FCC Rcd 1474; published at 70 FR 8034 (February 17, 2005) (internal quotation marks omitted). For this reason, the TRS regulations include a speed of answer requirement so that a TRS user does not have to wait to reach a CA. *See 2005 VRS Speed of Answer Order,* 20 FCC Rcd 13168, paragraph 6; published at 70 FR 51649 (August 1, 2005). For text-based TRS services, the speed of answer requires that 85 percent of all calls be answered within 10 seconds. 47 CFR 64.604(b)(2) of the Commission's rules. Presently, for VRS, the speed of answer rule requires 80 percent of all calls to be answered within three minutes. *See 2005 VRS Speed of Answer Order,* 20 FCC Rcd 13165, paragraph 1 (although this requirement had been waived for VRS, effective January 1, 2006, 80 percent of all VRS calls must be answered within 3 minutes). This longer speed of answer period for VRS reflects concerns over the shortage of qualified interpreters available to handle VRS calls. *2005 VRS Speed of Answer Order* 13174–13175, paragraph 18.

If a consumer is limited to using only one provider's service, the consumer is dependent solely on that provider to reach a CA available to place a call. If there is a long wait time, or the call is urgent, the consumer cannot attempt to contact a CA of another provider's service because such calls are blocked. Therefore, at any particular moment in time, a VRS user is at a disadvantage compared to voice callers because a CA may not be available to handle the VRS user's call, and the VRS user cannot promptly reach a ''dial tone.'' As CAC states, ''[w]hen a hearing person picks up the telephone to make a call, that individual can immediately access anyone, anytime, regardless of the telephone carrier to which that person or the called party subscribes. This same capacity is not being made available to those VRS users who are restricted to one service provider. These consumers are presently unable to switch to another provider to make their calls, even when their primary provider has no dial tone *i.e.,* no interpreter available to place the call.'' CAC Comments at 3. Although the VRS speed of answer requirement was adopted to address this issue, because compliance with the rule is measured on a monthly basis, and the

compliance rate is presently 80 percent of all calls, even if the standard is met a VRS user may have to wait a significant amount of time to reach a CA. Therefore, in these circumstances, speed of answer does not necessarily ensure functional equivalency for any particular call.

The Commission also believes that it is inconsistent with functional equivalency to require VRS users to have two sets of equipment to ensure that they can promptly reach a CA, and impractical in an urgent situation to expect users to have to switch out equipment if one provider is not available quickly enough. For many consumers, particularly those that are not technologically sophisticated, switching relay equipment that is attached to the consumer's broadband Internet connection is not a simple matter. For example, at a minimum the consumer must ensure that: (1) He or she has selected the right piece of equipment for the particular provider; (2) the equipment is turned on and plugged into the Internet connection; (3) the other piece of equipment is turned off and disconnected from the Internet connection; and (4) the piece of equipment is properly configured to read the correct IP address of the VRS provider. Voice telephone users are not required to have multiple sets of equipment to obtain a dial tone and access the telephone network. In addition, this is burdensome and costly. Further, requiring consumers to have two sets of equipment to access multiple providers adversely affects a VRS user's ability to receive incoming calls. If, for example, only one device is turned on, the router may nevertheless direct the incoming call to the device that is turned off, and as a result the VRS user will miss the call. Voice telephone users do not similarly risk missing incoming calls because of the necessity of having multiple equipment to ensure access to a dial tone.

Further, call blocking adversely affects the ability of hearing person to successfully initiate a VRS call. If a hearing person is limited to calling a deaf person through one provider's service, the choices of the hearing person are constrained by an arrangement to which he or she is not a party and likely does not even know about. The hearing person may attempt to place a VRS call through several providers before reaching the one provider that can place a call to the VRS user. This not only discourages VRS calls initiated by hearing persons, but again is inconsistent with TRS as a service that must be available to give persons with hearing and speech disabilities access to the telephone system, regardless whether the person with a disability or the voice telephone user initiates the call. In sum, consistent with functional equivalency, all VRS consumers must be able to place a VRS call through any of the VRS providers' service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer. Therefore, a provider may not block calls so that VRS equipment cannot be used with other providers' service. In addition, a provider may not take other steps that restrict a consumer's unfettered access to other providers' service. This includes the practice of providing degraded service quality to consumers using VRS equipment or service with another provider's service. Finally, new providers seeking to offer service have the burden of ensuring that their service is interoperable with existing providers' service.

The Public Interest and Access to Emergency Services. The Commission has repeatedly emphasized the public interest importance of ensuring that consumers have access to emergency services. Because a VRS user, like all consumers, must be able to contact promptly emergency services, the Commission also concludes that restricting consumers to contacting a single VRS provider is inconsistent with the public interest.

As noted above, many individuals with hearing and speech disabilities use TRS to contact emergency services. If a VRS user is restricted to placing a call with one provider, and that provider's wait time prevents the user from promptly reaching a CA in the event of an emergency, the consumer may suffer serious harm. Even assuming a VRS provider is able to develop a means of promptly handling emergency calls, this does not negate the broader public interest in ensuring full VRS access to all providers. In the event of an emergency, or an event that might temporarily affect a particular provider's ability to offer service, consumers must be able to call any CA to reach emergency services. Particularly in the aftermath of September 11, 2001, and recent hurricanes in the Gulf Coast, the Commission finds that it is essential to ensure that VRS consumers are not dependent on services of a single provider in the event of an emergency.

Call Blocking Cannot be Justified as Part of a ''Total Platform Service. Sorenson contends that it may receive compensation from the Fund regardless of how it provisions relay service with equipment and other services. Sorenson's argument is premised on at least four points: (1) The provision of TRS is no different from the provision of other communication services to the public, including wireless telephone calls, traditional wireline telephone calls, and satellite television; (2) TRS providers therefore may offer whatever ''service package'' they like, which may include bundling equipment, the relaying of calls, maintenance and repair of the equipment, and additional features; (3) bundling equipment with service is essential to ensuring that the provider recovers the cost of developing the equipment (*i.e.*, a return on investment) and therefore can continue to innovate; and (4) bundling equipment with service permits deaf consumers to use the equipment to make free peer-to-peer calls, which furthers the goal of improving communication for deaf people. As summarized below, Sorenson's points cannot support the use of the Interstate TRS Fund to compensate call blocking practices.

First, TRS is fundamentally different from the provision of wireless telephone, satellite television, or similar services that may bundle equipment and services in that these services are market-based and, unlike TRS, are paid for by any consumer wishing to subscribe. By contrast, TRS is an accommodation for persons with disabilities required of voice telephone providers as mandated by Congress. TRS is fully compensated by the states and the Federal Interstate TRS Fund; it is not paid for by the consumer. Moreover, section 225 of the Communications Act focuses on the provision of relay service. Indeed, this is apparent from the plain language of section 225 of the Communications Act, which is directed at ''services'' that carriers must offer in their service areas that enable communication between persons who use a TTY or other nonvoice terminal device and an individual who does not use such device. 47 U.S.C. 225(a)(3) and (c); *see also* CSD and Hamilton *Ex Parte* (January 25, 2006) at 5 (attachment) (''the FCC has always interpreted the ADA's TRS mandates to require the provision of relay services, not the manufacture and distribution of equipment uses with those services''). Section 225 of the Communications Act requires carriers to make relay service available to handle calls that consumers choose to make, and provides a mechanism whereby they will be compensated for their reasonable costs of operating relay facilities and relaying calls. For this reason, relay users have traditionally purchased their own devices (*e.g.*, TTYs) or received them from state programs. Although more

recently some providers have distributed free TRS equipment to consumers, consistent with the purpose of section 225 of the Communications Act, the Commission has made clear that the costs of consumer equipment are not compensable from the Fund.

Second, and for the same reason, not all ''service packages'' marketed by TRS providers are compensable from the Fund under section 225 of the Communications Act. TRS is a service that certain common carriers are required to offer (and that some non-common carriers such as Sorenson have voluntarily chosen to offer) that is defined by section 225 of the Communications Act and the TRS mandatory minimum standards. If a provider offers service in compliance with these rules, it may be compensated from the Fund. But an entity cannot determine for itself that it is going to provide something different than or beyond the Commission's rules, and still expect compensation from the Fund. For example, Video Remote Interpreting (VRI) is a commercial service similar to VRS for which consumers must pay a fee. *See generally Call Handling Practices PN,* 20 FCC Rcd 1475 (distinguishing VRI and VRS). Sorenson make the related argument that call blocking is necessary to allow it to recover the cost of developing its equipment. *See, e.g.*, Sorenson Comments at 29. As noted above, entities that develop customer equipment are, of course, free to sell their equipment to consumers to recover their investment in the equipment.

Sorenson's final argument, that its ''bundled'' approach permits deaf consumers to make free peer-to-peer calls, is irrelevant to the fundamental point that to receive compensation from the Fund a company must allow full unrestricted access to this nation's communications network. In related contexts, the Commission has repeatedly adhered to policies favoring open access to networks and interoperability of terminal equipment. For example, in the context of connecting terminal equipment to the telephone network, the Commission has promulgated a series of rules to ensure open access and interoperability. *See* 47 CFR 68.1 *et seq.* Moreover, policies of open access and interconnection were fundamental to the Telecommunications Act of 1996. For example, section 251 of the Communications Act provides a duty of telecommunications carriers to interconnect with other carriers and ''not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 of the Communications Act (Access by Persons with Disabilities).'' 47 U.S.C. 251(a)(1) & (2).

Research and Development. Some commenters assert that in connection with requiring interoperability the Commission should permit recovery of some costs for research and development relating to the improvement of VRS service. The Commission has previously emphasized that, as a general matter, engineering and other expenses for research and development to meet waived mandatory minimum standards, or to provide enhancements beyond applicable non-waived mandatory minimum standards, are not compensable from the Fund. *See, e.g., 2004 TRS Report and Order,* 19 FCC Rcd 12547–12548, paragraphs 188–189. The Commission clarifies, however, that to the extent providers engage in research and development directed at the provision of service to the consumer as required by the rules, *e.g.*, the routing and handling of calls at the relay center, such costs may be compensable subject to the ''reasonableness'' standard. Such costs do not include those directed at issues inherent in Internet-based services generally or the provision of Voice over IP (VoIP).

Notification. The Commission requires any VRS provider that has restricted the use of TRS equipment to notify their customers by July 1, 2006, that, upon the effective date of this *Declaratory Ruling,* they may make or receive a VRS call through any of the providers. Further, as of that date, it will be an impermissible marketing practice for any provider to tell or suggest to any consumer that the consumer may not be used to make a relay call through another provider's service. *Cf. Call Handling Practices PN,* (addressing improper TRS marketing practices).

Effective Date. The Commission recognizes that because the provision of VRS is now subject to a speed of answer requirement, and as a result of this order some providers may experience an increase in call volume, all providers may need a period of time to adjust their operations to take into account the possible effect of this order. *See, e.g.*, Sorenson *Ex Parte* (January 24, 2006) at 1 (requesting if the Commission requires interoperability a reasonable amount of time ''to implement software, hardware, and other modifications necessary to comply'' with the new rule); Hands On *Ex Parte* (January 27, 2006) (noting that elimination of call blocking may result in a ''temporary dislocation of the market'' as consumers will be free to choose any provider to make a VRS call, and therefore requesting a 90 day waiver of the speed of answer requirement). For these reasons, this *Declaratory Ruling* shall be effective July 31, 2006. Beginning on that date, any VRS provider restricting its service as described above will be ineligible for compensation from the Fund.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA, *see* 5 U.S.C. 601–612, has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Statute 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Act of 1996 (SBREFA). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 605(b). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 5 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

This *Declaratory Ruling* addresses a petition requesting the Commission to declare that a VRS provider may not receive compensation from the Interstate TRS Fund if it blocks calls to competing VRS providers. *See CCASDHH Petition*, note 1, *supra.* The Commission concludes that the practice of restricting the use of VRS to a particular provider is inconsistent with the TRS regime as intended by Congress, and raises serious public safety concerns. *See* 47 U.S.C. 225(a)(3), note 2, *supra.* The Commission further concludes that all VRS consumers must be able to place a VRS call through any

of the VRS providers' service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer. As consumers increasingly rely on VRS as their preferred means of using TRS to access the telephone system, the Commission finds that it is in the public interest that all VRS consumers can place and receive calls through any VRS providers' service in the event of emergency and urgency. Therefore, this *Declaratory Ruling* concludes that providers must ensure that all VRS consumers can place and receive calls through any of the VRS providers' service in order to receive compensation from the Interstate TRS Fund. The Interstate TRS Fund administrator distributes the VRS providers for reasonable costs of providing VRS. Each year, the Interstate TRS Fund administrator, the National Exchange Carrier Association, Inc. (NECA), proposes the compensation rates for the various forms of TRS, including VRS, to the Commission. NECA collects and reviews projected cost and minutes of use data submitted by TRS providers to determine the annual TRS compensation rates. Reasonable compliance cost is included in the projected cost submitted by TRS providers. *See* paragraphs 8–9, *supra*. *See also*, TRS Fund Performance Status Reports maintained by National Exchange Carrier Association (NECA) as of October 31, 2005, *http://www.neca.org* (under Resources, then TRS Fund). In order to be compensated for the costs of providing VRS, the providers are required to meet the applicable TRS mandatory minimum standards as required in § 64.604. *See generally* 47 CFR 64.604(c)(5)(iii)(E) of the Commission's rules. Reasonable costs of compliance with this *Declaratory Ruling* are compensable from the Fund. Because the providers will be recouped for the costs of compliance within a reasonable period, the Commission asserts that the providers will not be detrimentally burdened. Therefore, the Commission certifies that the requirements of the *Declaratory Ruling* will not have a significant economic impact on a substantial number of small entities.

The Commission also notes that, arguably, there are not a substantial number of small entities that will be affected by our action. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. 13 CFR 121.201 of the Commission's rules, NAICS code 517110. According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513310 (issued Oct. 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.'') Currently, only eight providers are providing VRS and being compensated from the Interstate TRS Fund: AT&T Corp.; Communication Access Center for the Deaf and Hard of Hearing, Inc.; Hamilton Relay, Inc.; Hands On; MCI; Nordia Inc.; Sorenson; and Sprint. The Commission notes that two of the providers noted above are small entities under the SBA's small business size standard. Because two of the affected providers will be promptly compensated within a reasonable period for complying with this *Declaratory Ruling*, the Commission concludes that the number of small entities affected by our decision in this Order is not substantial. Therefore, the Commission certifies that the requirements of this *Declaratory Ruling* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the *Declaratory Ruling* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA. *See* 5 U.S.C. 605(b).

Congressional Review Act

The Commission will not send a copy of the *Declaratory Ruling* pursuant to the Congressional Review Act because the adopted rules are rules of particular applicability. *See* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to the authority contained in sections 1.2 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152 and 225, the *Declaratory Ruling* is adopted. CCASDHH's Petition is granted to the extent indicated herein. The Declaratory Ruling shall become effective July 31, 2006.

The Commission will send a copy of the *Declaratory Ruling*, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–8376 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–992; MB Docket No. 05–269; RM–11267]

Radio Broadcasting Services; Allegan, Mattawan, and Otsego, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition filed by Forum Communications, Inc., licensee of FM Station WZUU, proposing the substitution of Channel 223A for Channel 222A at Allegan, reallotment of Channel 223A from Allegan to Mattawan, Michigan, as its first local service and modification of the FM Station WZUU license accordingly. To prevent removal of Allegan's sole local service, the document grants the reallotment of co-owned Station WQXC–FM, Channel 265A from Otsego to Allegan, Michigan and modification of the Station WQXC–FM license accordingly. A staff engineering analysis has determined that Channel 223A can be allotted to Mattawan in conformity with the Commission's rules, provided there is a site restriction of 10.6 kilometers (6.6 miles) southeast at reference coordinates 42–07–45 NL and 85–43–13 WL. Additionally, Channel 265A can be allotted to Allegan in compliance with the Commission's rules, at the Station WQXC(FM) existing transmitter site at coordinates 42–30–31 NL and 85–46–08 WL. The reallotments are located within 320 kilometers (200 miles) of the U.S.-Canadian border. Canadian concurrence has been requested and approved for these reallotments.

DATES: Effective June 22, 2006.

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

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 05–269, adopted May 5, 2006, and released May 8, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 1. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 222A and by adding Channel 265A at Allegan, by adding Mattawan, Channel 223A, and by removing Ostego, Channel 265A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8162 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–955; MB Docket No. 05–292; RM–11281]

Radio Broadcasting Services; Churchville and Keswick, VA and Marlinton, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* this *Report and Order* allots Channel 292A to Marlinton, West Virginia. In addition it substitutes Channel 291A for Channel 292B1, Station WBOP(FM), Churchville, Virginia, reallots Channel 291A to Keswick, Virginia, and modifies Station WBOP(FM)'s license accordingly. The coordinates for Channel 292A at Marlinton, West Virginia, are 38–13–24 NL and 80–05–41 WL. The coordinates for Channel 291A at Keswick, Virginia, are 38–01–48 NL and 78–22–55 WL, with a site restriction of 2.1 kilometers (1.3 miles) northwest of Keswick.

DATES: Effective June 19, 2006.

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

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 05–292, adopted May 3, 2006 and released May 5, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Churchville, Channel 292B1, and adding Keswick, Channel 291A.

■ 3. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Marlinton, Channel 292A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8160 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–986; MB Docket No. 04–375; RM–11038]

Radio Broadcasting Services; Hillsborough and Louisburg, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of New Century Media Group, LLC, reallots Channel 273A from Louisburg, North Carolina to Hillsborough, North Carolina, and modifies the license of Station WKXU(FM), accordingly. The coordinates for Channel 273 at Hillsborough are 36–06–49 North Latitude and 79–00–20 West Longitude, with a site restriction of 9.51 kilometers (5.91 miles) northeast of the community.

DATES: Effective June 26, 2006.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 04–375, adopted May 10, 2006, and released May 12, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Louisburg, Channel 273A and by adding Hillsborough, Channel 273A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8171 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1005; MB Docket No. 05–125, RM–11176]

Radio Broadcasting Services; Weaverville, Palo Cedro, and Alturas, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of George S. Flinn, Jr., licensee of Station KWCA(FM), Channel 266A, Weaverville, California, deletes Channel 266A at Weaverville, California, from the FM Table of Allotments, allots Channel 266C3 at Palo Cedro, California as the community's first local FM service, and modifies the license of Station KWCA(FM) to specify operation on Channel 266C3 at Palo Cedro, California. In order to accommodate that allotment, the Audio Division further deletes vacant Channel 267C at Alturas, California, and allots, in its place, Channel 268C1 at Alturas. Channel 266C3 can be allotted to Palo Cedro, California, in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.6 km (12.2 miles) northwest of Palo Cedro. The coordinates for Channel 266C3 at Palo Cedro, California, are 40–40–04 North Latitude and 122–25–31 West Longitude. Channel 268C1 can be allotted at Alturas, California, with a site restriction of 48.1 km (29.9 miles) west of Alturas. The coordinates for Channel 268C1 at Alturas, California, are 41–25–00 NL and 121–06–32 WL.

DATES: Effective June 26, 2006.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–125, adopted May 10, 2006, and released May 12, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California is amended by removing Channel 267C and adding Channel 268C1 at Alturas, by removing Channel 266A at Weaverville, and by adding Palo Cedro, Channel 266C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8153 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–954; MB Docket No. 05–316; RM–11294]

Radio Broadcasting Services; Arnold and City of Angels, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, this *Report and Order* allots Channel 240A, FM Station KBYN, Arnold, California from Arnold to City of Angels, California, and modifies Station KBYN's license accordingly. The coordinates for Channel 240A at City of Angels, California are 38–05–32 NL and 120–27–22 WL, with a site restriction of 8.6 kilometers (5.3 miles) east of City of Angels.

DATES: Effective June 19, 2006.

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

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–316, adopted May 3, 2006 and released May 5, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202 (b), the Table of FM Allotments under California, is amended by removing Channel 240A at Arnold, and adding City of Angels, Channel 240A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8156 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1004; MB Docket No. 05–166, RM–11228]

Radio Broadcasting Services; McAlester, Okemah, and Wilburton, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The staff grants a rulemaking petition jointly filed by Little Dixie Radio, Inc., KESC Enterprises, Inc., and Southeastern Oklahoma Radio, LLC, to reallot and change the community of license for Station KESC(FM) from Channel 279C1 at Wilburton to Channel 279C1 at Okemah, Oklahoma, as a first local service. To prevent the removal of the sole local aural service at Wilburton, the staff approved the ''back-fill'' reallotment and change of community for Station KMCO(FM) from Channel 267C1 at McAlester, Oklahoma, to Channel 267C1 at Wilburton, Oklahoma. With this action, the proceeding is terminated.

DATES: Effective June 26, 2006.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 05–166, adopted May 10, 2006, and released May 12, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of the Report and Order in this proceeding in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

The reference coordinates for Channel 279C1 at Okemah are 35–14–22 NL and 96–18–48 WL. Station KMCO(FM) is not changing its transmitter site. The reference coordinates for Channel 267C1 at Wilburton are 34–59–13 NL and 95–42–10 WL. The staff also denied objections filed by Maryellen Mooney and Doncie Campagna. In denying these objections, the staff held that the ''back-fill'' reallotment of Channel 267C1 at Wilburton will be an adequate substitute for Channel 279C1 from a technical standpoint.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 267C1 at McAlester, by adding Okemah, Channel 279C1, and by removing Channel 279C1 and adding Channel 267C1 at Wilburton.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8149 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1007; MB Docket No. 05–162; RM–11227, RM–11295]

Radio Broadcasting Services; Enfield, New Hampshire; Hartford, VT; Keeseville and Morrisonville, NY and White River Junction, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, this *Report and Order* (1) allots Channel 282A to Enfield, New Hampshire as its first local aural transmission service; (2) reallots Channel 282C3 from Hartford, Vermont, to Keeseville, New York, and modifies the license of FM Station WWOD accordingly; (3) reallots Channel 237A from White River Junction, Vermont, to Hartford, Vermont and modifies the license of FM Station WXLF accordingly, and (4) reallots Channel 231A from Keeseville, New York, to Morrisonville, New York, as Morrisonville's first local aural transmission service. The coordinates for Channel 282A at Enfield, New Hampshire are 43–38–30 North Latitude and 72–08–42 West Longitude, with no site restrictions. The coordinates for Channel 282C3 at Keeseville, New York are 44–31–31 North Latitude and 73–31–07 West Longitude, with a site restriction of 3.8 kilometers (2.3 miles) northwest of Keeseville. The coordinates for Channel 237A at Hartford, Vermont, are 43–43–45 North Latitude and 72–22–22 West Longitude, with a site restriction of 8.1 kilometers (5.0 miles) north of Hartford. The coordinates for Channel 231A at Morrisonville, New York are 44–40–19 North Latitude and 73–32–17 West Longitude, with a site restriction of 3.0 kilometers (1.9 miles) southeast of Morrisonville.

DATES: Effective June 26, 2006.

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

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–162, adopted May 10, 2006, and released May 12, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Station WWOD was granted a license to specify operation on Channel 282C3 in lieu of Channel 282A at Hartford,

Vermont. *See* File No. BLH–1996 0919 KA.

List of Subjects in 47 CFR Part 73

Radio, Radio Broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202 (b), the Table of FM Allotments under New Hampshire, is amended by adding Enfield, Channel 282A.

■ 3. Section 73.202 (b), the Table of FM Allotments under New York, is amended by removing Channel 231A and adding Channel 282C3 at Keeseville and by adding Morrisonville, Channel 231A.

■ 4. Section 73.202 (b), the Table of FM Allotments under Vermont, is amended by removing Channel 282A and adding Channel 237A at Hartford; and by removing White River Junction, Channel 237A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8150 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1006; MB Docket No. 05–123, RM–11191]

Radio Broadcasting Services; Alturas, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of George S. Finn, Jr., allots Channel 277C at Alturas, California, as the community's fourth local FM service. Channel 277C can be allotted to Alturas, California, in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.2 kilometers (11.3 miles) east of Alturas. The coordinates for Channel 277C at Alturas, California, are 41–31–30 North Latitude and 120–19–45 West Longitude.

DATES: Effective June 26, 2006.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–123, adopted May 10, 2006, and released May 12, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 277C at Alturas.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8377 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 1

[Docket No. OST–1999–6189]

RIN 9991–AA50

Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary of Transportation (OST), DOT.

ACTION: Final rule.

SUMMARY: This amendment delegates various authorities vested in the Secretary of Transportation (Secretary) by the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' or ''SAFETEA–LU'' (Pub. L. 109–59; August 10, 2005) and other laws to the Research and Innovative Technology Administrator, the Federal Highway Administrator, the Federal Railroad Administrator, the National Traffic Highway Safety Administrator, the Federal Transit Administrator, the Pipeline and Hazardous Materials Safety Administrator, the Federal Motor Carrier Safety Administrator, and the Under Secretary for Transportation Policy.

DATES: *Effective Date:* May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Karen Starring, Attorney Advisor, Office of General Counsel, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590–0001; Telephone (202)366–9314.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2005, the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' or ''SAFETEA–LU'', Public Law 109–59, was signed into law. Title 49 of the Code of Federal Regulations (CFR) section 1.4(f) is amended to reflect SAFETEA–LU nomenclature for ''mass transit'' which is now ''public transportation.''

49 CFR 1.23 defines the spheres of primary responsibility of the Secretary, Deputy Secretary, Assistant Secretaries, and specific Department level offices. As a result of SAFETEA–LU, the Department will add a Deputy Assistant Secretary for Tribal Government Affairs. This rulemaking defines the sphere of primary responsibility for the Deputy Assistant Secretary for Tribal Government Affairs.

49 CFR 1.45(b) permits the Administrators to redelegate authority the Secretary delegates to them. However, inadvertently, section 1.45(b) failed to specifically grant this authority to the Federal Motor Carrier Safety Administrator. While the Federal Motor Carrier Safety Administrator clearly has this authority as a matter of general administrative law, the Department is seizing this opportunity to correct this inadvertent error. In addition, please note that prior actions taken by subordinate FMCSA officials are considered valid despite the lack of specific redelegation language.

49 CFR 1.46 delegates to the Administrator of the Research and Innovative Technology Administration (RITA) the authority to carry out various functions and activities related to the mission of the agency vested in or delegated to the Secretary. The Secretary has determined that certain authority vested in the Secretary under SAFETEA–LU should be delegated to the Research and Innovative Technology Administrator. This rulemaking revises section 1.46 to reflect these delegations.

49 CFR 1.48 delegates to the Administrator of the Federal Highway Administration (FHWA) the authority to carry out various functions and activities related to the mission of the agency vested in or delegated to the Secretary. The Secretary has determined that the authority vested in the Secretary under SAFETEA–LU concerning the authorization of funds for Federal-aid highways, Federal lands highways, and highway safety programs, and other matters should be delegated to the Federal Highway Administrator. This rulemaking adds subsection (c)(24) to section 1.48 to reflect these delegations. In addition, the remainder of section 1.48 is amended to reflect current authority and citations and to remove expired authorities.

49 CFR 1.49 delegates to the Administrator of the Federal Railroad Administration (FRA) the authority to carry out various functions and activities related to the mission of the agency vested or delegated to the Secretary. The Secretary has determined that certain authority vested in the Secretary under SAFETEA–LU including the authorization of funds for capital grant programs and other matters related to railroad projects, programs, and studies should be delegated to the Federal Railroad Administrator. This rulemaking revises subsection (ee) and adds subsections (mm) and (nn) to section 1.49 to reflect these delegations.

49 CFR 1.50 delegates to the Administrator of the National Highway Traffic Safety Administration (NHTSA) the authority to carry out various functions and activities related to the mission of the agency vested in or delegated to the Secretary. The Secretary has determined that certain authority vested in the Secretary under SAFETEA–LU concerning highway safety, motor vehicle safety, and other matters should be delegated to the National Highway Traffic Safety Administrator. This rulemaking adds subsection (p) to section 1.50 to reflect these delegations.

49 CFR 1.51 delegates to the Administrator of the Federal Transit Administration (FTA) the authority to carry out various functions and activities related to the mission of the agency vested in or delegated to the Secretary. The Secretary has determined that the authority vested in the Secretary under SAFETEA–LU concerning public transportation should be delegated to the Federal Transit Administrator. This rulemaking revises and amends section 1.51 to reflect these delegations. In addition, other paragraphs of section 1.51 are amended to reflect current authority and citations and to remove expired authorities.

49 CFR 1.53 delegates to the Administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA) the authority to carry out various functions and activities related to the mission of the agency vested in or delegated to the Secretary. The Secretary has determined that the authority vested in the Secretary under SAFETEA–LU concerning the transportation and inspection of hazardous materials should be delegated to the Pipeline and Hazardous Materials Safety Administrator. This rulemaking revises subsection (b)(1) of section 1.53 to reflect these delegations.

49 CFR 1.73 delegates to the Administrator of the Federal Motor Carrier Safety Administration (FMCSA) the authority to carry out various functions and activities related to the mission of the agency vested in or delegated to the Secretary. The Secretary has determined that the authority vested in the Secretary under Title IV of SAFETEA–LU, the ''Motor Carrier Safety Reauthorization Act of 2005'', 49 U.S.C. 30101, should be delegated to the Federal Motor Carrier Safety Administrator. This rulemaking revises and amends section 1.73 to reflect these delegations.

49 CFR 1.74 delegates to the Under Secretary for Transportation Policy the authority to carry out various functions and activities related to the mission of the Office of the Under Secretary for Transportation Policy vested in or delegated to the Secretary. The Secretary has determined that the authority vested in the Secretary under SAFETEA–LU concerning the tax-exempt financing of highway projects and rail-truck facilities should be delegated to the Under Secretary for Transportation Policy. This rulemaking revises and amends section 1.74 to reflect this delegation.

Since these amendments relate to departmental management, organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the Department's ability to meet the statutory intent of the applicable laws and regulations covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

Regulatory Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

The final rule is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation requirements of Executive Order 13132 do not apply.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act, 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We also do not believe this rule would impose any costs on small entities because it simply delegates authority from one official to another. Therefore, I certify this final rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the

Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ For the reasons set forth in the preamble, the Office of the Secretary of Transportation amends 49 CFR part 1 as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Public Law 101–552, 104 Stat. 2736; Public Law 106–159, 113 Stat. 1748; Public Law 107–71, 115 Stat. 597; Public Law 107–295, 116 Stat. 2064; Public Law 107–295, 116 Stat 2065; Public Law 107–296, 116 Stat. 2135; 41 U.S.C. 414; Public Law 108–426, 118 Stat. 2423; Public Law 109–59, 119 Stat. 1144.

■ 2. Revise § 1.4(f) to read as follows:

§ 1.4 General responsibilities.

* * * * *

(f) *The Federal Transit Administration.* Is responsible for:

(1) Exercising the authority vested in the Secretary for developing comprehensive and coordinated public transportation systems that serve the public.

(2) Administering Federal transportation assistance programs and functions; and

(3) Assuring appropriate liaison and coordination with other Federal agencies, state and local governmental authorities, with respect to the foregoing.

* * * * *

■ 3. Amend § 1.23 as follows:

■ a. Redesignate paragraphs (h) through (q) as paragraphs (i) through (r), respectively; and

■ b. Add new paragraph (h) to read as follows:

§ 1.23 Spheres of primary responsibility.

* * * * *

(h) *Deputy Assistant Secretary for Tribal Government Affairs.* Plan, coordinate and implement the Department's policies and programs with respect to Indian tribes and tribal organizations. Coordinate intra-Departmental tribal transportation programs and activities. Serve as the Department's primary point of contact in relationships with public and private organizations and groups related to Indian tribes and tribal organizations. Participate in any negotiated rulemaking relating to, or having an impact on, projects, programs, or funding associated with the tribal transportation program.

* * * * *

■ 4. Revise § 1.45(b) to read as follows:

§ 1.45 Delegations to all Administrators.

* * * * *

(b) Except as otherwise specifically provided, each official to whom authority is granted by § 1.45 through 1.53, 1.66, 1.68, and 1.73 may redelegate and authorize successive redelegations of that authority within the organization under that official's jurisdiction.

* * * * *

■ 5. Revise § 1.46(c), (d), (e), (i), (l) and (m) to read as follows:

§ 1.46 Delegations to the Administrator of the Research and Innovative Technology Administration.

* * * * *

(c) *Advanced vehicle technology.* Carry out the functions vested in the Secretary by section 5111 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5506), as extended by the Surface Transportation Extension Act of 2004, Part V, Public Law 108–310, September 30, 2004, 118 Stat. 1144, and section 5513(j) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Title V, Subtitle E, Public Law 109–59, August 10, 2005, 119 Stat. 1144.

(d) *Remote sensing technology.* Carry out the functions vested in the Secretary by section 5113 of the Transportation Equity Act for the 21st Century (23 U.S.C. 502 Note), as extended by the Surface Transportation Extension Act of 2004, Part V, Public Law 108–310, September 30, 2004, 118 Stat. 1144, and section 5506 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Title V, Subtitle E, Public Law 109–59, August 10, 2005, 119 Stat. 1144.

(e) *University transportation research.* Carry out the functions vested in the Secretary by section 5110 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5505), as extended by the Surface Transportation Extension Act of 2004, Part V, Public Law 108–310, September 30, 2004, 118 Stat. 1144, and sections 5401 and 5402 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Title V, Subtitle D, Public Law 109–59, August 10, 2005, 119 Stat. 1144.

* * * * *

(i) *Intermodalism.* Carry out the functions vested in the Secretary by 49 U.S.C. 5503(d) and Section 4149 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Title IV, Subtitle A and Section 5209, Title V, Subtitle B, Public Law 109–59, August 10, 2005, 119 Stat. 1144.

* * * * *

(l) *Research grants.* Carry out the functions vested in the Secretary by section 5513(c), (d), (g), (h), (i), (l), and (m) (as (m) relates to (c), (d), (g), (h), (i), (j), and (l)) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Title V, Subtitle E, Public Law 109–59, August 10, 2005, 119 Stat. 1144.

(m) *Biobased transportation research.* Carry out the functions vested in the Secretary by section 5201(m) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Title V, Subtitle B, Public Law 109–59, August 10, 2005, 119 Stat. 1144.

* * * * *

■ 6. Revise § 1.48 to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

(a) Unless otherwise provided, the Federal Highway Administrator may further delegate authority provided under this section.

(b) The Federal Highway Administrator is delegated authority to administer the following provisions of title 23, Highways, U.S.C.:

(1) Chapter 1, Federal-Aid Highways, except for sections 142 (as it relates to matters within the primary responsibility of the Federal Transit Administrator), 153, 154, 158, 159, 161, and 164.

(2) Chapter 2, Other Highways.

(3) Chapter 3, General Provisions, except for section 322.

(4) Section 409 of chapter 4, Highway Safety.

(5) Chapter 5, Research, Technology, and Education, except for sections 508 and 509.

(6) Chapter 6, Infrastructure Finance.

(c) The Federal Highway Administrator is delegated authority to administer the following laws relating generally to highways:

(1) Section 502(c) of the General Bridge Act of 1946, as amended (60 Stat. 847, 33 U.S.C. 525(c)).

(2) Reorganization Plan No. 7 of 1949 (63 Stat. 1070).

(3) The Federal-Aid Highway Act of 1954, as amended (Pub. L. 83–350, 68 Stat. 70).

(4) The Federal-Aid Highway Act of 1956, as amended (Pub. L. 84–627, 70 Stat. 374).

(5) The Highway Revenue Act of 1956, as amended (Pub. L. 84–627, 70 Stat. 374, 387, 23 U.S.C.A. 120 note).

(6) The Alaska Omnibus Act, as amended (Pub. L. 86–70, 73 Stat. 141, 48 U.S.C.A. 21 note.).

(7) The Act of September 26, 1961, as amended (Pub. L. 87–307, 75 Stat. 670).

(8) The Act of April 27, 1962 (Pub. L. 87–441, 76 Stat. 59).

(9) The Federal-Aid Highway Act of 1962, as amended (Pub. L. 87–866, 76 Stat. 1145).

(10) The Joint Resolution of August 28, 1965, as amended (Pub. L. 89–139, 79 Stat. 578, 23 U.S.C.A. 101 et seq., notes).

(11) The Highway Beautification Act of 1965, as amended (Pub. L. 89–285, 79 Stat. 1028, 23 U.S.C.A. 131 et seq., notes).

(12) The Federal-Aid Highway Act of 1966, as amended (Pub. L. 889–574, 80 Stat. 766).

(13) The Federal-Aid Highway Act of 1968, as amended (Pub. L. 90–495, 82 Stat. 815).

(14) The Federal-Aid Highway Act of 1970, as amended (except section 118) (Pub. L. 91–605, 84 Stat. 1713).

(15) Sections 103, 104, 111(b), 128(b), 131, 135, 136, 141, 147, 149, 154, 158 through 161, 163, 203, 206, 401, and 402 of the Federal-Aid Highway Act of 1973, as amended (Pub. L. 93–87, 87 Stat. 250; Pub. L. 93–643, 88 Stat. 2281).

(16) Sections 102(b) (except subparagraph (2)) and (c); 105 (b)(1) and (c); 141; 146; 147; and 152 of the Federal-Aid Highway Act of 1976 (Pub. L. 94–280, 90 Stat. 425).

(17) Sections 105, 107(c) through (e), 123(a) and (b), 124(c), 126(d) through (g), 138(c), 140, 142 through 145, 147 through 154, 167, and 171, title IV, as amended (as it relates to matters within the primary responsibility of the Federal Highway Administrator), and sections 502–504 of title V of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689).

(18) The Federal-Aid Highway Act of 1982 (Pub. L. 97–327, 96 Stat. 1611), except section 6 as it relates to matters within the primary responsibility of the Federal Transit Administrator.

(19) The Surface Transportation Assistance Act of 1982, as amended, (Pub. L. 97–424, 96 Stat. 2097) except,

(i) Sections 165 and 531 as they relate to matters within the primary responsibility of the Federal Transit Administrator;

(ii) Sections 105(f), 413; 414(b) (2); 421, 426, and title III; and

(iii) Section 414(b)(1), unless with the concurrence of the National Highway Traffic Safety Administrator.

(20) Sections 103(e), 105(a) through (g), 106(a), and (b), 110(b), 114(d), 117(f), 120(c) and (d), 123(g) and (i), 133(f), 134, 136, 137, 139 through 145, 146(b), 147(c), 149(a) through (f), (h), (i), (k), 151 through 157, 164, and 208 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17, 101 Stat. 132).

(21) Sections 1002(c) and (e), 1003(c), 1004, 1006(h), 1009(c), 1012(b) and (d) through (f), 1013(c), 1014(c), 1015, 1016(g), 1017(c), 1021(c) and (d), 1022(c), 1023(f) through (g), 1029(c), (f), and (g), 1032(d) and (e), 1038 through 1042, 1044, 1045, 1046(d), 1047, 1049, 1050, 1051, 1054, 1057 through 1063, 1065, 1067, 1069, 1072, 1073, 1074, 1076, 1077, 1086, 1088 through 1092, 1097, 1099 through 1108, 6012, and 6014 through 6016 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914).

(22) Sections 201 through 205, 327 through 336, 339, 340, 349, 352, 353, and 408 of the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568).

(23) Sections 1101(a), 1102, 1103(m) and (n), 1106(a) and (d), 1107(c), 1108(f) and (g), 1110(d)(2) and (e), 1112(c) and (e), 1117(a), (b), and (d), 1118, 1119, 1202(b) and (e), 1204(i), 1207(c), 1210, 1211(i) and (l), 1212 (b), (e) through (j), (l), (m), (o), and (q) through (t), 1213(c), and (f) through (j), 1214, 1215, 1216, 1217, 1220, 1223, 1224, 1225, 1307(d) through (f), 1308, 1309, 1311, 1402, 1511, 5001, 5112, 5116 through 5118, and 5203 through 5212 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107).

(24) Sections 1102, 1105(f), 1109(f), 1111(b)(4), 1112, 1115(c), 1116(a) and (b), 1117, 1119(n), 1120(c), 1201, 1301, 1302, 1303, 1304, 1305, 1306, 1308, 1310, 1401(e), 1402, 1403, 1404, 1405, 1408, 1409(a) and (b), 1410, 1411, 1502, 1603, 1604, 1801 (d), 1803, 1804, 1805, 1807, 1808(g) through (k), 1907, 1908, 1910, 1911, 1914, 1916, 1917, 1918, 1919, 1923, 1924, 1925, 1927, 1928, 1934, 1935, 1936, 1937, 1939, 1940, 1941, 1943, 1944, 1945, 1948, 1949, 1950, 1952, 1957, 1958, 1959, 1961, 1962, 1964, 2003(e), 4112, 4141, 4404 (as it relates to matters within the primary responsibility of the Federal Highway Administrator), 5101(b), 5202(b)(3)(B), (c), and (d), 5203(e) and (f), 5204(g) and (i), 5304, 5305, 5306, 5307, 5308, 5309 (except (c)(4)), 5501, 5502, 5504, 5507, 5508, 5511, 5512, 5513(b), (f), (k), and (m) (as (m) relates to (b), (f), and (k)), 5514, 6001(b), 6002(b), 6009(b) and (c) (as they relate to matters within the primary responsibility of the Federal Highway Administrator), 6010 (as it relates to matters within the primary responsibility of the Federal Highway Administrator), 6017, 6018, 10210, and 10212 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, 119 Stat. 1144).

(d) The Federal Highway Administrator is delegated authority to:

(1) Carry out the functions vested in the Secretary of Transportation by section 601 of the Pipeline Safety Act of 1992 (Pub. L. 102–508, 106 Stat. 3289) relating to construction of the Page Avenue Extension Project in Missouri.

(2) Carry out the functions of the Secretary under the Appalachian Regional Development Act of 1965 (Pub. L. 89–4, 79 Stat. 5, 40 U.S.C. Subtitle IV) except section 208.

(3) Carry out the Act of September 21, 1966, Public Law 89–599, relating to certain approvals concerned with a compact between the States of Missouri and Kansas.

(4) Carry out the law relating to the Chamizal border highway (Pub. L. 89–795, 80 Stat. 1477).

(5) Carry out the Highway Safety Act of 1966, as amended (Pub. L. 89–564, 80 Stat. 731) and chapter 4 of title 23 U.S.C. as amended by section 207 of the Surface Transportation Assistance Act of 1978 for highway safety programs, research and development relating to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian and bicycle safety.

(6) Exercise the authority vested in the Secretary by 49 U.S.C. 20134(a) with respect to the laws administered by the Federal Highway Administrator pertaining to highway safety and highway construction.

(7) Carry out the functions vested in the Secretary by section 5 (as it relates to bridges, other than railroad bridges, not over navigable waters), and section 8(a) (as it relates to all bridges other than railroad bridges) of the International Bridge Act of 1972 (Pub. L. 92–434, 86 Stat. 731).

(8) Exercise the authority vested in the Secretary by sections 101, 118, 120(b), 123 and 124 of the Federal-Aid Highway Amendments of 1974 (Pub. L. 93–643, January 4, 1975, 88 Stat. 2281).

(9) Carry out the functions vested in the Secretary by section 118 of the National Visitor Center Facilities Act of 1968 (Pub. L. 90–264, 82 Stat. 43), as added by the Union Station Redevelopment Act of 1981 (Pub. L. 97–125; 95 Stat. 1672), with respect to the completion of the parking facility and associated ramps at Union Station in Washington, DC (40 U.S.C. 818).

(10) Carry out the functions vested in the Secretary by Public Law 98–229, 98 Stat. 55, insofar as it relates to apportioning certain funds for construction of the Interstate Highway

System in Fiscal Year 1985, apportioning certain funds for Interstate substitute highway projects, and increasing amounts available for emergency highway relief.

(11) Prescribe regulations, as necessary, at parts 24 and 25 of this title, to implement Public Law 91–646, 84 Stat. 1894, and any amendments thereto, as appropriate, in coordination with the Assistant Secretary for Transportation Policy, and carry out all other functions vested in the Secretary by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646, 84 Stat. 1894, and any amendments thereto.

(12) Carry out the functions vested in the Secretary of Transportation by section 114 of Part C of the Paperwork Reduction Reauthorization Act of 1986 (contained in the Act Making Continuing Appropriations for Fiscal Year 1987 and for Other Purposes, Public Law 99–591, 100 Stat. 3341, 2241–349), relating to construction of Interstate Highway H–3 in Hawaii.

(13) Carry out all of the functions vested in the Secretary under section 324 of the Fiscal Year 1986 Department of Transportation Appropriations Act (Pub. L. 99–190, 99 Stat. 1288), notwithstanding the reservation of authority under Sec. 1.44(j) of this part.

(14) Carry out the functions vested in the Secretary of Transportation by section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, (Pub. L. 94–210, 90 Stat. 31) relating to the Alameda Corridor Project in consultation with the Federal Railroad Administrator.

(15) Carry out the function of acting as the lead DOT agency in matters relating to the National Environmental Policy Act pertinent to the authority vested in the Secretary to establish, operate, and manage the Nationwide Differential Global Positioning System (NDGPS) by section 346 of the Department of Transportation and Related Agencies Appropriations Act, 1998 (Pub. L. 105–66, 111 Stat. 1425).

(16) Exercise the responsibilities of the Secretary under 49 U.S.C. 303 as it relates to matters within the primary responsibility of the Federal Highway Administrator.

(17) Exercise the responsibilities of the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other Federal laws related to programs, projects, and activities administered by the Federal Highway Administration.

(18) Exercise the responsibilities of the Secretary under section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)), as amended by section 6011 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, 119 Stat. 1144), as it relates to matters within the primary responsibility of the Federal Highway Administrator.

(19) Exercise the responsibilities of the Secretary under 49 U.S.C. 309.

■ 7. Amend § 1.49 as follows:

■ a. Revise paragraph (ee); and

■ b. Add paragraphs (mm) and (nn) to read as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

* * * * *

(ee) Carry out the functions vested in the Secretary by section 5701 of title 49 of the United States Code, with respect to transportation by railroad.

* * * * *

(mm) Carry out the functions and exercise the authority vested in the Secretary by sections 1307, 1946, 9004, 9006, and 9007 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. No. 109–59, 119 Stat. 1144) as they relate to deployment of magnetic levitation transportation projects, the Gateway Rural Improvement Pilot Program, a study of the impact of public safety of train travel in communities without grade separation, capital grants to the Alaska Railroad, and a study of rail transportation and regulation.

(nn) Carry out the functions and exercise the authority vested in the Secretary by section 20154 of title 49, United States Code relating to capital grants for rail line relocation projects.

■ 8. In § 1.50, add paragraph (p) to read as follows:

§ 1.50 Delegations to the National Highway Traffic Safety Administrator.

* * * * *

(p) Carry out the functions and exercise the authority vested in the Secretary under the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' or ''SAFETEA–LU'' (Pub. L. 109–59; August 10, 2005), as it relates to:

(1) Section 1906, the grant program to prohibit racial profiling;

(2) Section 2001(d), transfers;

(3) Section 2003(c), on-scene motor vehicle collision causation;

(4) Section 2003(d), research on distracted, inattentive, and fatigued drivers;

(5) Section 2003(f), refusal of intoxication testing;

(6) Section 2003(g), impaired motorcycle driving;

(7) Section 2003(h), reducing impaired driving recidivism;

(8) Section 2009(f), annual evaluation, in regard to high visibility enforcement program;

(9) Section 2010, motorcyclist safety;

(10) Section 2011, child safety and child booster seat incentive grants;

(11) Section 2012, safety data;

(12) Section 2013, drug-impaired driving enforcement;

(13) Section 2014, first responder vehicle safety program;

(14) Section 2015, driver performance study;

(15) Section 2016, rural state emergency medical services optimization pilot program;

(16) Section 2017, older driver safety; law enforcement training;

(17) Section 5513(e), automobile accident injury research;

(18) Section 5513(m) as it relates to section 513(e);

(19) Section 10202, emergency medical services;

(20) Section 10302, side-impact crash protection rulemaking;

(21) Section 10303, tire research;

(22) Section 10305(b), publication of nontraffic incident data collection;

(23) Section 10306, study of safety belt use technologies;

(24) Section 10307(b), regulations, in regard to safety labeling requirements;

(25) Section 10308, power window switches; and

(26) Section 10309(a), testing, in regard to 15-passenger van safety.

■ 9. Amend § 1.51 as follows:

■ a. Remove paragraphs (f), (g), (h), (j), (k), (l), (m), and (n);

■ b. Redesignate paragraph (i) as paragraph (f);

■ c. Revise paragraphs (a) and (b); and

■ d. Add new paragraphs (g), (h), and (i) to read as follows:

§ 1.51 Delegations to Federal Transit Administrator.

* * * * *

(a) The Urban Mass Transportation Act of 1964, as amended (78 Stat. 302, 49 U.S.C. 1601 et seq.).

(b) Section 1 of Reorganization Plan No. 2 of 1968 (5 U.S.C. app. 1).

* * * * *

(f) Title II of the National Mass Transportation Assistance Act of 1974 (Pub. L. 93–503, November 26, 1974), except sections 204 and 205.

(g) Title 49 United States Code, chapter 53 as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005).

(h) 49 U.S.C. 303 as it involves public (mass) transportation projects.

(i) Sections 3040, 3041, 3044, 3045, 3046, 3048, 3049, and 3050 of the Safe,

Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, 119 Stat.1144); sections 6009 (b) and (c) and 6010 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users as they relate to public (mass) transit projects; and the following provisions as amended by SAFETEA–LU and as related to public (mass) transportation projects:

(1) 23 U.S.C. 139, 326, and 502(h); and

(2) 42 U.S.C. 7506(c).

■ 10. Amend § 1.53 as follows:

■ a. Remove paragraph (d);

■ b. Redesignate paragraph (e) as paragraph (d); and

■ c. Revise paragraph (b) introductory text and (b)(1) to read as follows:

§ 1.53 Delegations to the Administrator of the Pipeline and Hazardous Materials Safety Administration.

* * * * *

(b) * * *

(1) Carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c), (d) and (e), 5122, 5123, and 5124 relating to investigations, records, inspections, emergency orders, penalties, and specific relief, with particular emphasis on the shipment of hazardous materials and the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of multi-modal containers that are represented, marked, certified, or sold for use in the transportation of hazardous materials.

* * * * *

■ 11. Amend § 1.73 as follows:

■ a. Revise paragraph (a)(7), (8), and (9);

■ b. Revise paragraphs (g) and (h); and

■ c. Add paragraphs (q) through (y) to read as follows:

§ 1.73 Delegation to the Administrator of the Federal Motor Carrier Safety Administration.

* * * * *

(a) * * *

(7) Chapter 145, sections 14501, 14502, 14504 and 14504a relating to Federal-State relations;

(8) Chapter 147, sections 14701 through 14708, 14710, and 14711, relating to enforcement remedies, investigations and motor carrier liability; and

(9) Chapter 149, sections 14901 through 14913, and 14915, relating to enforcement remedies, investigations and motor carrier liability.

* * * * *

(g) Carry out the functions vested in the Secretary by subchapters I, III, and IV of chapter 311, title 49, U.S.C., relating to commercial motor vehicle programs, safety regulation, and international activities, except that the authority to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture is limited to standards that are not based upon and similar to a Federal Motor Vehicle Safety Standard promulgated under chapter 301 of title 49, U.S.C.

(h) Carry out the functions vested in the Secretary by 49 U.S.C. 5701 relating to food transportation inspections of commercial motor vehicles; and 5113 and 31144 relating to safety fitness of owners and operators.

* * * * *

(q) Carry out the functions vested in the Secretary by Public Law 109–59, 119 Stat. 1717, section 4105(b)(1) relating to the study concerning predatory tow truck operations.

(r) Carry out the functions vested in the Secretary by Public Law 109–59, 119 Stat. 1738, section 4126 relating to the commercial vehicle information systems and networks program.

(s) Carry out the functions vested in the Secretary by Public Law 109–59, 119 Stat. 1742, section 4128 relating to grants under the safety data improvement program.

(t) Carry out the functions vested in the Secretary by Public Law 109–59, 119 Stat. 1744, section 4134 relating to the grant program for persons to train operators of commercial motor vehicles.

(u) Carry out the functions vested in the Secretary by Public Law 109–59, 119 Stat. 1744, section 4135 relating to the task force concerning commercial drivers license program.

(v) Carry out the functions vested in the Secretary by Public Law 109–59, 119 Stat. 1744, section 4139(a) and (b)(1) relating to the training and outreach to state personnel and a review concerning Canadian and Mexican commercial motor vehicles respectively.

(w) Carry out the functions vested in the Secretary by Public Law 109–59, 119 Stat. 1759, section 4213 relating to the establishment of a working group for development of practices and procedures to enhance Federal-State relations.

(x) Carry out the functions vested in the Secretary by Public Law 109–59, 119 Stat. 1821, section 5503 relating to the motor carrier efficiency study.

(y) Carry out the functions vested in the Secretary by Public Law 109–59, 119 Stat. 1829, sections 5513(a) and (m), relating to the research grant for a thermal imaging inspection system demonstration project.

■ 12. Revise § 1.74 to read as follows:

§ 1.74 Delegations to the Under Secretary for Transportation Policy.

The Under Secretary for Transportation Policy is delegated authority:

(a) Under the Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.*, to:

(1) Serve as the principal adviser to the Secretary on all intermodal and cross-modal hazardous materials matters;

(2) Act as the focal point for review of hazardous materials policies, priorities, and objectives;

(3) Provide oversight for planning and budgeting strategies for all departmental hazardous materials activities;

(4) Resolve disputes among Operating Administrations on hazardous materials issues;

(5) Provide external reviews and continual monitoring of all departmental hazardous materials activities;

(6) In coordination with the Assistant Secretary for Budget and Programs, direct that the Operating Administrations apply resources to specific cross-modal initiatives;

(7) Coordinate DOT-wide hazardous materials outreach and data activities; and

(8) Address other regulatory and programmatic cross-modal issues related to hazardous materials as warranted.

(b) Carry out the functions and exercise the authority vested in the Secretary by section 11143 of Public Law 109–59, Stat. 1144, titled ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' to manage the day-to-day activities associated with implementation of section 11143 regarding tax-exempt financing of highway projects and rail-truck facilities. The Under Secretary of Transportation for Policy may further delegate this authority.

Issued this 16th day of May, 2006, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 06–4854 Filed 5–30–06; 8:45 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 71, No. 104
Wednesday, May 31, 2006

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 330

9 CFR Part 94

[Docket No. 05–002–3]

Interstate Movement of Garbage From Hawaii; Municipal Solid Waste

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would amend the regulations pertaining to certain garbage to provide for the interstate movement of garbage from Hawaii subject to measures designed to protect against the dissemination of plant pests into noninfested areas of the continental United States. This action will allow interested persons additional time to prepare and submit comments.

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–2005–0047 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–002–2, 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. 05–002–2.

Reading Room: You may read any comments that we receive on Docket No. 05–002–2 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: Ms. Shannon Hamm, Assistant Deputy Administrator, Policy and Program Development, APHIS, 4700 River Road Unit 20, Riverdale, MD 20737–1231; (301) 734–4957.

SUPPLEMENTARY INFORMATION: On April 19, 2006, we published in the **Federal Register** (71 FR 20030–20041, Docket No. 05–002–2) a proposal to amend the regulations pertaining to certain garbage to provide for the interstate movement of garbage from Hawaii subject to measures designed to protect against the dissemination of plant pests into noninfested areas of the continental United States.

Comments on the proposed rule were required to be received on or before May 19, 2006. We are reopening the comment period on Docket No. 05–002–2 until June 5, 2006. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between May 19, 2006, and the date of this notice.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, 371.3, and 371.4.

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

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–8455 Filed 5–30–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–2006–STD–0131]

RIN 1904–AA92

Energy Conservation Standards for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps: Public Meeting and Availability of the Framework Document

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability of the Framework Document.

SUMMARY: The Department of Energy (DOE or Department) will hold an informal public meeting to discuss and receive comments on issues it will address in this rulemaking proceeding. The Department is initiating the rulemaking process to amend energy conservation standards for general service fluorescent lamps, incandescent reflector lamps, and general service incandescent lamps. The Department also encourages written comments on these subjects. To inform stakeholders and facilitate this process, DOE has prepared a Framework Document, a draft of which is available at: *http://www.eere.energy.gov/buildings/appliance_standards/.*

DATES: The Department will hold a public meeting on Thursday, June 15, 2006, from 9 a.m. to 5 p.m. in Washington, DC. Any person requesting to speak at the public meeting should submit a request to speak before 4 p.m., Thursday, June 8, 2006. The Department must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Thursday, June 8, 2006. Written comments are welcome, especially following the public meeting, and should be submitted by Thursday, June 29, 2006.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121. (Please note that foreign nationals participating

in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards-Jones at (202) 586–2945 so that the necessary procedures can be completed.)

Stakeholders may submit comments, identified by docket number EE–2006–STD–0131 and/or RIN number 1904–AA92, by any of the following methods:

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

• E-mail: *fluorescent_and_incandescent_lamps.rulemaking@ee.doe.gov.* Include EE–2006–STD–0131 and/or RIN 1904–AA92 in the subject line of the message.

• Mail: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for Fluorescent and Incandescent Lamps, EE–2006–STD–0131 and/or RIN 1904–AA92, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.

• Hand Delivery/Courier: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

Docket: For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Linda Graves, Esq., U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–1851. E-mail: *linda.graves@ee.doe.gov.* Thomas B. DePriest, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9507. E-mail: *Thomas.DePriest@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act (EPCA or the Act) of 1975 (42 U.S.C. 6291–6309) established an energy conservation program for major household appliances. The National Energy Conservation Policy Act of 1978 (NECPA) amended EPCA to add Part C of Title III (42 U.S.C. 6311–6317), which established an energy conservation program for certain industrial equipment. Additional amendments to EPCA have given DOE the authority to regulate the energy efficiency of several products, including certain fluorescent and incandescent lamps, the products that are the focus of this rulemaking. Amendments to EPCA in the Energy Policy Act of 1992 (EPACT 1992), Public Law 102–486, established energy conservation standards for residential, commercial and industrial general service fluorescent lamps and incandescent reflector lamps, as well as requirements to conduct two cycles of rulemakings for determining whether these standards should be amended.[1] (42 U.S.C. 6295(i)(1), (3)–(4)) In addition, EPCA provides that within twenty-four months after the Federal Trade Commission's (FTC) labeling requirements have become effective for general service fluorescent lamps and general service incandescent lamps, DOE must initiate a rulemaking to determine if the standards in effect for such lamps should be amended so that they would be applicable to additional general service fluorescent and general service incandescent lamps. (42 U.S.C. 6295(i)(5)) Furthermore, according to EPCA, DOE must publish a rule within eighteen months of initiating the rulemaking. (Id.) The FTC published its labeling requirements for covered lamps on May 13, 1994, which had an effective date of May 15, 1995. 59 FR 25176. Previously, the Department did not take action on the requirements of 42 U.S.C. 6295(i) because lamps were assigned low priority based on public comment and potential energy savings estimates in the priority setting process.[2]

Section 1.2 of the Framework Document provides detail on the distinction between fluorescent lamps and general service fluorescent lamps, and the differences among incandescent lamps, incandescent reflector lamps and general service incandescent lamps. The following paragraphs discuss the statutory requirements and actions that DOE is taking for each of the lamp types covered in this rulemaking.[3]

EPCA's standards for general service fluorescent lamps require that they meet prescribed minimum efficacy levels per given color rendering index (CRI) levels.[4] In this rulemaking, DOE is conducting its first review, pursuant to 42 U.S.C. 6295(i)(3), to determine if these standards should be amended, while fulfilling the additional requirement, in 42 U.S.C. 6295(i)(5), to determine if the standards should be applicable to additional general service fluorescent lamps.

As with general service fluorescent lamps, EPCA establishes energy conservation standards for incandescent reflector lamps, requiring that certain lamps meet prescribed efficacy levels. In this rulemaking, the Department is conducting its first review, pursuant to 42 U.S.C. 6295(i)(3), to determine if the standards should be amended. The Department is also fulfilling the additional requirement in 42 U.S.C. 6295(i)(5) to determine whether the standards should cover additional general service incandescent lamps, including additional incandescent reflector lamps.

To begin the required rulemaking process, the Department prepared the Framework Document to present the issues and explain the analyses and process it anticipates using to amend the energy conservation standards for general service fluorescent lamps, incandescent reflector lamps, and general service incandescent lamps. The focus of the public meeting will be to

[1] Although EPACT 1992 placed regulatory authority, standards, and definitions for fluorescent and incandescent lamps under the energy conservation program for consumer products (42 U.S.C. 6291–6309), those provisions also apply to general service fluorescent and incandescent reflector lamps distributed for commercial use. (42 U.S.C. 6291(1)).

[2] See Appendix B to FY 2005 Preliminary Priority-Setting Summary Report on the DOE Web page at: *http://www.eere.energy.gov/buildings/appliance_standards/priority_setting.html.*

[3] This rulemaking addresses ''backlog'' rulemakings for incandescent general service lamps, fluorescent lamps, and incandescent reflector lamps that are identified in the report that DOE submitted to Congress on January 31, 2006, Energy Conservation Standards Activities, pursuant to section 141 of the Energy Policy Act of 2005 (Pub. L. 109–58) and to the Conference Report (109–275) to the Fiscal Year 2006, Energy and Water Development Appropriations Act. The report is available as a PDF file on the DOE Web page at: *http://www.eere.energy.gov/buildings/appliance_standards/2006_schedule_setting.html.*

[4] The Act defines ''lamp efficacy'' as ''the lumen output of a lamp divided by its wattage, expressed in lumens per watt (LPW).'' (42 U.S.C. 6291(30)(M)) It defines ''color rendering index'' (CRI) as ''the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.'' (42 U.S.C. 6291(30)(J)).

discuss the analyses and issues identified in various sections of the Framework Document. During the Department's presentation to stakeholders, the Department will discuss each item listed in the Framework Document as an issue for comment. The Department will also make a brief presentation on the rulemaking process for these products. The Department encourages those who wish to participate in the public meeting to obtain the Framework Document and be prepared to discuss its contents. A copy of the draft Framework Document is available at: *http://www.eere.energy.gov/buildings/appliance_standards/*. However, public meeting participants need not limit their discussions to the topics in the Framework Document. The Department is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for these products. The Department also welcomes all interested parties, whether or not they participate in the public meeting, to submit in writing by Thursday, June 29, 2006, comments and information on the matters addressed in the Framework Document and on other matters relevant to consideration of standards for these lamps.

The public meeting will be conducted in an informal, facilitated, conference style. A court reporter will be present to prepare a transcript of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by the U.S. antitrust laws.

After the public meeting and the expiration of the period for submitting written statements, the Department will begin collecting data, conducting the analyses as discussed at the public meeting, and reviewing the comments received.

Anyone who would like to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information regarding fluorescent and incandescent lamps, should contact Ms. Brenda Edwards-Jones at (202) 586–2945.

Issued in Washington, DC, on May 24, 2006.

Douglas L. Faulkner,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E6–8356 Filed 5–30–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 360

[Docket Number: 060316072–6072–01]

RIN: 0625–AA70

Mexican Cement Import Licensing System

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Proposed rule and request for public comment.

SUMMARY: The Department of Commerce (Commerce) requests public comment on a proposed rule to establish a Mexican Cement Import Licensing System in accordance with the Agreement Between the Office of the United States Trade Representative and the Department of Commerce of the United States of America and the Ministry of Economy of the United Mexican States (Secretaria de Economia) on Trade in Cement (Agreement), dated March 6, 2006. This cement licensing system is intended to enable Commerce to monitor the sub-regional export limits established by the Agreement for the three year duration of the Agreement.

DATES: Written comments must be received on or before 5 p.m., Eastern daylight savings time on June 30, 2006.

ADDRESSES: Written comments should be sent to Jonathan Herzog, Senior International Trade Policy Analyst, Import Administration, Room 1870, Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon (202) 482–0162; Judith Wey Rudman (202) 482–0192; or Jonathan Herzog (202) 482–4271.

SUPPLEMENTARY INFORMATION: On March 6, 2006, the Office of the United States Trade Representative (USTR), Commerce, and Secretaria de Economia signed a bilateral agreement concerning trade in cement between the United States and Mexico. A copy of the Agreement is available on the Commerce Web site: *http://www.ia.ita.doc.gov/download/mexico-cement/cement-final-agreement.pdf.* This Agreement settles ongoing litigation before the North American Free Trade Agreement (NAFTA) and World Trade Organization (WTO) dispute resolution panels, and provides for export limits for three years. This Agreement applies only to cement from Mexico as defined in Section I.L. of the Agreement.

The Agreement provides that Commerce shall establish an import licensing system in order to implement the terms of this Agreement. Consistent with Reorganization Plan No. 5 of 1950, effective May 24 (1950 15 FR 3174, 64 Stat. 1263), the Secretary of Commerce has delegated the authority for establishing and operating such a system, as provided under 13 U.S.C. 301(a) and 302, to the International Trade Administration (ITA) under Delegation of Authority 10–3. In order to implement this authority, ITA is today publishing this proposed rule and request for comment to establish an internet-based cement licensing system called the Mexican Cement Import Licensing System. The Mexican Cement Import Licensing System is designed to allow Commerce to gain all of the real-time information it needs to meet its obligations under this important bilateral trade agreement with Mexico. The system would be comprised of two parts:

(1) An online registration system for cement importers; and

(2) An automatic cement license issuance system.

All importers of cement products from Mexico would be required to obtain an import license and provide that license number to U.S. Customs and Border Protection (CBP) on the entry summary (CBP Form 7501). In addition to the standard information required to be reported on CBP Form 7501, the Mexican Cement Import License application will require the importer of record to report the Sub-region of Final Destination, the Final Destination, and the Mexican Export License Number, and to state whether the shipment is being made for disaster relief, as defined in the Agreement. The information gathered by the Mexican Cement Import Licensing System will provide Commerce with specific, reliable, and real-time data which will be used to monitor imports pursuant to the Agreement.

The Agreement is complex and involves sub-regional export limits which are in effect for a maximum of three years. Without access to import data on a real-time basis through the Mexican Cement Import Licensing System, Commerce will not be able to effectively monitor and administer the Agreement. If an allegation of circumvention of the Agreement is raised, Commerce may be required to conduct an accelerated changed circumstances review within 90 days. Currently, it can take up to 60 days to obtain from CBP and the Bureau of the Census the information necessary to determine whether Commerce needs to

conduct such a review. In addition, certain of the information required by Commerce is not available from CBP (*i.e.*, sub-region of final destination, statement of use for the purposes of disaster relief, and Mexican Export License number). To ensure that Commerce has the ability to fully monitor imports pursuant to this Agreement and to enable Commerce to make a timely determination as to whether a changed circumstances review is appropriate, it is necessary to have access to real-time information on imports of Mexican cement. Therefore, due to the relatively short duration of the Agreement, the level of detail of the monitoring requirements, and Commerce's obligations under the terms of the Agreement, it is essential that Commerce implement the Mexican Cement Import Licensing System.

Mexican Cement Import Licensing System

The Mexican Cement Import Licensing System would include both the online registration system for importers and the automatic cement import license issuance system. In order to obtain a cement import license, an importer, or the importer's agent or customs broker, must first register with Commerce and be assigned a user identification number. This identification number would be required to log on to the cement import license issuance system. A single user identification number would be issued to an importing company or brokerage house. Operating units within the company (*e.g.*, individual branches, divisions or employees) would all use the same user identification code. The cement import license issuance system would be designed to allow multiple users of a single identification number from different locations within the company to enter information simultaneously.

Any company or broker with a United States address may register and obtain a user identification number. There is no fee to register and a user identification number would be issued within two (2) business days. As part of the registration process, the importer, agent or customs broker would be required to provide certain general information. Such information would include the applicant company name, Employer Identification Number (EIN) or the CBP ID number (where no EIN is available), address, phone number, contact information and e-mail address for both the company headquarters and any branch offices that would be applying for cement import licenses. This information would be used solely for the purposes of administering the Mexican Cement Import Licensing System. The information would not be released by Commerce, except as permitted by U.S. law. Commerce would begin registering and issuing user identification numbers at least one week prior to the implementation date of the Mexican Cement Import Licensing System. The user ID would be needed to apply for the license.

Cement import licenses would be issued to registered importers, customs brokers or their agents through an automatic Mexican Cement Import Licensing System. The separately-issued user identification number discussed above would be required to access the system. There would be no fee charged to apply for the import licenses. Cement import licenses would be issued automatically after the completion of the application form. In order to obtain a license, the applicant must report the following information about the cement import transaction:

(1) Applicant company name and address;

(2) Applicant contact name, phone number, fax number and e-mail address;

(3) Importer name;

(4) Exporter name;

(5) Manufacturer name;

(6) Country of origin;

(7) Country of exportation;

(8) Expected date of export;

(9) Expected date of import;

(10) Expected port of entry;

(11) *Sub-Region of Final Destination:* Indicate the Sub-region where either the Mexican Cement will be consumed by an affiliated company to make concrete or concrete products or the Sub-region of the first unaffiliated purchaser of the Mexican Cement.

(12) *Final Destination:* Indicate the complete name and address (including county) of either the affiliated company that will consume the Mexican Cement or the first unaffiliated purchaser of the Mexican Cement. If either is not known when the Import License is applied for, indicate the address (including county) where the Mexican Cement will be siloed/warehoused until the time of shipment to the first unaffiliated purchaser.

(13) CBP entry number, if known;

(14) Current Harmonized Tariff System of the United States (HTSUS) number (from Chapter 25 of the HTSUS);

(15) Quantity (in metric tons);

(16) Customs value (U.S. $);

(17) Whether the entry is made pursuant to the disaster relief provisions of the Agreement; and

(18) Mexican Export License Number.

Much of the information requested on the application form will be filled out automatically based on information provided during the registration process (*e.g.*, applicant company name and address) or will be self-generated from other information reported in the form (*e.g.*, product description or average unit value). Other information will be available from drop-down lists in the application form (*e.g.*, HTSUS numbers covered by the Agreement, country of origin, port of entry). A sample copy of the cement import license application form is available for viewing on Import Administration's Web site at *http://ia.ita.doc.gov/cement-agreement/index.html.* As currently proposed, a CBP entry number will not be required to be reported in order to obtain a license, but applicants would be encouraged to do so if the CBP entry number is known at the time of filing for the license.

Upon completion of the application form, the importer, customs broker or the importer's agent would certify as to the accuracy and completeness of the information and submit the form electronically. After refreshing the page, the system will automatically issue a cement import license number. The refreshed form containing the submitted information and the newly issued import license number will appear on the screen (the ''license form''). Applicants can print the import license form only at that time. For security purposes, users will not be able to retrieve licenses from the license system at a later date for reprinting. If needed, copies of completed license forms can be requested from Commerce during normal business hours.

The cement import license will be required for every entry summary (CBP Form 7501) submitted for covered cement products. As currently envisioned, a single license could cover multiple products as long as the importer, exporter, manufacturer, first unaffiliated customer, sub-region, and final destination of the product, and country of origin and exportation are the same. However, separate licenses would be required if any of the above information differed with respect to a given set of covered imported cement products. As a result, a single CBP entry summary may require more than one cement import license. The applicable license number(s) must cover the total quantity of cement entered and should match the information provided on the CBP Form 7501. There is no requirement to present physical copies of the license forms at the time of submitting CBP Form 7501; however, parties must maintain copies in accordance with CBP's normal requirements.

Certain aggregate information collected from the license application system will be posted on the Import Administration website. Only certain aggregate information will be available to the public. All other information, including copies of the licenses and the names of importers, exporters, and manufacturers, will be considered business proprietary information and will not be released to the public. The use of this information will be strictly limited to the administration of the Agreement and it will not be kept longer than the period of time legally required beyond the expiration or termination of the Agreement.

Duration of the Cement Import License

The cement import license can be applied for up to 30 days prior to the expected date of importation and until the date of filing of CBP Form 7501. The cement import license is valid for up to 60 days; however, import licenses that were valid on the date of importation but expired prior to the filing of CBP Form 7501 will be accepted. Special timing issues surrounding withdrawal of products from a warehouse, Foreign Trade Zone (FTZ) issues, and temporary imports will be handled separately, as they arise.

Handling of Cement to Foreign Trade Zones

Commerce proposes to require a license for cement shipped into a United States FTZ. Because a CBP entry number would not be available for shipments entering the FTZ, the code ''FTZ'' would be entered on the license application. There is no requirement to present physical copies of the license forms at the time of the FTZ admission; however, copies must be maintained in accordance with CBP's normal requirements. FTZ admission documents submitted without the required license number(s) will be considered to be in circumvention of the Agreement. A further Mexican cement license will not be required for shipments from FTZs into the commerce of the United States.

Mexican Export License Requirement

Pursuant to Section IV.C. of the Agreement, each importer is required to submit a valid Mexican Export License to CBP with its 7501 entry summary. For multiple shipments at multiple ports, or multiple entries at one port, the original Mexican Export License shall be presented with the first entry summary and a copy of the Export License shall be presented with each subsequent entry summary.

CBP Requirements

CBP intends to publish a separate Notice of Proposed Rulemaking (NPRM), setting requirements for the timely filing of the cement import license information at entry.

Hours of Operation

As currently proposed, parties will be able to access the system 24 hours a day, 7 days a week. If the system is down for an extended period of time, parties will be able to obtain licenses from Commerce via fax during regular business hours.

Duration

The licensing program will be in effect for the duration of the Agreement only. The licenses, however, will be valid for 10 business days after the expiration or termination of the Agreement to allow for the final filing of required CBP documentation.

Regulatory Flexibility Act

The Chief Counsel for Regulation certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* A summary of the factual basis for this certification is below.

Commerce is unable to determine the number of brokerage companies and importers that would be impacted by this rule as Commerce does not collect this information. However, based on historical data, Commerce estimates that there are few brokerage companies and importers that would be considered small entities under Small Business Administration's standard (5 U.S.C. 603(b)(3)). Typically, larger brokers handle Mexican cement shipments because of the capital that is needed upfront to handle bonds and other costs. Each importer or broker must fill out the license form for each entry of the subject merchandise. Based on CBP entry summary information, we estimate that 12,150 licenses will be issued each year. Of this number, only a small percentage of licenses would be requested by a small entity as a result of this rule.

Even if this rule impacted a large number of small entities, these entities would not incur significant costs to comply with the proposed regulations. Most brokerage companies that are currently involved in filing required documentation for importing goods into the United States, specifically CBP documentation, are accustomed to CBP's automated systems. Today, more than 99 percent of the CBP filings are handled electronically. Therefore, the web-based nature of this simple license application should not impose a significant cost to any firm in completing this new requirement. However, should a company prefer or need to apply for an ID or license by other than electronic means, a fax/phone option will be available at Commerce during regular business hours. There is no cost to register for a company-specific user identification number and no cost to file for the license.

Each license form is expected to take at most about 10 minutes to complete using much of the same information the brokers will use to complete their CBP entry summary documentation. The response time should not vary widely because the same information is used to fill out other required CBP documents. The estimated average cost to private sector respondents is $20.00 per hour.

Based on the estimated 12,150 licenses that will be issued each year, the total cost to respondents as a result of this rule is $40,500.00. Based on historic CBP information, there are few small entities that would be affected by this rule. Therefore, of this amount, only a small percentage of the total cost would be incurred by small entities. Based on this factual basis, this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The public reporting burden for these collections of information is estimated at 10 minutes. Parties must maintain copies in accordance with CBP's existing requirements. The licensing system requests information already required of an importer, approval is automatic, and the importer will have ample opportunity and time to apply. These estimates of time required to complete an application include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on the reporting burden estimate or any other aspect of the requirements in this proposed rule to ITA Office of Policy at the addresses above and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget,

Washington, DC 20503 (Attention: ITA Desk Officer).

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 Paperwork Reduction Act unless that collection displays a valid OMB Control Number.

Executive Order 12866

It has been determined that this rule is significant for purposes of Executive Order 12866 of September 30, 1993 (''Regulatory Planning and Review'') (58 FR 51735 (October 4, 1993)).

Executive Order 13132

This rule does not contain policies with federalism implications as that term is defined in Section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

List of Subjects in 19 CFR Part 360

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Textiles.

For the reasons set out in the preamble, 19 CFR part 360 is proposed to be added to read as follows:

PART 360—MEXICAN CEMENT IMPORT LICENSING SYSTEM

Sec.

360.201 Mexican Cement Import Licensing System.
360.202 Online registration.
360.203 Automatic issuance of import licenses.
360.204 Fees.
360.205 Hours of operation.

Authority: 13 U.S.C. 301(a) and 302.

§ 360.201 Mexican Cement Import Licensing System.

(a) *In general.* (1) On March 6, 2006, the Agreement Between the Office of the United States Trade Representative and the Department of Commerce of the United States of America and the Ministry of Economy of the United Mexican States (Secretaria de Economia) on Trade in Cement (Agreement) was signed. Pursuant to the Agreement, the United States has agreed to implement an import licensing system that covers imports of merchandise covered by the scope of the antidumping duty order on Cement from Mexico. Some of the data to be collected is in addition to data currently collected by U.S. Customs and Border Patrol. The data collected by the Mexican Cement Import Licensing system will be used by the Department of Commerce to monitor imports of Mexican Cement, as the imports occur.

(2) Mexican Cement is defined as gray portland cement and clinker from Mexico. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than being ground into finished cement. Specifically included within the scope of this definition are pozzolanic blended cements and oil well cements. Specifically excluded are white cement and Type ''S'' masonry cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item number 2523.29 and cement clinker is currently classifiable under HTSUS item number 2523.10. Gray portland cement has also been entered under HTSUS item number 2523.90 as ''other hydraulic cements.'' These HTSUS subheadings are provided for convenience and USCBP purposes; the written definition is controlling for purposes of this Agreement.

(3) The Mexican Cement Import Licensing System includes an online registration system. All imports of Mexican cement, are subject to the Mexican Cement Import Licensing requirements. Information gathered from these licenses will be used to ensure that the terms of the Agreement are complied with and enforced.

(4) A single license may cover multiple products as long as certain information on the license (*e.g.*, importer, exporter, manufacturer, and sub-region of final destination) remains the same. However, separate licenses for Mexican cement entered under a single entry will be required if the information differs. As a result, a single CBP entry summary may require more than one Mexican cement import license. The applicable license(s) must cover the total quantity of Mexican cement entered and should cover the same information provided on CBP Form 7501.

(b) *Entries for consumption.* All entries for consumption of covered Mexican cement products will require an import license prior to the filing of CBP Form 7501. The license(s) number must be reported on CBP Form 7501 at the time of filing. There is no requirement to present physical copies of the license forms at the time of filing CBP Form 7501; however, copies must be maintained in accordance with CBP's existing requirements. If CBP Form 7501 is submitted without the required license number(s) it will be considered circumvention of the Agreement.

(c) *Foreign Trade Zone entries.* All shipments of covered Mexican cement into FTZs, known as FTZ admissions, will require an import license prior to the filing of FTZ admission documents. The license number(s) must be reported on the application for FTZ admission and/or status designation (CBP Form 214) at the time of filing. There is no requirement to present physical copies of the license forms at the time of FTZ admission; however, copies must be maintained in accordance with CBP's existing requirements. FTZ admission documents submitted without the required license number(s) will be considered to be in circumvention of the Agreement. A further Mexican cement license will not be required for shipments from FTZs into the commerce of the United States.

(d) *Mexican Export License Requirement.* Each importer is required to submit a valid Mexican Export License to CBP with its 7501 entry summary. For multiple shipments at multiple ports, or multiple entries at one port, the original Mexican Export License shall be presented with the first 7501 entry summary and a copy of the Export License shall be presented with each subsequent 7501 entry summary.

§ 360.202 Online registration.

(a) *In General.* (1) Any importer, importing company, customs broker or importer's agent with a U.S. street address may register and obtain the user identification number necessary to log on to the automatic Mexican cement import license issuance system. Foreign companies may obtain a user identification number if they have a U.S. address through which they may be reached; P.O. Boxes will not be accepted. A user identification number normally will be issued within two business days. Companies will be able to register online through the import licensing Web site. However, should a company prefer to apply for a user identification number non-electronically, a phone/fax option will be available at Commerce during regular business hours.

(2) This user identification number will be required in order to log on to the Mexican cement import license issuance system. A single user identification number will be issued to an importing company, brokerage house or importer's agent. Operating units within the company (*e.g.*, individual branches, divisions, or employees) will all use the same company user identification number. The Mexican cement import license issuance system will be designed to allow multiple users of a single identification number from different locations within the company to enter information simultaneously.

(b) *Information required to obtain a user identification number.* In order to obtain a user identification number, the

importer, importing company, customs broker or importer's agent will be required to provide general information. This information will include: The filer's company name, employer identification number (EIN) or CBP ID number (where no EIN is available), U.S. street address, telephone number, contact information and e-mail address for both the company headquarters and any branch offices that will be applying for Mexican cement import licenses. This information will not be released by Commerce, except as required by U.S. law.

§ 360.203 Automatic issuance of import licenses.

(a) *In general.* Mexican cement import licenses will be issued to registered importers, customs brokers or their agents through an automatic Mexican cement import license issuance system. The licenses will be issued automatically after the completion of the form.

(b) *CBP entry number.* Filers are not required to report a CBP entry number to obtain an import license but are encouraged to do so if the CBP entry number is known at the time of filing for the license.

(c) *Information required to obtain an import license.* (1) The following information is required to be reported in order to obtain an import license (if using the automatic licensing system, some of this information will be provided automatically from information submitted as part of the registration process):

(i) Applicant company name and address;

(ii) Applicant contact name, phone number, fax number and e-mail address;

(iii) Importer name;

(iv) Exporter name;

(v) Manufacturer name;

(vi) Country of origin;

(vii) Country of exportation;

(viii) Expected date of export;

(ix) Expected date of import;

(x) Expected port of entry;

(xi) Sub-Region of Final Destination: Indicate the Sub-region where either the Mexican Cement will be consumed by an affiliated company to make concrete or concrete products or the Sub-region of the first unaffiliated purchaser of the Mexican Cement.

(xii) Final Destination: Indicate the complete name and address (including county) of either the affiliated company that will consume the Mexican Cement or the first unaffiliated purchaser of the Mexican Cement. If either is not known when the Import License is issued, indicate the address (including county) where the Mexican Cement will be siloed/warehoused until the time of shipment to the first unaffiliated purchaser.

(xiii) CBP entry number, if known;

(xiv) Current Harmonized Tariff System of the United States (HTSUS) number (from Chapter 25 of the HTSUS);

(xv) Quantity (in metric tons);

(xvi) Customs value (U.S. $);

(xvii) Whether the entry is made pursuant to the disaster relief provisions of the Agreement; and

(xviii) Mexican Export License Number.

(2) Certain fields will be automatically filled out by the automatic license system based on information submitted by the filer (*e.g.*, product category, unit value). Filers should review these fields to help confirm the accuracy of the submitted data.

(3) Upon completion of the form, the importer, customs broker or the importer's agent will certify as to the accuracy and completeness of the information and submit the form electronically. After submitting the completed form, the system will automatically issue a Mexican cement import license number. The refreshed form containing the submitted information and the newly issued license number will appear on the screen (the ''license form''). Filers can print the license form only at that time. For security purposes, users will not be able to retrieve licenses from the license system at a later date for reprinting. If needed, copies of completed license forms can be requested from Commerce during normal business hours.

(d) *Duration of the Mexican cement import license.* The Mexican cement import license can be applied for up to 30 days prior to the expected date of importation and until the date of filing of CBP Form 7501, or in the case of FTZ entries, the filing of CBP Form 214. The Mexican cement import license is valid for 60 days; however, import licenses that were valid on the date of importation but expired prior to the filing of CBP Form 7501 will be accepted.

(e) *Correcting submitted license information.* Due to data security issues, it will not be possible to alter an existing license electronically once it has been issued. However, prior to the entry date listed on CBP Form 7501, filers will be able to cancel previously issued licenses and file for a new license with the correct information. If the filer prefers to have Commerce personnel change the license, there will be a telephone/fax option.

§ 360.204 Fees.

No fees will be charged for obtaining a user identification number, issuing a Mexican cement import license.

§ 360.205 Hours of operation.

The automatic licensing system will generally be accessible 24 hours a day, 7 days a week but may be down at selected times for server maintenance. If the system is down for an extended period of time, parties will be able to obtain licenses from Commerce directly via fax during regular business hours.

Dated: May 22, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–8402 Filed 5–30–06; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734 and 772

[Docket No. 050316075–6122–03]

RIN 0694–AD29

Revisions and Clarification of Deemed Export Related Regulatory Requirements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Bureau of Industry and Security (BIS) has reviewed the public comments received in response to the ''*Advance Notice of Proposed Rulemaking: Revision and Clarification of Deemed Export Related Regulatory Requirements*'' (ANPR) published in the **Federal Register** on March 28, 2005. The ANPR identified recommendations contained in the U.S. Department of Commerce Office of Inspector General (OIG) Report entitled ''*Deemed Export Controls May Not Stop the Transfer of Sensitive Technology to Foreign Nationals in the U.S.*'' (Final Inspection Report No. IPE–16176—March 2004). This action discusses concerns raised by the OIG and summarizes public comments received in response to the ANPR. This document also states that the current BIS licensing policy related to deemed exports is appropriate and confirms that the existing definition of ''use'' adequately reflects the underlying export controls policy rationale in the Export Administration Regulations (EAR). As such, BIS is withdrawing the ANPR. In addition, this action addresses comments on the scope of the

fundamental research provisions in the EAR.

ADDRESSES: Although there is no official comment period for this document, you may submit comments, identified by Docket No. 050316075–6122–03, by any of the following methods:

- E-mail: *publiccomments@bis.doc.gov*. Include ''050316075–6122–03'' in the subject line of the message.
- Fax: (202) 482–3355.
- Mail or Hand Delivery/Courier: U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: Docket No. 050316075–6122–03.

FOR FURTHER INFORMATION CONTACT: Alexander Lopes, Director of the Deemed Exports and Electronics Division, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, telephone: (202) 482–4875 or e-mail: *alopes@bis.doc.gov* or Marcus Cohen, Bureau of Industry and Security, telephone: (202) 482–2440 or e-mail: *mcohen@bis.doc.gov*. Copies of the referenced OIG Report are available at: *http://www.oig.doc.gov/oig/reports/2004/BIS-IPE-16176-03-2004.pdf*. Public comments received by BIS in response to the ANPR are available at: *http://efoia.bis.doc.gov/*.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) has reviewed public comments received in response to the ''*Advance Notice of Proposed Rulemaking: Revision and Clarification of Deemed Export Related Regulatory Requirements*'' (ANPR) published in the **Federal Register** on March 28, 2005 (70 FR 15607; comment period extended, 70 FR 30655). The ANPR described recommendations contained in the U.S. Department of Commerce Office of Inspector General (OIG) Report entitled ''*Deemed Export Controls May Not Stop the Transfer of Sensitive Technology to Foreign Nationals in the U.S.*'' (Final Inspection Report No. IPE–16176–March 2004).

In its report, the OIG concluded that existing BIS policies under the Export Administration Regulations (EAR) could enable foreign nationals from countries and entities of concern to access otherwise controlled technology. These concerns prompted the OIG to recommend the following:

(1) Base the requirement for a deemed export license on a foreign national's country of birth and not on country of citizenship or permanent residency;

(2) Revise the definition of ''use'' in Section 772.1 of the EAR; and

(3) Modify regulatory guidance in Supplement No. 1 to Part 734 regarding licensing of technology to foreign nationals involved with academic research and government-sponsored research projects.

Adopting certain of the OIG's recommendations would entail regulatory changes to the EAR. Accordingly, the ANPR requested comments from industry, the academic community, and U.S. government agencies involved in research on the potential impact the proposed revisions would have on their activities. In response to the ANPR, BIS received 311 comments from 88 academic institutions (many academic institutions submitted more than one comment), 22 companies, 25 trade associations, 14 individuals, 20 academic associations, 6 law firms and legal associations, 4 U.S. national laboratories, 4 U.S. agencies, 3 members of Congress, and 2 foreign governments. All public comments received by BIS in response to the ANPR are currently posted on the EFOIA page of the BIS Web site.

Based upon a thorough review of the public comments and a review of foreign immigration requirements, BIS has determined that the current licensing requirement based upon a foreign national's country of citizenship or permanent residency is appropriate. The current deemed export licensing policy, based on a foreign national's most recent country of citizenship or permanent residency, recognizes the significance of declarative assertion of affiliation over the mere geographical circumstances of birth. BIS has also concluded that the existing definition of ''use'' in Section 772.1 of the EAR should remain unchanged. The existing definition of ''use'' appropriately implements the underlying export control policy rationale in the EAR. Finally, BIS intends to expand outreach to help the regulated community understand the questions and answers in Supplement 1 to Part 734 of the EAR. Moreover, the public should be aware that BIS provides guidance on fundamental research on its Web site. (*See* Deemed Export FAQ's at *http://www.bis.doc.gov/policiesandregulations/index.htm*).

In sum, BIS is not adopting those recommendations of the OIG which would have required regulatory changes to the EAR and, accordingly, is withdrawing the ANPR.

A review of the public comments, as well as BIS's response to the recommendations of the OIG and to certain issues raised in the public comments, follows.

Scope of Agency Action

The current review focused on recommendations made by the OIG, and was not intended to address broader issues related to the operation of the deemed export rule. For example, some comments suggested that the deemed export rule should simply be abolished. Others suggested reforms of U.S. export control policies that would extend far beyond the deemed export rule, while still others questioned the constitutionality of the deemed export rule. Such criticisms and suggested reforms were beyond the scope of the review of the public comments related to this notice, but like all issues of deemed export policy, they will be subject to review by the Deemed Export Advisory Committee (DEAC). For further information related to the establishment of the DEAC, see the notice entitled ''*Establishment of Advisory Committee and Clarification of Deemed Export-Related Regulatory Requirements,*'' published in the **Federal Register** on May 22, 2006 (71 FR 29301).

All of the public comments received in response to the ANPR, including those public comments that raised issues beyond the scope of review related to this notice, will be made available to members of the Deemed Export Advisory Committee (DEAC). All aspects of the deemed export policy will be subject to review by the DEAC.

In general, the comments focused on the OIG's recommendations regarding the proposal that deemed export license requirements be based on a foreign national's country of birth and a proposed revision to the definition of ''use.'' While few of the public comments received directly addressed the OIG's recommendation to revise the regulatory guidance in Supplement No. 1 to Part 734 of the EAR, many comments indirectly discussed the potential effect of such regulatory modifications on fundamental research. The general themes expressed in the public comments, as well as BIS's response to the recommendations of the OIG and to certain issues raised in the public comments, are described in more specificity below.

A. Public Comments Received in Response to the ANPR

Country of Birth

Almost without exception, the comments stated clear opposition to the OIG's recommendation that deemed export licenses be based on a foreign

national's country of birth rather than country of citizenship. (See 15 CFR 734.2(b)(2)(ii)) Comments from all sources stressed that deemed export controls must take into account the integral and critical contribution of foreign nationals to U.S. fundamental research.

Numerous comments expressed concern that excessive and bureaucratic requirements will foster a perception among foreign students and researchers that the United States does not welcome foreign nationals in its high-technology research community. Many comments observed that the decrease in the number of foreign nationals in U.S. academic institutions and U.S. industry has already been detrimental to the economy of the United States. These comments argued that a change in the deemed export licensing policy from country of citizenship to country of birth would further adversely impact the United States.

Various comments discussed other methods by which prospective foreign national students and employees are screened. Comments from both academia and industry noted that their organizations rely on existing U.S. visa requirements as a means of guarding against the unlawful release of technology. Many of these comments recommended that the deemed export licensing policy should operate in conjunction with other established systems of screening foreign nationals.

Comments also expressed concerns related to potential conflicts of laws. Some comments noted that if forced to apply a country of birth criteria to their employees, companies might run afoul of both U.S. and foreign anti-discrimination and privacy laws. Comments from companies that operate on a global scale stated that the recommendation by the OIG would present formidable legal and operational hurdles.

Another trend among the comments was a concern about the fundamental unfairness of the change recommended by the OIG. Many comments suggested that the current deemed export licensing policy which focuses on a foreign national's country of citizenship is more appropriate because obtaining citizenship demonstrates an affirmative declaration of affiliation and loyalty toward a particular sovereign entity in ways that the circumstance of a person's birth does not. Further, many comments argued that the OIG failed to present any evidence to support the recommended change in licensing policy and that the envisioned improvements to national security have not been persuasively presented.

Definition of ''Use''

The OIG recommended that BIS revise the definition of ''use'' in Section 772.1 of the EAR. The OIG effectively recommended replacing the word ''and'' with the word ''or,'' as follows: '' 'Use' (All categories and General Technology Note)—Operation, installation (including on-site installation), maintenance (checking), repair, overhaul, *or* refurbishing.'' (*Emphasis added*)

The public comments voiced general opposition to this recommendation as well. Many comments stated that revising the definition with the disjunctive ''or'' would capture too many routine operations carried out by students/employees, and thus constitute a large (and generally unnecessary) compliance burden on organizations. In addition, many comments argued that the OIG failed to proffer any evidence to support the recommended change in licensing policy and, further, that envisioned improvements to national security have not been satisfactorily presented in the OIG's report.

The general theme among comments from the academic community was that the conjunctive reading of the ''use'' definition properly reflects the policy rationale that currently underlies the controls on the transfer of use technology to foreign national students and researchers. These comments argued that the current ''use'' definition correctly requires the presence of technology relating to all six activities (*i.e.*, operation, installation, maintenance, repair, overhaul, and refurbishing) because it is the totality of those activities that triggers the requirement for a deemed export license.

Many comments asserted that by changing ''and'' to ''or'' in the definition, mere operation of a controlled item by a foreign national would trigger a requirement for a deemed export license. Numerous comments stressed that the proposed revision would thus result in a large expansion of deemed export license applications submitted to BIS. They claim that this will impose a substantial financial and administrative burden on their respective organizations and will also increase the licensing burden on BIS. While many comments cited the number or percentage of foreign nationals in the commenters' organizations, the comments generally do not provide the actual number of items for which ''use'' technology is controlled within their respective organizations.

Some of the comments from industry suggested that OIG's recommended change would have little practical impact. Those comments reflect that many companies already interpret the definition of ''use'' in the disjunctive and, further, that the current definition could reasonably be interpreted to be an illustrative list of activities constituting use. As such, they stated that the suggested definition revision would have minimal, if any, effect on business operations.

However, organizations from all sectors appear concerned that a change in the definition would restrict the scope of fundamental research by capturing more routine activities that are currently not subject to the EAR. Many public comments noted that such narrowing of the scope of fundamental research would have a chilling effect on U.S. research efforts conducted by industry and universities alike.

In addition, several comments note that although the OIG speculated in its report that many academic and Federal laboratories might need to seek deemed export licenses, the OIG failed to offer evidence in support of this claim. These comments pointed out that the report contained no findings that controlled ''use'' technology has been illegally transferred to foreign nationals, either in Federal laboratories, university facilities, or within industry.

Regulatory Guidance Related to Fundamental Research

Supplement No. 1 to Part 734 of the EAR provides guidance in the form of questions and answers to further elucidate the deemed export regulations. In its report, the OIG found two of the answers therein may be inaccurate or unclear. The OIG recommended modification to guidance (answers to Questions A(4) and D(1), respectively) covering the following topics:

(1) Whether prepublication clearance by a government sponsor would void the publishability exemption in the EAR and trigger the deemed export rule; and

(2) Whether a license would be required for a foreign graduate student to work in a laboratory.

A large percentage of public comments addressed the OIG's proposed revisions to the answers provided in the deemed export guidance. Although less than 2% of the public comments received directly addressed the OIG's recommended modifications, a significant number of comments discussed the suggested revisions in relation to the possible effect such guidance would have on the

scope of fundamental research as discussed in Section 734.8 of the EAR.

Only a few of the comments focused on the impact of prepublication clearance by a government sponsor as it relates to Section 734.7(a)(4)(iii) of the EAR. Even within that small number, there was no unanimity of opinion. Some agreed with the OIG that research results that are subject to prepublication clearance of a government agency are subject to the EAR. However, other comments noted that Section 734.11 should itself be understood as an exemption to the EAR and, as such, the answer to Question A(4) is correct as currently stated. Still other comments noted that while the answer to Question A(4) is essentially correct, slight modification of the answer is required for purposes of clarification.

With regard to the OIG's suggested revision of the answer to Question D(1), the comments highlighted a theme of serious concern about the effect as it relates to the jurisdictional scope of fundamental research. While only a handful of comments addressed Question D(1) directly, those that did so noted that the apprehension regarding the OIG's revision stems in large part from the OIG's proposed change in the definition of ''use.'' It appears that many in the research community view the revised answer to Question D(1) as a codification that mere operation of a piece of controlled laboratory equipment by a foreign national student will trigger the requirement for a deemed export license. Thus, comments from all sectors appeared to reflect concern that the OIG's recommended modification to the guidance in Supplement No. 1 to Part 734 in conjunction with a disjunctive reading of the ''use'' definition will either significantly erode or abolish the exemption for fundamental research in the academic laboratory environment.

B. BIS Response to the Recommendations of the OIG and the Public Comments Received in Response to the ANPR

As a result of the extensive nature of the public comments, BIS is establishing a Deemed Export Advisory Committee (DEAC) under the terms of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 5 U.S.C., App. 2). The DEAC will serve as forum to address complex questions related to an evolving deemed export control policy. Specifically, the DEAC will be charged with reviewing the current deemed export policy and determining whether to recommend any changes to that policy. For further information related to the establishment of the DEAC, see the notice entitled ''Establishment of Advisory Committee and Clarification of Deemed Export-Related Regulatory Requirements,'' published in the **Federal Register** on May 22, 2006 (71 FR 29301).

Country of Birth

While the deemed export rule plays a crucial role in preventing foreign nationals from countries of concern from obtaining controlled U.S. technology, BIS also recognizes that export controls must take into account the integral and critical contribution of foreign nationals to U.S. fundamental research. U.S. research institutions play a vital role in advancing science and technology for future generations. Part of the vitality of the research enterprise is the contribution made by foreign national students, faculty, and visiting scientists.

There are substantial concerns associated with the OIG's recommendation to adopt the ''country of birth'' of foreign nationals as policy for deemed export license determinations. Due in large measure to the concerns raised in the public comments received in response to the ANPR, BIS has determined that the current licensing requirement related to deemed exports is appropriate.

BIS recognizes that many individuals may have ethnic ties to a particular nation, but bear no loyalty towards states where they were born. Further, BIS notes that an individual's act of obtaining citizenship or permanent residency adequately demonstrates affiliation and allegiance to the adoptive nation. Thus, the current deemed export licensing requirement, based on a foreign national's most recent country of citizenship or permanent residency, recognizes the importance of declarative assertion of affiliation over the mere geographical circumstances of birth.

BIS recognizes concerns that may arise in instances where a foreign national maintains dual citizenship or multiple permanent residence relationships. The deemed export rule accounts for the possibility of a foreign national maintaining dual citizenship and specifies that a release of technology or source code subject to the EAR to a foreign national is ''deemed to be an export to the home country *or countries* of the foreign national.'' (*Emphasis added*) (15 CFR 734.2(b)(2)(ii)) Under existing interpretations of this provision, a home country is a country in which a foreign national is a citizen or permanent resident. If the status of a foreign national is not certain, exporters can request the assistance of BIS to determine where the stronger ties lie, based on the facts of the specific case. In response to such a request, BIS will look at the foreign national's country, family, professional, financial, and employment ties.

Based upon the recommendations of the OIG, a thorough review of the public comments, and a detailed analysis of the deemed export rule and its impact on the regulated community, BIS has determined that the current licensing requirement based upon a foreign national's country of citizenship or permanent residency is appropriate.

Definition of ''Use''

After thorough review, BIS has concluded that the existing definition of ''use'' in Section 772.1 of the EAR should remain in the conjunctive. As such, the word ''and'' is appropriate and the definition of ''use'' remains unchanged: All six activities in the definition of ''use'' must be present to trigger a license requirement. Changing ''and'' to ''or'' in the definition, as suggested by the OIG, would lead to a situation in which mere operation of a controlled item by a foreign national could trigger the requirement for a deemed export license. Consequently, BIS has determined that revision to the existing definition would result in an expansion of deemed export license applications imposing a substantial licensing burden on the regulated community, without a corresponding benefit to national security. Hence, the definition of ''use'' remains unchanged.

Moreover, the conjunctive word ''and'' in the current ''use'' definition reflects the policy rationale that underlies the controls on the release of controlled ''use'' technology to foreign nationals. The current ''use'' definition lists all six activities (i.e., operation, installation, maintenance, repair, overhaul, & refurbishing) because the totality of those activities would provide the foreign national with enough knowledge to replicate or improve the performance capabilities of the controlled item. As such, all of the activities listed in the definition of ''use'' are required to trigger a license requirement.

''Use'' controls are predicated on Cold War-era reverse-engineering concerns. Under the Coordinating Committee on Multilateral Export Controls (COCOM), the multilateral organization that cooperated in restricting strategic exports (conventional and dual use items) to Eastern Bloc (communist-governed) countries, export controls on technology were based on the concern that the release of technical information to a foreign national of an Eastern Bloc country would enable a controlled item

to be replicated by an Eastern Bloc country. The Wassenaar Arrangement (WA), the successor to COCOM, was established to address post-Cold War security concerns. However, the Cold War-inspired ''use'' definition was adopted by WA without revision and subsequently included in Part 772 of the EAR.

The OIG highlighted inconsistent interpretations of ''use'' that exist throughout industry, academia, and within BIS. However, a regulatory revision of the definition of ''use'' from the conjunctive to the disjunctive is not the most appropriate vehicle for resolving disparate interpretations. Instead, BIS is clarifying that the definition of ''use'' is properly read in the conjunctive. This clarification resolves the inconsistency suggested by the OIG Report and restates a coherent, bright line rule, which will resolve any misunderstanding and increase compliance with the regulations.

Regulatory Guidance Related to Fundamental Research

As noted in many of the comments, there has been some misapprehension as to the scope of the existing regulations as they relate to academic and research institutions. While the domain of items subject to the EAR is large, it is not infinite. There are four broad classes of items that are not subject to the EAR: (1) Items controlled for export exclusively by another agency of the U.S. government, (2) products such as books, movies, magazines, and recordings; (3) publicly available technology and software; and (4) foreign-made items that have less than a *de minimis* percentage of controlled U.S. content.

Although the OIG Report refers to an ''exemption'' for fundamental research, the EAR generally does not refer to items or activities that are not subject to the EAR as ''exemptions.'' As outlined in Part 734, items and activities are either subject to the EAR or they are not subject to the EAR. (See 15 CFR 734.2 & 734.3) In Part 734, the EAR addresses the jurisdictional scope of fundamental research and sets forth specific parameters and limitations that would take such activities and products resulting from fundamental research outside of the scope of the EAR.

Section 734.8 states that the information resulting from fundamental research is usually not subject to the EAR if the intent is to make the information resulting from the fundamental research publicly available. As such, a product of basic and applied fundamental research would often be captured within the broader category of items that are ''publicly available,'' and thus is not subject to the EAR. Such research can be distinguished from proprietary research and from research related to industrial development, design, and production, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons. (See 15 CFR 734.8(a) & 734.11(b)).

It is essential to distinguish the information or product (which may be in the form of a scientific paper or publication that describes and/or details the results of the fundamental research) that results from fundamental research from the conduct that occurs within the context of the fundamental research. While the product of the fundamental research is not subject to the EAR because the results of that research are intended for publication and dissemination within the scientific community, authorization may be required if during the conduct of the research controlled technology is released to a foreign national.

The regulated community has expressed concern that the deemed export rule is inconsistent with National Security Decision Directive 189 (NSDD–189). The stated purpose of NSDD–189 is as follows:

''This directive establishes national policy for controlling the flow of science, technology and engineering information produced in federally funded fundamental research at colleges, universities, and laboratories. Fundamental research is defined as follows:

'Fundamental research' means basic and applied research in science and engineering, the *results of which ordinarily are published and shared broadly* within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.'' (*Emphasis added*) (NSDD–189, section II, Policy)

The description of fundamental research found in Section 734.8 of the EAR closely mirrors this section of NSDD–189. Further, the directive clarifies that the product that results from fundamental research is distinct from the conduct involved in the research itself. NSDD–189 also distinguishes proprietary research from basic and applied research.

The regulated community has expressed concerns that license requirements within the EAR for the release of controlled technologies to foreign nationals from countries of concern are in opposition to the Administration's stated policy with respect to fundamental research. However, NSDD–189 expressly notes that the United States government may place restrictions on the release of controlled information. The pertinent section of NSDD–189 states as follows:

''No restriction may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, *except as provided in applicable U.S. Statutes.*'' (*Emphasis added*) (NSDD–189, section II, Policy)

The Export Administration Act (EAA) and the International Emergency Economic Powers Act (IEEPA), the principal statutes authorizing dual-use export controls, constitute applicable U.S. statutes within the meaning of NSDD–189. Pursuant to the EAA, the EAR implement U.S. government restrictions related to fundamental research when the conduct of the research involves the transfer of controlled technologies to foreign nationals. As such, there is no inconsistency between the technology controls listed in the EAR and the type of restrictions on fundamental research specified in NSDD–189.

Based on the extensive and varied public comments received, BIS has concluded that expanded outreach is required to clarify the guidance provided in the questions and answers in Supplement 1 to Part 734 of the EAR. Furthermore, as indicated by the findings of the OIG, the extensive and varied response to the ANPR, and the number of questions and issues that have been raised in recent outreach efforts, it is apparent that an expanded outreach program must be supplemented by a collaborative effort between BIS and the regulated community to ensure that the deemed export policy is consistent with evolving technologies and national security concerns.

Dated: May 24, 2006.

Matthew Borman,

Deputy Assistant Secretary of Commerce for Export Administration.

[FR Doc. E6–8370 Filed 5–30–06; 8:45 am]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–NM–0003; FRL–8175–5]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve two separate State Implementation Plan (SIP) revisions submitted by the Governor of New Mexico. The first submittal, dated September 7, 2004, adopts local Ambient Air Quality Standards (AAQS) and incorporates by reference the Federal National AAQS for the Albuquerque/Bernalillo County, New Mexico area. The second submittal, dated July 28, 2005, revises the Variance Procedure for the Albuquerque/Bernalillo County, New Mexico area. We are proposing to approve these two separate SIP revisions in accordance with the requirements of the Clean Air Act, section 110.

DATES: Written comments must be received on or before June 30, 2006.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733 at (214) 665–6691, or *shar.alan@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: May 19, 2006.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 06–4920 Filed 5–30–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0123; FRL–8061–7]

Inorganic Bromide; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is announcing that 12 specific inorganic bromide tolerances have been reassessed and is proposing to revoke them because they are no longer needed. These twelve tolerances are for residues of inorganic bromide from pre-plant (non-food) use in or on raw agricultural commodities grown in soil fumigated with combinations of chloropicrin, methyl bromide, and propargyl bromide. Although methyl bromide is used as an agricultural pesticide, the Agency considers its application as a soil fumigant to be a non-food use because it is quickly degraded or metabolized in the soil, and subsequently incorporated into natural plant constituents.Methyl bromide is also emitted to the atmosphere. Residues of the parent compound are not likely to be found in foods as a result of prior treatment of fields. While residues of inorganic bromide may be present, these residues are indistinguishable from background because of inorganic bromide's ubiquity in the environment. In addition, the Agency has concluded that inorganic bromide residue from such use is not of risk concern and has determined those twelve tolerances to be safe. Consequently, EPA is proposing to revoke them because no tolerances are needed for those non-food uses and the Agency considers these tolerances to be reassessed. Furthermore, since methyl bromide, when applied as a pre-plant soil fumigant is a non-food use, it should be added as an entry to 40 CFR 180.2020 noting the non-food use determination. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. The regulatory actions proposed in this document pertain to the proposed revocation of 12 tolerances that count as tolerance reassessments toward the August 2006 review deadline.

DATES: Comments must be received on or before July 31, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0123, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0123. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in

the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Steven Weiss, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8293; e-mail address: *weiss.steven@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

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

II. Background

A. What Action is the Agency Taking?

Previously, EPA had established tolerances for residues of inorganic bromide for soil treatment with methyl bromide. However, EPA has classified methyl bromide as a non-food use pesticide with regard to its soil fumigant uses and proposes to revoke tolerances for inorganic bromide. The Agency stated that although methyl bromide is used as an agricultural pesticide, it is considered a non-food use chemical for soil fumigation uses since it is quickly degraded or metabolized in the soil, and subsequently incorporated into natural plant constituents. Methyl bromide is also emitted to the atmosphere. Residues of the parent compound are not likely to be found in foods as a result of prior treatment of fields. While residues of inorganic bromide may be present, these residues are indistinguishable from background because of inorganic bromide's ubiquity in the environment. Therefore, tolerances are not required for soil fumigant uses of methyl bromide, and tolerances currently established for residues of inorganic bromide resulting from methyl bromide soil fumigation (40 CFR 180.199) should be revoked. Supporting documents are available in the docket of this proposed rule.

Tolerances and tolerance exemptions established under part 180 apply to residues from only preharvest application, unless otherwise specified, in accordance with 40 CFR 180.1(i). On April 17, 2003 (68 FR 18935) (FRL–7180–2), EPA made pesticide tolerance nomenclature changes including a nomenclature change in 40 CFR part 180 regarding the term ''preharvest'' such that in 40 CFR 180.199(c) the regional tolerance for ''ginger, roots, pre-H and post-H'' was revised to ''ginger, roots, postharvest.'' Nevertheless, the tolerance expression in 40 CFR 180.199(c) applies to the raw agricultural commodity grown in soil fumigated with combinations of methyl bromide and chloropicrin, and therefore the regional tolerance on ginger, roots, postharvest should be revoked because that tolerance is no longer needed for soil fumigant use and use on ginger, roots, post-harvest is covered by a tolerance under 40 CFR 180.123.

Considering all the above factors (that the only residue of concern in pre-plant soil fumigation with methyl bromide is methyl bromide *per se* and there being no reasonable expectation of methyl bromide residues in most crops planted and grown in the fumigated soil, and that inorganic bromide is not of risk concern), as well as the low likelihood of identifying control samples for tolerance enforcement which would be bromide-free, the conclusion that soil fumigation uses of methyl bromide should be considered non-food uses means that the tolerances for residues of inorganic bromide resulting from such use are therefore unnecessary. Accordingly, EPA believes that the 12 tolerances in 40 CFR 180.199(a) for residues of inorganic bromides in or on

broccoli, cauliflower, eggplants, muskmelons, peppers, pineapples, strawberries, and tomatoes; in 40 CFR 180.199(b) on asparagus, lettuce, and onions (dry bulb); and in 40 CFR 180.199(c) on ginger, roots are not required under FFDCA and can be revoked. The Agency considers the twelve tolerances to be reassessed and counts them toward meeting the tolerance reassessment requirements listed in FFDCA section 408(q).

Furthermore, since methyl bromide, when applied as a pre-plant soil fumigant is a non-food use, it should be added as an entry to 40 CFR 180.2020 noting the non-food use determination.

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

C. When do These Actions Become Effective?

EPA is proposing that revocation of these tolerances become effective on the date of publication of the final rule in the **Federal Register**. The Agency has determined that there is no reasonable expectation that residues of the pesticides listed in this proposed rule will be found on the commodities discussed in this proposed rule and therefore the lack of the tolerances does not prevent sale of the commodities.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of May 18, 2006, EPA has reassessed over 8,130 tolerances. This document proposes to revoke a total of 12 tolerances and counts them toward the August 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are The Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standard established by FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and the fact that there is no reasonable expectation that residues of the pesticides listed in this proposed rule will be found on the commodities discussed in this proposed rule (so that the lack of the tolerance could not prevent sale of the commodity), the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible

joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: May 19, 2006.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended asfollows:

PART 180—AMENDED

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

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

§ 180.199 [Removed]

2. Section 180.199 is removed.

3. Section 180.2020 is amended by adding alphabetically the following entry to the table to read as follows.

§ 180.2020 Non-food determinations.

* * * * *

Pesticide Chemical	Chemical CAS Reg. No.	Limits	Uses
Methyl Bromide	74–83–9	When applied as a pre-plant soil fumigant	All pre-plant soil uses
* *	* * *	* *	

[FR Doc. E6–8398 Filed 5–30–06; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 06–57]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; Video Relay Service Interoperability

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether and how an open global database of proxy numbers of Video Relay Service (VRS) users may be created so that a hearing person may call a VRS user through any VRS provider without having to ascertain the first VRS user's current Internet-Protocol (IP) address.

DATES: Comments are due on or before July 17, 2006. Reply comments are due on or before July 31, 2006. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the general public, Office of Management and Budget (OMB), and other interested parties on or before July 31, 2006.

ADDRESSES: You may submit comments, identified by [CG Docket number 03–123 and/or FCC Number 06–57], by any of the following methods:

- Federal eRulemaking Portal:*http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition, a copy of any comments on the PRA information collection requirements contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kristy_L._LaLonde@omb.eop.gov*, or via fax at (202) 395–5167.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Chandler@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Leslie Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Further Notice of Proposed Rulemaking (*FNPRM*), *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; CG Docket No. 03–123, FCC 06–57, contains proposed information collection requirements subject to the PRA of 1995, Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. This is a summary of the Commission's FNPRM, FCC 06–57, adopted May 3, 2006, and released May 9, 2005, in CG Docket No. 03–123.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 03–123. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption in this proceeding, filers must submit two additional copies of each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Pursuant to § 1.1200 of the Commission's rules, 47 CFR 1.1200, this matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

The FNPRM contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the PRA of 1995, Public Law 104–13. Public and agency comment are due July 31, 2006. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it may ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Video Relay Service (VRS) Interoperability, Further Notice of Proposed Rulemaking, CG Docket No. 03–123.

Form No.: N/A.

Type of Review: New collection.

Number of Respondents: 8.

Number of Responses: 3,000,000.

Respondents: Business and other for-profit entities; State, Local or Tribal Government.

Estimated Time per Response: 40 to 1,000 hours.

Frequency of Response: Annual and one-time reporting requirement; recordkeeping; third party disclosure.

Total Annual Burden: 11,840 hours.

Total Annual Costs: $0.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On May 9, 2006, the Commission released a *Declaratory Ruling and Notice of Proposed Rulemaking (FNPRM)*, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, FCC 06–57. In this *FNPRM:*

The Commission seeks comment on the feasibility of establishing a single, open, and global database of proxy numbers for VRS users that would be available to all service providers, so that a hearing person can call a VRS user through any VRS provider, and without having first to ascertain the VRS user's current IP address.

The Commission also seeks comment on nature of the proxy numbers that might be used and how they might be administered.

The Commission seeks comment on the role of the Commission in creating and maintaining the database.

In this FNPRM, the Commission recognizes: (a) That when a hearing person contact a VRS user by calling a VRS provider, the calling party has to know in advance the IP address of the VRS user so that the calling party can give that address to the VRS CA; (b) that because most consumers' IP addresses are dynamic, the VRS consumer may not know the IP address of his or her VRS equipment at a particular time; (c) that some VRS providers have created their own database of ''proxy'' or ''alias'' numbers that associate with the IP address of their customers, even if a particular person's IP address is dynamic and changes; (d) that databases are maintained by the service provider and, generally, are not shared with other service providers; and (e) that a person desiring to call a VRS consumer via the consumer's proxy number can only use the services of the VRS provider that generates the number.

The FNPRM contains the following information collection requirements involving an open, global database of VRS proxy numbers.

The FNPRM seeks comment on: (1) Whether VRS providers should be required to provide information to populate an open, global database of VRS proxy numbers and to keep the information current; (2) whether the Interstate TRS Fund administrator, a separate entity, or a consortium of service providers should be responsible for the maintenance and operation of an open, global database of VRS proxy numbers; (3) whether Deaf and hard of hearing individuals using video broadband communication need uniform and static end-point numbers should be linked to the North American Numbering Plan (NANP) that which would remain consistent across all VRS providers so that they can contact one another and be contacted to the same extent that Public Switched Telephone Network (PSTN) and VoIP users are able to identify and call one another; (4) whether participation by service providers should be mandatory so that all VRS users can receive incoming calls.

Synopsis

California Coalition of Agencies Serving the Deaf and Hard of Hearing is a coalition of eight community-based nonprofit agencies providing various social services to deaf and hard-of-hearing consumers in California, (CCASDHH or Petitioner) filed a Petition for Declaratory Ruling that raises the issue of VRS providers using a proprietary database of ''proxy'' or ''alias'' numbers that allow their customers to use their existing telephone number (or some other number) as a proxy for their Internet Protocol (IP) address. California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH or Petitioner), *Petition for Declaratory Ruling on Interoperability,* CC Docket No. 98–67, CG Docket No. 03–123, filed February 15, 2005. This arrangement permits a VRS provider to determine automatically the IP address of a VRS user when a hearing person initiates a VRS call. These databases, however, are generally used only for calls made via one provider's service and using that provider's equipment. The FNPRM seeks comment on whether and how an open and global database of proxy number for VRS users may be created so that a hearing person may call a VRS user through any VRS provider without having to ascertain first the VRS user's current IP address. The Commission also seeks comment in the FNPRM on whether it should adopt specific Internet protocols or standards to ensure that all VRS providers can receive calls from, and make calls to, any VRS consumer, and all VRS consumers can make calls through any VRS provider.

Traditional TRS and VRS

When Congress enacted section 225 of the Communications Act, and the Commission implemented the TRS, relay calls were placed using a text telephone device (TTY) connected to the Public Switched Telephone Network (PSTN). In such a ''traditional'' TRS call, a person with a hearing (or speech) disability dials a telephone number for a TRS facility using a TTY. In this context, the first step for the TRS user, the completion of the outbound call to the TRS facility, is functionally equivalent to receiving a ''dial tone.'' Both persons with hearing and speech disabilities and voice telephone users can initiate a traditional TRS call by dialing 711 to reach a TRS provider. *See, e.g.*, 47 CFR 64.601(1).

VRS allows persons using American Sign Language (ASL) to access the telephone system through a broadband Internet video connection between the VRS user and the communications assistant (CA). A VRS user may initiate a VRS call either via a VRS provider's Web site or directly through VRS equipment connected to the Internet. With VRS, the dial tone equivalent is when the VRS user establishes a video connection with the CA, who then places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the VRS user and by voice with the hearing person. The conversation between the two end users flows in near real time and in a faster manner than with a TTY or a text-based TRS call. VRS, therefore, provides a degree of ''functional equivalency'' that is not attainable with text-based TRS by allowing those persons whose primary language is ASL to communicate in sign language, just as a hearing person communicates in, *e.g.*, spoken English.

A hearing person may also initiate a VRS call by calling a VRS provider through a toll-free telephone number. However, unlike the voice telephone network, VRS equipment is not linked to a uniform numbering system that correlates to a VRS user's IP address. Most VRS users have ''dynamic'' IP addresses, which are temporary addresses assigned to the user by an Internet service provider, and change periodically. This makes it difficult for a hearing person to know in advance the IP address of the VRS user he or she desires to call. If the calling party is not calling a VRS user through a VRS provider that maintains a database of its customers' IP addresses, the calling party must determine in advance the VRS user's correct IP address and give that address to the VRS provider.

The Petition

Petitioner addresses Sorenson's practice of using a database of ''proxy'' numbers that allows its customers to use their existing telephone number (or some other number) as a proxy for their IP address. Petition at 3–4, notes 3, 5–6. This arrangement permits a hearing person to call a VRS user through Sorenson without having to know the VRS user's IP address. Petitioner asserts that this ''restricted database'' precludes a hearing person from making a VRS call through another provider's service using the VRS user's proxy number. Petition at 6. Petitioner notes thats although a hearing person may still be able to call a VRS user by providing the VRS provider with the VRS user's IP address, most VRS users have dynamic IP addresses so that they likely do not know their IP address to give to the

calling party. Petition at 6. The Petition asserts that acquiring a static (*i.e.*, permanent) IP address is costly and that consumers generally do not have such IP addresses. Petition at 3, notes 3, 6.

The Comments

Commenters addressed the use of proxy numbers for the IP addresses of VRS users. CSD notes, for example, that presently ''there is no uniform means of identifying and accessing VRS users that offers the ease of the North American Numbering Plan (NANP) enjoyed by voice users.'' Instead, CSD asserts, each VRS provider has its own system for enabling hearing persons to make a relay call to a VRS user. CSD maintains that this results in serious confusion for hearing individuals who want to make a VRS call and requires them to have ''the specific provider information and extension of the individual they are trying to reach.'' CSD states that a ''seamless numbering scheme'' is needed that will allow all VRS users—deaf and hearing—to contact each other with the same ease that other telephone users do so. Finally, CSD notes that such a numbering scheme would facilitate the handling of emergency calls.

Sorenson responds that, because VRS equipment is generally connected to the Internet through a dynamic IP address, it developed a means by which callers can reach a device identified by an IP address. Sorenson assigns a unique number to each videophone (usually the consumer's telephone number), and the VP–100 and Sorenson's servers ''work together to match the unique identifier with the user's dynamic IP address.'' As a result, Sorenson creates a directory ''that matches pseudo phone numbers (which remain constant) with dynamic IP addresses,'' so that a hearing person seeking to call a Sorenson VRS user can do so by calling a Sorenson and providing the CA with the VRS user's ''phone number.'' Sorenson states that this ''proprietary videophone number dialing feature is part of Sorenson's integrated VRS solution and is not available independently of the VP–100.'' Sorenson claims that ''users find this feature very helpful because the videophone number does not change and there is no need to acquire a static (fixed) IP address or domain name.''

The FNPRM

In this FNPRM, the Commission addresses two issues: (1) The feasibility of establishing a single global database of proxy numbers for VRS users that would be available to all service providers, so that a hearing person can call a VRS user through any VRS provider, and without having first to ascertain the VRS user's current IP address; and (2) whether the Commission should adopt specific Internet protocols or standards to ensure that all VRS providers can receive calls from, and make calls to, any VRS consumer, and all VRS consumers can make calls through any VRS provider.

Proxy Numbers for VRS Users. As noted above, a hearing person may contact a VRS user by calling a VRS provider's toll free number. The VRS CA, however, will be able to establish the video-to-video link with the VRS user only if the CA knows the IP address of the VRS user's equipment. Often, that requires that the calling party know in advance the IP address of the VRS user so that the calling party can give that address to the VRS CA. Because most consumers' IP addresses are dynamic, the VRS consumer may not know the IP address of his or her VRS equipment at a particular time.

Some providers have created their own database of ''proxy'' or ''alias'' numbers that associate with the IP addresses of their customers, even if a particular person's IP address is dynamic and changes. These numbers often resemble telephone numbers, which makes it easier for VRS users to give their ''number'' to hearing persons who may wish call them via VRS. These databases, however, are maintained by the service provider and, generally, are not shared with other service providers. Therefore, a person desiring to call a VRS consumer via the consumer's proxy number can only use the services of the VRS provider that generates the number. *See, e.g.*, Sorenson *Ex Parte* (January 6, 2006) at 16.

In the FNPRM, the Commission seeks comment on the feasibility of establishing a single, open, and global database of proxy numbers for VRS users that would be available to all service providers, so that a hearing person can call a VRS user through any VRS provider, and without having first to ascertain the VRS user's current IP address. In assessing the feasibility of this proposal, commenters should address both technical and the economic issues. Technical issues include the need for standard protocols so that the database system can work with all VRS equipment and services. The Commission also seeks comment on whether there are aspects of proxy numbers that are dependent on functionalities outside of a database, such as functionalities in the user's equipment. If so, parties should address whether standardization is required. Commenters should address any other technical issues they believe are relevant to this issue.

The Commission also seeks comment on nature of the proxy numbers that might be used and how they might be administered. As the Commission has noted, some VRS databases associate users with ten-digit telephone numbers. Others allow the user to create their own unique identification. Communication Service for the Deaf (CSD) states that ''in order for VRS to be functionally equivalent to voice telephone services, deaf and hard of hearing individuals using video broadband communication need uniform and static end-point numbers linked to the North American Numbering Plan (NANP) that will remain consistent across all VRS providers so that they can contact one another and be contacted to the same extent that Public Switched Telephone Network (PSTN) and VoIP users are able to identify and call one another.'' CSD *Ex Parte* (October 20, 2005) at 3. Accordingly, CSD urges that this matter be referred to the North American Numbering Council (NANC). The Commission seeks comment on this approach.

The Commission further seeks comment on the maintenance and operation of such a database. Commenters should address whether this type of database should be the responsibility of the Fund administrator, a separate entity, or a consortium of service providers. Commenters that urge creation of an oversight committee should specify the scope and composition of the committee.

Finally, the Commission seeks comment on the role of the Commission in creating and maintaining the database. Commenters should address what specific rule changes would be necessary to establish the database. Commenters should also address whether participation by service providers should be mandatory so that all VRS users can receive incoming calls. Finally, the Commission seeks comment on what ongoing Commission oversight or regulation, if any, would be necessary.

Adoption of Specific VRS Internet Protocols or Standards. Videophones and other devices that send video via the Internet to make VRS calls operate via specific call signaling protocols or standards that connect the two endpoints to the call. Internet telephony requires standards or protocols so that the end-user devices can communicate with each other. H.323 is one standard for transmitting real-time voice and video over packet-based networks.

Another newer standard is SIP (Session Initiation Protocol). In declining to mandate the provision of VRS in the *Improved TRS Order,* the Commission stated because VRS was in its early stages of technological development the Commission would ''permit market forces, not the Commission, to determine the technology and equipment best suited for the provision of [VRS], and allow[] for the development of new and improved technology.'' *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, Report and Order and Further Notice of Proposed Rulemaking, (*Improved TRS Order*), 15 FCC Rcd 5153, paragraph 23; published at 65 FR 38432 (June 21, 2000) and 65 FR 38490 (June 21, 2000).

With traditional TRS, the Commission initially proposed requiring TTYs to be capable of communicating in either ASCII or Baudot formats. *Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act of 1990,* CC Docket No. 90–571, Notice of Proposed Rulemaking, 5 FCC Rcd 7187, 7188–7189, paragraph 12 (November 16, 1990); published at 55 FR 50037 (December 4, 1990) (noting that although ASCII offers a higher data transfer rate, not all TTY users have compatible equipment and rely instead ''on Baudot code equipment''). Baudot code was developed in the late 1800's and is a 5 bit coding scheme limited to 32 characters. ASCII was developed in the 1960's and is a 7 bit coding scheme specifically intended for data processing. *See generally R. Horak, Communications Systems and Networks* at 196–198 (3rd edition 2002). In adopting the TRS regulations, the Commission noted that both codes were being used by TTY users and existing TRS providers, although ASCII was the superior technology and had the advantage of being able to be used by personal computers. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 90–571, Report and Order and Request for Comments, (*TRS I*), 6 FCC Rcd 4661, paragraph 20; published at 56 FR 36729 (August 1, 1991). The Commission concluded that it would not adopt a phase-out period for Baudot because many persons who rely on TRS have access only to Baudot terminals. Therefore, the Commission adopted the proposed rule requiring TRS to be capable of communicating in both ASCII and Baudot formats. *TRS I,* 6 FCC Rcd 4661, paragraph 20. The rule states that ''TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.'' 47 CFR 64.604(b)(1).

Subsequently, the Commission noted that new TTY transmission protocols had evolved since the initial TRS regulations were adopted, and therefore sought comment on whether these enhanced protocols, such as the V.18 protocol, should be required to be used by TRS providers. *Improved TRS Order,* 15 FCC Rcd 5197–5199, paragraphs 139–146. The Commission also noted that Baudot was still the dominant protocol. In the June 2003 Second Report and Order, the Commission stated that it did not receive adequate comments on this issue and sought further comment on ''the extent to which innovative non-proprietary protocols for TTY products are currently being used, and any advantages or disadvantages such protocols may present to TRS providers.'' *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67 and CG Docket No. 03–123, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking (*Second Improved TRS Order*), 18 FCC Rcd 12440–12441, paragraph 127; published at 68 FR 50093 (August 25, 2003) and 68 FR 50973 (August 25, 2003). In the *2004 TRS Report and Order,* the Commission concluded that the record did not reflect that there were any new non-proprietary TTY protocols available on the market. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket Nos. 90–571 and 98–67, CG Docket No. 03–123 Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (*2004 TRS Report and Order*), 19 FCC Rcd 12512, paragraph 88; published at 65 FR 53346 (September 1, 2004) and 65 FR 53382 (September 1, 2004). The Commission therefore declined to mandate the use of additional TTY protocols. At the same time, it recognized that it is desirable to make TRS ''universal for all types of callers by ensuring its compatibility with various TTY protocols'' and stated that it would continue to monitor this issue. *2004 TRS Report and Order,* 19 FCC Rcd 12512, paragraph 89 (internal quotation marks omitted).

Presently, unlike with traditional TRS calls made using TTYs and the PSTN, the Commission has not mandated the use of particular protocols by VRS providers to ensure that all consumers and providers can communicate with each other. With the increasing use of VRS and changes in technology, we now seek comment on whether we should adopt specific protocols for VRS calls and if so, what protocol or protocols should be adopted.

As the provision of VRS has developed, nearly all VRS equipment (the VP–100, the D-Link, and webcams) uses the H.323 protocol, and all present providers use this protocol. As a result, this equipment is inherently interoperable with any of the VRS providers' service, and vice versa. Some newer videophone equipment, however, uses other protocols, such as SIP. A SIP device cannot, without translation, communicate with an H.323 device. Without a translation mechanism, if a VRS consumer has a SIP-based videophone the consumer will only be able to use the relay services of a provider that can handle SIP-based calls. Similarly, if a provider can only accept SIP-based calls, a consumer with an H.323-based videophone will not be able to use that provider's service, nor will a hearing person attempting to call a VRS user with an H.323-based videophone. As a result, it is clear that the development and use of videophones that use new Internet protocols that are incompatible with existing videophone protocols creates a barrier to realizing the goal of ensuring that all VRS providers can receive calls from, and make calls to, any VRS consumer, and ensuring that all VRS consumers can make calls through any VRS provider.

The Commission therefore seeks comment on whether, following the model of traditional TRS, it should mandate specific Internet protocols that VRS providers must use to receive and place VRS calls. The Commission notes that it does not regulate TRS equipment, but only providers to the extent they seek compensation from the Fund. If so, the Commission seeks comment on what standard or standards we should mandate, and an appropriate transition period for the adoption of these standards. The Commission also seeks comment on what costs may be involved if it requires all providers to be able to receive and make calls through specific multiple protocols, and whether such costs should be compensable by the Fund. The Commission further seeks comment on whether it should invite the providers, consumer groups, and other interested parties to work together to jointly propose standards to the Commission and if so, on the appropriate timing of such an endeavor.

The Commission also seeks comment on whether it can ensure

interoperability in some way other than mandating protocols, and on any other issues relating to ensuring that VRS consumers can use VRS equipment to call any of the VRS providers, and the VRS providers can make calls to all VRS consumers.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this FNPRM. *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, 110 Statute 857 (1996). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided in paragraph 57 of the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

Currently, it is difficult for a voice telephone user to call a VRS user because either the voice telephone user or the CA must know the IP address of the VRS user, and most VRS consumer's IP addresses are dynamic and therefore continually change. Some VRS have developed a solution to this problem by creating their own database of unique ''proxy'' number for their customers, which generally resemble telephone numbers. The provider has a method of ensuring that the proxy number will always correlate with the VRS user's IP address, even when the IP address changes. The record reflects, however, that these proxy numbers can be used only if the voice telephone user is using the VRS provider that assigned the consumer the proxy number.

The FNPRM therefore seeks comment on the feasibility of establishing and maintaining an open and a single, open, and global database of proxy numbers for VRS users so that a hearing person may call a VRS user through any VRS provider and without having to ascertain first the VRS user's current IP address. This would permit VRS users to have one number for their VRS equipment that voice telephone users could ''call'' through any VRS provider, similar to the way that traditional TRS calls are presently made to the PSTN number of TTY users. The Commission asks if there are aspects of proxy numbers that are dependent on functionalities outside of a database, such as functionalities in the user's equipment and, if so, the Commission further asks whether standardization should be required. The Commission also seeks comment on any other technological considerations that may be relevant to this issue.

In addition, the Commission seeks comment on the nature of the proxy numbers that might be used and how they might be administered. The Commission also asks whether this matter should be referred to North American Numbering Council (NANC). *See* 5 U.S.C. 603(a).

The Commission seeks comment on the maintenance and operation of such a database. The Commission specifically seeks comment on whether the maintenance and operation of such a proposed database be the responsibility of the Fund administrator, a separate entity, or a consortium of service providers. The Commission invites further comment on the role of the Commission in creating and maintaining the database, including whether participation by service providers should be mandatory so that all VRS users can receive incoming calls. Finally, the Commission asks what ongoing Commission oversight or regulation, if any, would be necessary.

The Commission notes that the development and use of videophones that use new Internet protocols are incompatible with existing videophone protocols, which creates a barrier to realizing the goal of ensuring that all VRS providers can receive calls from, and make calls to, any VRS consumer, and ensuring that all VRS consumers can make calls through any VRS provider.

The Commission therefore invites comment on whether it should mandate specific Internet protocols that VRS providers must use to receive and place VRS calls. The Commission notes that it does not regulate TRS equipment, but only providers to the extent they seek compensation from the Fund. If so, the Commission seeks comment on what standard or standards it should mandate, and an appropriate transition period for the adoption of these standards. The Commission seeks comment on what costs may be involved if it requires all providers to be able to receive and make calls through specific multiple protocols, and whether such costs should be compensable by the Fund. The Commission further seeks comment on whether it should invite the providers, consumer groups, and other interested parties to work together to jointly propose standards to the Commission and if so, on the appropriate timing of such an endeavor.

The Commission also seeks comment on whether it can ensure interoperability in some way other than mandating protocols, and on any other issues relating to ensuring that VRS consumers can use VRS equipment to call any of the VRS providers, and the VRS providers can make calls to all VRS consumers.

Legal Basis

The authority for the actions proposed in this FNPRM may be found in sections 1, 4(i) and (j), 201–205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201–205, 218 and 225, and sections 64.601–64.608 of the Commission's regulations, 47 CFR 64.601–64.608.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to the 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

As noted above, the FNPRM seeks comment on establishing a global database of proxy IP addresses for VRS users that would be available to all VRS providers. As a result, the Commission believes that the entities that may be affected by the proposed rules are only VRS providers. Neither the Commission

nor the SBA has developed a definition of ''small entity'' specifically directed toward VRS providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees. 13 CFR 121.201, NAICS Code 517110. Currently, there are eight VRS providers. Approximately two or fewer of these entities are small entities under the SBA size standard. *See* National Association for State Relay Administration (NASRA) Statistics. These numbers are estimates because of recent and pending mergers and partnerships in the telecommunications industry.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule establishing an open, global database of VRS proxy numbers would require VRS providers to provide information to populate the database and to keep the information current. Further, the proposed rule mandating specific Internet protocols and or standards would require VRS providers to use compatible video protocols in order to receive and place VRS calls.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, alternatives, specific to small businesses, that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.'' 5 U.S.C. 603(c)(1)–(4).

As noted above, a hearing person may contact a VRS user by calling a VRS provider's toll free number. The VRS CA, however, will be able to establish the video-to-video link with the VRS user only if the CA knows the IP address of the VRS user's equipment. Often, that requires that the calling party know in advance the IP address of the VRS user so that the calling party can give that address to the VRS CA. Because most consumers' IP addresses are dynamic, the VRS consumer may not know the IP address of his or her VRS equipment at a particular time. Some providers have created their own database of ''proxy'' or ''alias'' numbers that associate with the IP addresses of their customers, even if a particular person's IP address is dynamic and changes. These numbers often resemble telephone numbers, which makes it easier for VRS users to give their ''number'' to hearing persons who may wish to call them via VRS. These databases, however, are maintained by the service provider and, generally, are not shared with other service providers. Therefore, a person desiring to call a VRS consumer via the consumer's proxy number can only use the services of the VRS provider that generates the number. *See, e.g.*, Sorenson *Ex Parte* (January 6, 2006) at 16.

In this FNPRM, the Commission contemplates the feasibility of establishing a single, open, and global database of proxy numbers for VRS users that would be available to all service providers, so that a hearing person can call a VRS user through any VRS provider, and without having first to ascertain the VRS user's current IP address. In assessing the feasibility of this proposal, commenters should address both technical and the economic issues. Technical issues include the need for standard protocols so that the database system can work with all VRS equipment and services. The Commission asks whether there are aspects of proxy numbers that are dependent on functionalities outside of a database, such as functionalities in the user's equipment. If so, parties should address whether standardization is required. The Commission requests that commenters address any other technical issues they believe are relevant to this issue. The Commission considers the potential impact of these technical and economic issues on small business and the alternatives in easing the burden on small businesses.

The Commission also invites comment on nature of the proxy numbers that might be used and how they might be administered. As the Commission has noted, some VRS databases associate users with ten-digit telephone numbers. Others allow the user to create their own unique identification. CSD states that ''in order for VRS to be functionally equivalent to voice telephone services, deaf and hard of hearing individuals using video broadband communication need uniform and static end-point numbers linked to the North American Numbering Plan (NANP) that will remain consistent across all VRS providers so that they can contact one another and be contacted to the same extent that Public Switched Telephone Network (PSTN) and VoIP users are able to identify and call one another.'' CSD *Ex Parte* (October 20, 2005) at 3. Accordingly, CSD urges that this matter be referred to the North American Numbering Council (NANC). CSD *Ex Parte* (October 20, 2005) at 3. The Commission seeks comment on this approach and the alternatives to this approach that may have a minimal burden on small businesses. The Commission further seeks comment on the maintenance and operation of such a database. The Commission invites commenters to address whether this type of database should be the responsibility of the Fund administrator, a separate entity, or a consortium of service providers and whether the proposed responsibility would pose a significant burden on small businesses. The Commission asks that commenters that urge creation of an oversight committee should specify the scope and composition of the committee.

Finally, the Commission contemplates the role of the Commission in creating and maintaining the database. The Commission provisionally considers that specific rule changes may be necessary to establish the database and that the alternatives to these rule changes may be needed to alleviate the burden on small businesses. The Commission requests that commenters address whether participation by service providers should be mandatory so that all VRS users can receive incoming calls. The Commission considers the exemption of a mandatory participation by small entities as it may create a significant burden on small businesses. Finally, the Commission seeks comment on what ongoing Commission oversight or regulation, if any, would be necessary and on what would be the alternatives in considering the impact on small businesses.

Videophones and other devices that send video via the Internet to make VRS calls operate via specific call signaling protocols or standards that connect the two endpoints to the call. Internet telephony requires standards or protocols so that the end-user devices can communicate with each other. H.323 is one standard for transmitting real-time voice and video over packet-based networks. Another newer standard is SIP (Session Initiation Protocol). In declining to mandate the provision of VRS in the *Improved TRS Order*, the Commission stated because VRS was in its early stages of technological development the

Commission would ''permit market forces, not the Commission, to determine the technology and equipment best suited for the provision of [VRS], and allow [* * *] for the development of new and improved technology.'' *Improved TRS Order*, 15 FCC Rcd at 5153, paragraph 23.

With traditional TRS, the Commission initially proposed requiring TTYs to be capable of communicating in either ASCII or Baudot formats. *Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act of 1990*, CC Docket No. 90–571, Notice of Proposed Rulemaking, 5 FCC Rcd 7187, 7188–7189, at paragraph 12 (November 16, 1990) (noting that although ASCII offers a higher data transfer rate, not all TTY users have compatible equipment and rely instead ''on Baudot code equipment''). Baudot code was developed in the late 1800's and is a 5 bit coding scheme limited to 32 characters. ASCII was developed in the 1960's and is a 7 bit coding scheme specifically intended for data processing. *See generally* R. Horak, *Communications Systems and Networks* at 196–198 (3rd edition 2002). In adopting the TRS regulations, the Commission noted that both codes were being used by TTY users and existing TRS providers, although ASCII was the superior technology and had the advantage of being able to be used by personal computers. *TRS I*, 6 FCC Rcd at 4661, at paragraph 20. The Commission concluded that it would not adopt a phase-out period for Baudot because many persons who rely on TRS have access only to Baudot terminals.

Therefore, the Commission adopted the proposed rule requiring TRS to be capable of communicating in both ASCII and Baudot formats. *TRS I*, 6 FCC Rcd at 4661, at paragraph 20. The rule states that ''TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.'' 47 CFR 64.604(b)(1) of the Commission's rules. Subsequently, the Commission noted that new TTY transmission protocols had evolved since the initial TRS regulations were adopted, and therefore sought comment on whether these enhanced protocols, such as the V.18 protocol, should be required to be used by TRS providers. *Improved TRS Order*, 15 FCC Rcd at 5197–5199, paragraphs 139–146. The Commission also noted that Baudot was still the dominant protocol. *Improved TRS Order*, 15 FCC Rcd at 5197–5199, paragraphs 139–146. In the June 2003 Second Report and Order, the Commission stated that it did not receive adequate comments on this issue and sought further comment on ''the extent to which innovative non-proprietary protocols for TTY products are currently being used, and any advantages or disadvantages such protocols may present to TRS providers.'' *Second Improved TRS Order*, 18 FCC Rcd at 12440–12441, paragraph 127. In the *2004 TRS Report and Order*, the Commission concluded that the record did not reflect that there were any new non-proprietary TTY protocols available on the market. *2004 TRS Report and Order*, 19 FCC Rcd at 12512, paragraph 88. The Commission therefore declined to mandate the use of additional TTY protocols. At the same time, it recognized that it is desirable to make TRS ''universal for all types of callers by ensuring its compatibility with various TTY protocols'' and stated that it would continue to monitor this issue. *2004 TRS Report and Order*, 19 FCC Rcd at 12512, paragraph 89 (internal quotation marks omitted).

Presently, unlike traditional TRS calls made using TTYs and the PSTN, the Commission has not mandated the use of particular protocols by VRS providers to ensure that all consumers and providers can communicate with each other. However, with the increasing use of VRS and changes in technology, the Commission now contemplates whether we should adopt specific protocols for VRS calls and if so, what protocol or protocols should be adopted. The Commission further contemplates the effects of adopting specific protocols on small businesses. As the provision of VRS has developed, nearly all VRS equipment (the VP–100, the D-Link, and webcams) uses the H.323 protocol, and all present providers use this protocol. As a result, this equipment is inherently interoperable with any of the VRS providers' service, and vice versa. Some newer videophone equipment, however, uses other protocols, such as SIP. A SIP device cannot, without translation, communicate with an H.323 device. Without a translation mechanism, if a VRS consumer has a SIP-based videophone the consumer will only be able to use the relay services of a provider that can handle SIP-based calls. Similarly, if a provider can only accept SIP-based calls, a consumer with an H.323-based videophone will not be able to use that provider's service, nor will a hearing person attempting to call a VRS user with an H.323-based videophone. As a result, it is clear that the development and use of videophones that use new Internet protocols that are incompatible with existing videophone protocols creates a barrier to realizing the goal of ensuring that all VRS providers can receive calls from, and make calls to, any VRS consumer, and ensuring that all VRS consumers can make calls through any VRS provider.

The Commission therefore contemplates, following the model of traditional TRS, mandating specific Internet protocols that VRS providers must use to receive and place VRS calls. The Commission notes that it does not regulate TRS equipment, but only providers to the extent they seek compensation from the Fund. If so, the Commission seeks comment on what standard or standards it should mandate, and on an appropriate transition period for the adoption of these standards. The Commission provisionally considers what costs may be involved if it required all providers to be able to receive and make calls through specific multiple protocols, and whether such costs should be compensable by the Fund as a way to ease financial burden on small businesses. The Commission further seeks comment on whether it should invite the providers, consumer groups, and other interested parties to work together to jointly propose standards to the Commission and if so, on the appropriate timing of such an endeavor.

The Commission also considers the alternatives of ensuring interoperability other than mandating protocols. The Commission further asks for comments on any other issues relating to ensuring that VRS consumers can use VRS equipment to call any of the VRS providers, and the VRS providers can make calls to all VRS consumers. The Commission also requests for comments that will propose any alternative that will minimize adverse economic impact on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Pursuant to the authority contained in sections 1.2 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152 and 225, this further notice of proposed rulemaking is adopted.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–8374 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–988; MB Docket No. 06–97; RM–11254]

Radio Broadcasting Services; Dundee and Odessa, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comment on a petition filed by Finger Lakes Radio Group, Inc. to reallot and to change the community of license for Station WFLR–FM from Channel 240A at Dundee, New York, to Channel 238A at Odessa, New York. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be filed on or before July 3, 2006, and reply comments on or before July 18, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: James L. Oyster, Esq., 108 Oyster Lane, Castleton, Virginia 22716–2839 (Counsel for Finger Lakes Radio Group, Inc).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 06–97, adopted May 10, 2006, and released May 12, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW. Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW. Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Pursuant to § 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest pertaining to the use of Channel 238A at Odessa, New York. Channel 238A can be allotted to Odessa at proposed reference coordinates of 42–20–38 NL and 76–53–03 WL.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Dundee, Channel 240A and by adding Odessa, Channel 238A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8378 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 71, No. 104
Wednesday, May 31, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 24, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *oira_submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Use of Consultants Funded by Borrowers, 7 CFR 1789.

OMB Control Number: 0572–0115.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the Department of Agriculture that makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. The loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, and as prescribed by Office of Management and Budget Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivable, which states that agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance. RUS has the authority to use consultants voluntarily funded by borrowers for financial, legal, engineering, and other technical services. However, all RUS borrowers are eligible to fund consultant services but are not required to fund consultants.

Need and Use of the Information: RUS will collect information to determine whether it is appropriate to use a consultant voluntarily funded by the borrower to expedite a particular borrower application. If the information were not submitted, RUS would be unable to determine if using a consultant would accelerate the specific application process.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1.

Frequency Of Responses: Reporting: On occasion.

Total Burden Hours: 2.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–8318 Filed 5–30–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 24, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1951–A, ''Account Servicing Policies.''

OMB Control Number: 0575–0075.

Summary of Collection: The Rural Housing Service (RHS) provides supervised credit in the form of Single

Family Housing, Multi-Family Housing, and Community Facility loans and grants. Regulation at 7 CFR part 1951, subpart A sets forth the policies and procedures, including the collection and use of information, regarding the application of payments on loans made under the programs administered by the agencies and the return of paid-in-full and satisfied promissory notes.

Need and Use of the Information: The Agency borrowers submit the information to the local Agency office servicing the county in which their operation is located. The agency-servicing officials reviews and verifies the information. The information is collected when needed and on an individual case basis.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 110.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 28.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–8319 Filed 5–30–06; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 25, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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Agricultural Research Service

Title: Web Forms for Research Data, Models, Materials, and Publications as well as Study and Event Registration.

OMB Control Number: 0518–0032.

Summary of Collection: OMB Circular 130 Management of Federal Information Resources, establishes that ''agencies will use electronic media and formats * * * in order to make government information more easily accessible and useful to the public. * * *'' The Government Paperwork Elimination Act (GPEA), 44 U.S.C. 3504, Title XVII, required agencies to provide the option of electronic submission of information to the public. In order to provide information and services related to its program responsibilities defined at 7 CFR 2.65, the Agricultural Research Service (ARS) needs to obtain certain basic information from the public. Online forms are needed to allow the public to request from the Agricultural Research Service (ARS) research data, models, materials, and publications as well as registration for scientific studies and events.

Need and Use of the Information: ARS will use the information to respond to requests for specific services. The information will be collected electronically, by telephone, or by mail. If this collection is not conducted, ARS will be hindered from reducing the burden on its customers by providing them the most timely and efficient was to request services.

Description of Respondents: Individuals or households.

Number of Respondents: 25,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,250.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–8371 Filed 5–30–06; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 25, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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Rural Utilities Service

Title: 7 CFR 1744–E, Borrower Investments—Telecommunications Loan Program.

OMB Control Number: 0572–0098.

Summary of Collection: The Rural Economic Development Act of 1990, Title XXIII of the Farm Bill, Public Law 101–624, authorized qualified Rural Utilities Service (RUS) borrowers to make investments in rural development projects without the prior approval of the RUS Administrator, provided, however that such investments do not

cause the borrower to exceed its allowable qualified investment level as determined in accordance with the procedures set forth in 7 CFR part 1744, subpart E. RUS requests that the borrower submit (1) a description of the rural development project and type of investment; (2) a reasonable estimate of the amount the borrower is committed to provide to the project including future expenditures; and (3) a pro forma balance sheet and cash flow statement for the period covering the borrower's future commitments to determine that the ''excess'' or proposed ''excess'' investments will not impair the borrower's ability to repay the loan or cause financial hardship.

Need and Use of the Information: RUS will collect information to consider whether or not to approve a borrower's request to make an investment in a rural development project when such an investment would cause the borrower to exceed its allowable investment level. If this information was not collected, RUS could not thoroughly assess the economic impact of such an investment.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 25.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 238.

Rural Utilities Service

Title: 7 CFR 1730, Review Rating Summary.

OMB Control Number: 0572–0025.

Summary of Collection: The Rural Utilities Service (RUS) manages loan programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended. An important part of safeguarding loan security is to see that RUS financed facilities are being responsibly used, adequately operated, and adequately maintained. Future needs have to be anticipated to ensure that facilities will continue to produce revenue and that loans will be repaid as required by the RUS mortgage. Regular periodic operations and maintenance (O&M) review can identify and correct inadequate O&M practices before they cause extensive harm to the system. Inadequate O&M practices can result in public safety hazards, increased power outages for consumers, added expense for emergency maintenance, and premature aging of the borrower's systems, which could increase the loan security risk to RUS.

Need and Use of the Information: RUS will collect information using form 300 Review Rate Summary to identify items that may be in need of additional attention; to plan corrective actions when needed; to budget funds and manpower for needed work; and to initiate ongoing programs as necessary to avoid or minimize the need for ''catch-up'' programs.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 229.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 916.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–8372 Filed 5–30–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 25, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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Forest Service

Title: Urgent Removal of Timber.

OMB Control Number: 0596–0167.

Summary of Collection: Periodically, catastrophic events such as severe drought conditions, insect and disease outbreaks, wildfires, floods, and windthrow occur on forested lands within, or near, National Forest System (NFS) lands. As a result of such catastrophic event, substantial amounts of private and other public timber may be severely damaged. The damaged timber must be harvested within a relatively short time period to avoid substantial losses in both the quantity and quality of the timber due to deterioration. The critical time period available for harvesting this damaged timber and avoiding substantial deterioration varies with the season of the year, the species of timber, the damaging agent, and the location of the damaged timber. The following statute is applicable to extension of National Forest System timber sales: The National Forest Management Act of 1976 (16 U.S.C. 472a), and 36 CFR part 223.115 and 36 CFR part 223.53.

Need and Use of the Information: The Forest Service (FS) will collect the following information: (1) Name of the timber sale purchaser; (2) Identity of catastrophic event creating the need for urgent removal of timber; (3) Name of the NFS sale contract(s) for which an urgent removal extension is requested; (4) Quantity of urgent removal from qualifying catastrophic event purchaser has under contract and/or plans to harvest subject to approval by FS of urgent removal extension of sale(s) identified in purchaser's request; and (5) General information showing the manufacturing and/or logging equipment capacity available to purchaser.

Description of Respondents: Business or other for-profit; Individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 25.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 100.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–8373 Filed 5–30–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–301]

United States Standards for Grades of Greenhouse Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on its proposal to revise the United States Standards for Grades of Greenhouse Tomatoes. AMS is proposing to revise the standards to allow that percentages of defects and size classifications be determined by count rather than weight. This would result in a revision of the following sections of the standards: Tolerances, Size Classification, Standard Pack, Damage, and Serious Damage sections. Additionally, AMS is proposing to delete the ''Unclassified'' section, add moldy stems as a damage defect, and add a scoring guide for damage and serious damage for skin checks. The proposed revisions would bring the standards for greenhouse tomatoes in line with current marketing practices, thereby improving their usefulness in serving the industry.

DATES: Comments must be received by July 31, 2006.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

The proposed United States Standards for Grades of Greenhouse Tomatoes are available either through the address cited above or by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm.*

FOR FURTHER INFORMATION CONTACT: Cheri L. Emery, at the above address or call (202) 720–2185, E-mail *Cheri.Emery@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the voluntary United States Standards for Grades of Greenhouse Tomatoes using procedures that appear in part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised in 1966.

Background

Prior to undertaking research and other work associated with revision of the grade standards, AMS published a notice in the **Federal Register** (68 FR 68859) on December 10, 2003, soliciting comments on the possible revision of the United States Standards for Grades of Greenhouse Tomatoes. In response to this notice, a comment was received from an international industry group asking for an extension of the comment period. Following a review of the request AMS published a notice in the **Federal Register** (69 FR 12299) on March 16, 2004, extending the comment period from February 9, 2004, to March 31, 2004.

Further, after the comment period, AMS prepared a discussion draft of the proposed greenhouse tomato standard, and distributed copies for input to all commenters, industry associations, and other interested persons. As a result, we are adding a scoring guide for damage and serious damage by skin checks and including moldy stems as a damage defect.

In response to our request for comments, AMS received seven comments on the possible revisions. Two from domestic trade organizations, two from international trade organizations, two from foreign trade organizations, and one from a foreign government agency. The comments are available by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm.*

Four comments were in favor of the revisions to allow that percentages of defects and size classifications be determined by count rather than weight, stating the proposed change would significantly increase the speed of the inspection process while not changing the integrity of the inspection.

AMS received one comment specifically requesting a subsection for Tomatoes on the Vine (TOV) in the Greenhouse Tomato Standard. Three comments asked to include information to make the standards more useful to other types of greenhouse tomatoes and TOV. Based on these comments, we believe that it is preferable to address this issue by the development of a new standard for TOV.

AMS received two comments requesting a standard definition as to what represents a greenhouse tomato, and four comments that were opposed to including such a definition. The commenters opposed to defining ''greenhouse tomatoes'' stated that a strict definition would limit some growers from producing or marketing their product. Historically, the industry has been able to market this product without such a definition in the standards. Accordingly, AMS has decided not to take further action concerning the definition.

AMS received four comments requesting that destination tolerances be reviewed. However, no specific change was requested. Accordingly, the tolerances will remain unchanged.

AMS received four comments expressing concerns with changing to a size classification based on a diameter calculation due to the variations in the shape of the varieties. They requested using a count basis for determining size. AMS is proposing to revise the size classification section to add that the size of tomatoes may be specified by count per container, or in accordance with the defined diameter specifications. Because of the change from weight to count, AMS is also proposing to change the size designations from ounces to diameter, define the minimum and maximum diameter in inches of a small tomato to mean $2^{4}/_{32}$ to $2^{9}/_{32}$, a medium tomato to mean $2^{8}/_{32}$ to $2^{17}/_{32}$, a large tomato to mean $2^{16}/_{32}$ to $2^{25}/_{32}$, and an extra large tomato to mean $2^{24}/_{32}$ and larger, and add a definition for minimum and maximum diameter.

The proposed revisions will result in a modification of the following four sections of the standards: The tolerance section will change from weight to count. The standard pack section would be revised to base the ''standard pack'' on marked count by defining ''Fairly uniform in size'' as: ''not more than 10

percent, by count, of the tomatoes in any container may vary more than ½ inch in diameter.'' The damage section will be revised to include that all references to area, aggregate area, length, or aggregate length definitions are based on a 2½ inch in diameter tomato. The damage by catfaces scoring guide will be changed to ½ inch aggregate area based on a tomato 2½ inches in diameter. The serious damage section will also be revised to include references to area, aggregate area, length, or aggregate are based on a 2½ inch in diameter tomato. The serious damage by catfaces scoring guide will be changed to 1 inch aggregate area based on a tomato 2½ inches in diameter.

Based upon input from industry, AMS is proposing to add a scoring guide for damage and serious damage by skin checks. Damage will be defined as, ''when the appearance of the tomato is affected to a greater extent than that of a tomato 2½ inches in diameter having skin checks which has an aggregate area equivalent to that of a circle three-eighths inch in diameter.'' Serious damage will be defined as, ''when the appearance of the tomato is affected to a greater extent than that of a tomato 2½ inches in diameter having skin checks which has an aggregate area equivalent to that of a circle five-eighths inch in diameter.'' In addition, AMS is also proposing to add moldy stems as a damage defect in the requirements for a U.S. No. 1.

Finally, AMS is proposing to eliminate the ''Unclassified'' category. This section is being removed in all standards when they are revised. The category is not a grade and only serves to show that no grade has been applied to the lot.

The official grade of a lot of greenhouse tomatoes covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

This notice provides a 60-day comment period for interested parties to comment on the proposed changes to the standard.

Authority: 7 U.S.C. 1621–1627.

Dated: May 25, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–8375 Filed 5–30–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Seek OMB Approval To Collect Information, Forms Pertaining to the Peer Review of ARS Research Projects

AGENCY: Agricultural Research Service (ARS), USDA.

ACTION: Notice and request for comments.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 and OMB implementing regulations. The Department is soliciting public comments on the subject proposal.

DATES: Written comments on this notice must be received by July 31, 2006.

ADDRESSES: Address all comments concerning this notice to: Michael S. Strauss, Peer Review Program Coordinator, Office of Scientific Quality Review; Agricultural Research Agency, USDA; 5601 Sunnyside Avenue, Beltsville, Maryland 20705; Phone: 301–504–3283; Fax: 301–504–1251.

FOR FURTHER INFORMATION CONTACT: Michael S. Strauss, 301–504–3282.

SUPPLEMENTARY INFORMATION: The Office of Scientific Quality Review will seek approval from OMB to update six existing forms that will allow the ARS to efficiently manage data associated with the peer review of agricultural research. All forms are transferred and received in an electronic storage format that does not include on-line access.

Abstract: The Office of Scientific Quality Review was established in September of 1999 as a result of the Agricultural Research, Extension, and Education Reform Act 1998 (''The Act'') (Pub. L. 105–185). The Act included mandates to perform scientific peer reviews of all research activities conducted by the USDA. The Office manages the ARS peer review system by centrally planning peer panel reviews for ARS research projects on a five-year cycle.

Each set of reviews is assigned a chairperson to govern the review process. The majority of the peer reviewers are non-ARS scientists. Peer review panels are convened to provide in-depth discussion and review of the research project plans. Each panel reviewer receives information on between 1 and 20 ARS research projects.

On average, 220 research projects are reviewed annually by an estimated 100 reviewers; whereby approximately 200 are reviewed by panel and approximately 20 are reviewed through an ad hoc process. The organization and management of this peer review system, particularly panel reviews, is highly dependent on the use of forms.

The Office of Scientific Quality Review will seek OMB approval of the following forms:

1. *Confidentiality Agreement Form*—USDA uses this form to document that a selected reviewer is responsible for keeping confidential any information learned during the subject peer review process. The Confidentiality Agreement is signed prior to the reviewer's involvement in the peer review process. This form requires an original signature.

2. *Panelist Information Form*—USDA uses this form to gather up-to-date background information about the reviewer. Reviewers often include sensitive information on this form. This form requires an original signature.

3. *Peer Review of an ARS Research Project Form (Peer Review Form)*—USDA uses this form to guide the reviewer's comments on the subject project. The form contains the reviewing criteria and space for the reviewer's narrative comments and evaluation.

4. *Recommendations for ARS Research Project Form*—(Recommendations Form, formerly known as ''Critique Form''). USDA uses this form to guide the panel's evaluation and critique of the review process. The form contains recommendations for the subject research project.

5. *Panel Expense Report Form (Expense Report)*—USDA uses this form to document a panel reviewer's expense incurred traveling to and attending a peer review meeting. The Expense Report includes lodging, meals, and transportation expenses. When completed, the form contains sensitive information.

Panel Invoice Form (Invoice)—USDA uses this form to document the transfer of an honorarium to a peer reviewer. Reviewers receive honoraria as compensation for serving as peer review panelists. This form requires an original signature.

(1) USDA's collection of information on the Confidentiality Agreement Form is needed to document that a selected reviewer is responsible for keeping confidential any information learned during the subject peer review process. The Confidentiality Agreement would be signed prior to the reviewer's involvement in the peer review process.

(2) USDA's collection of information on the Panelist Information Form is needed to gather up-to-date background information about the reviewer. It contains sensitive information.

(3) USDA's collection of information on the Peer Review Form is needed to guide the reviewer's comments on the subject project. It contains the reviewing criteria and space to insert comments.

(4) USDA's collection of information on the Recommendations Form is needed to guide the panel's critique of the review process. It contains recommendations for the subject research project.

(5) USDA's collection of information on the Expense Report Form is needed to document a panel reviewer's expenses incurred by attending a peer review meeting. The Expense Report includes lodging, meals, and transportation expenses. It includes sensitive information.

(6) USDA's collection of information on the Invoice is needed to document the transfer of a stipend to the peer reviewer. The stipend is given to reviewers as appreciation for their time spent on the panel review process.

Estimate of Burden: The burden associated with this approval process is the minimum required to achieve program objectives. The information collection frequency is the minimum consistent with program objectives. The following estimates of time required to complete the forms are based on OSQR's experience in working with reviewers and accepting their input into our procedures.

1. Confidentiality Agreement Form: This form takes 10–15 minutes to complete. It only requires a signature and date, but the reviewer must read the terms of the agreement.

2. Panelist Informational Form: This form takes 20–30 minutes to complete. It resembles a typical request for personal information; many reviewers provide the same data as grant reviewers in other peer review programs.

3. Peer Review of an ARS Research Project Form (Peer Review Form) This form takes 4–6 hours to complete. Because this is a review, the page length significantly varies. Reviewers are free to write as much as they wish.

4. Recommendations for ARS Research Project Form (Recommendations Form, formerly known as ''Critique Form'').

This form takes 1 hour to complete. Because this is a review, the page length significantly varies. Reviewers are free to write as much as they wish.

5. Panel Expense Report Form (Expense Report) This form takes 10–15 minutes to complete.

6. Panel Invoice Form (Invoice): This form takes 5–10 minutes to complete. This form has the reviewer's personal info pre-filled and the reviewer only verifies it's accuracy and signs.

Respondents and Estimated Number of Respondents: Scientific experts, currently working in the same discipline as the research projects under review, are selected to review research projects. These experts are notable peers within and external to the ARS. Annually, about 100 peer reviewers complete these forms. Ad hoc reviewers are not, typically, paid a stipend, and do not travel to meet with other reviewers; and thus they do not complete Expense Report and Invoice Forms. On occasion, ad hoc reviewers may participate in a Web-based panel and be paid a nominal honorarium, thus necessitating completion of and Invoice Form. Ad hoc reviewers, retained for special situations, will make up about a 25 percent of all the reviewers retained annually.

Frequency of Response:

Form	Number of respondents	Annual frequency
Confidentiality Agreement	100	1 per respondent.
Peer Review Forms (Required for all reviewers and they have 1–4 review assignments on average).	100	~4 per respondent (Total of 400).
Expense Report, Invoice, & Panelist Information Forms	75	1 per respondent for each form (Total of 225).
Recommendations Form (Required on panel reviews, whereby comments from the peer review form are combined into one file).	75	~2.5 per respondent (Total of 200).

ESTIMATED TOTAL ANNUAL BURDEN ON RESPONDENTS

Form (time required to complete)	Number completed annually	Total burden
Confidentiality Agreement (12 min.)	100	1200 min.
Peer Review Forms (~5 hrs.)	400	2000 hrs.
Panelist Information Forms (25 min.)	225	5625 min.
Recommendations Form (1 hr.)	200	200 hrs.
Invoice (7 min.)	225	1575 min.
Expense Report (12 min.)	225	2700 min.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Comments: The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of ARS functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the estimated burden from proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: April 24, 2006.

Antoinette Betschart,

Associate Administrator for Operations and Management, Agricultural Research Service, USDA.

[FR Doc. 06–5004 Filed 5–26–06; 11:38 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Discussion of Funding Projects for next year, (5) Chairman's Perspective, (6) General Discussion, (7) Next Agenda.

DATES: The meeting will be held on June 8, 2006 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Janet Flanagan, Acting DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddin@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by June 6, 2006 will have the opportunity to address the committee at those sessions.

Dated: May 23, 2006.

Janet Flanagan,

Acting Designated Federal Official.

[FR Doc. 06–4971 Filed 5–30–06; 8:45 am]

BILLING CODE 3410–11–M

ANTITRUST MODERNIZATION COMMISSION

Request for Public Comment

AGENCY: Antitrust Modernization Commission.

ACTION: Request for public comment.

SUMMARY: The Antitrust Modernization Commission requests comments from the public regarding specific questions relating to the issues selected for Commission study.

DATES: Comments are due by June 30, 2006.

ADDRESSES: By electronic mail: *comments@amc.gov.* By mail: Antitrust Modernization Commission, Attn: Public Comments, 1120 G Street, NW., Suite 810, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Andrew J. Heimert, Executive Director & General Counsel, Antitrust Modernization Commission. Telephone: (202) 233–0701; e-mail: *info@amc.gov.* Internet: *http://www.amc.gov.*

SUPPLEMENTARY INFORMATION: The Antitrust Modernization Commission was established to ''examine whether the need exists to modernize the antitrust laws and to identify and study related issues.'' Antitrust Modernization Commission Act of 2002, Public Law No. 107–273, § 11053, 116 Stat. 1856. In conducting its review of the antitrust laws, the Commission is required to ''solicit the views of all parties concerned with the operation of the antitrust laws.'' *Id.* By this request for comments, the Commission seeks to provide a full opportunity for interested members of the public to provide input regarding certain issues selected for Commission study. From time to time, the Commission may issue additional requests for comment on issues selected for study.

Comments should be submitted in written form. Comments should identify the topic to which it relates. Comments need not address every question within the topic. Comments exceeding 1500 words should include a brief (less than 250 word) summary. Commenters may submit additional background materials (such as articles, data, or other information) relating to the topic by separate attachment.

Comments should identify the person or organization submitting the comments. If comments are submitted by an organization, the submission should identify a contact person within the organization. Comments should include the following contact information for the submitter: An address, telephone number, and e-mail address (if available). Comments submitted to the Commission will be made available to the public in accordance with Federal laws.

Comments may be submitted either in hard copy or electronic form. Electronic submissions may be sent by electronic mail to *comments@amc.gov.* Comments submitted in hard copy should be delivered to the address specified above, and should enclose, if possible, a CD–ROM or a 3½ inch computer diskette containing an electronic copy of the comment. The Commission prefers to receive electronic documents (whether by e-mail or on CD–ROM/diskette) in portable document format (.pdf), but also will accept comments in Microsoft Word format.

The AMC has issued this request for comments pursuant to its authorizing statute and the Federal Advisory Committee Act. Antitrust Modernization Commission Act of 2002, Public Law No. 107–273, § 11053, 116 Stat. 1758, 1856; Federal Advisory Committee Act, 5 U.S.C. App., § 10(a)(3).

Topic for Comment

The Commission requests comment on the following topic.

Criminal Remedies

1. Some observers have opined that application of 18 U.S.C. 3571(d) consistent with the Constitution may be difficult in all but the most unusual circumstances after *United States* v. *Booker,* 543 U.S. 220 (2005), given *Booker*'s requirement that the gain or loss be proven to a jury beyond a reasonable doubt. Should 18 U.S.C. 3571(d) be amended so that it is not applicable in Sherman Act prosecutions? If Section 3571(d) were made inapplicable to Sherman Act prosecutions, should the maximum fine under the Sherman Act be increased? If so, what should be the revised fine amount?

2. In responding to the first question, please also comment on the following:

a. What is the practical difficulty of proving gain or loss from an antitrust violation beyond a reasonable doubt?

b. If evaluation of the amount of gain or loss requires or warrants expert testimony, can it be said as a matter of law that gain or loss cannot, in such a case, be proven beyond a reasonable doubt?

c. Why do businesses agree, post-*Booker,* to pay fine amounts in excess of the $10 million (now $100 million) statutory maximum?

d. Is the threat of criminal prosecution of a greater number of individuals employed by a business, or of more serious sentences for the business's individuals, a factor that leads some businesses to agree to pay fine amounts in excess of the $10 million or $100 million maxima?

Dated: May 24, 2006.

By direction of the Antitrust Modernization Commission.

Andrew J. Heimert,

Executive Director and General Counsel, Antitrust Modernization Commission.

[FR Doc. E6–8313 Filed 5–30–06; 8:45 am]

BILLING CODE 6820–YH–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received a request to revoke one antidumping duty order in part.

DATES: May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Certain Steel Concrete Reinforcing Bars from Turkey with respect to two exporters.

INITIATION OF REVIEWS:

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than April 30, 2007.

Antidumping Duty Proceedings	Period to be Reviewed
RUSSIA: Magnesium Metal.	
A–821–819	10/4/04 - 3/31/06
PSC VSMPO–AVISMA Corporation.	
Solikamsk Magnesium Works.	
THE PEOPLE'S REPUBLIC OF CHINA: Brake Rotors[1].	
A–570–846	4/1/05 - 3/31/06
National Automotive Industry Import & Export Corporation or China National Automotive Industry Import & Export Corporation, and manufactured by **any company other than** Shandong Laizhou CAPCO Industry (''Laizhou CAPCO'').	
Laizhou CAPCO, and manufactured by **any company other than** Laizhou CAPCO.	
Laizhou Luyuan Automobile Fittings Co., and manufactured by **any company other than** Laizhou Luyuan Automobile Fittings Co., or Shenyang Honbase Machinery Co., Ltd..	
Shenyang Honbase Machinery Co., Ltd., and manufactured by **any company other** than Laizhou Luyuan Automobile Fittings Co., or Shenayang Honbase Machinery Co., Ltda.,.	
China National Industrial Machinery Import & Export Company.	
Laizhou Auto Brake Equipment Factory.	
Laizhou Auto Brake Equipment Company.	
Qingdao Gren Co..	
Yantai Winhere Auto–Part Manufacturing Co., Ltd..	
Longkou Haimeng Machinery Co., Ltd..	
Zibo Luzhou Automobile Parts Co., Ltd..	
Laizhou Hongda Auto Replacement Parts Co., Ltd..	
Hongfa Machinery (Dalian) Co., Ltd..	
Qingdao Meita Automotive Industry Co., Ltd..	
Shangdong Huanri Group Co., Ltd..	
Shangdong Huanri Group General Company.	
Longkou TLC Machinery Co., Ltd..	
Zibo Golden Harvest Machinery Limited Company.	
Shanxi Zhongding Auto Parts Co., Ltd..	
Xianghe Xumingyuan Auto Parts Co., Ltd..	
Xiangfen Hengtai Brake System Co., Ltd..	
Laizhou City Luqi Machinery Co., Ltd..	
Qingdao Rotec Auto Parts Co., Ltd..	
Shenyang Yinghao Machinery Co..	
Longkou Jinzheng Machinery Co..	
Laizhou Wally Automobile Co., Ltd..	
Laizhou Huanri Automobile Parts Co., Ltd..	
THE PEOPLE'S REPUBLIC OF CHINA: Non–Malleable Cast Iron Pipe Fittings[2].	
A–570–875	4/1/05 - 3/31/06
Buxin Myland (Foundry) Ltd..	
Jinan Meide Corporation.	
Myland Industrial Co., Ltd..	
SFTEC.	
TURKEY: Certain Steel Concrete Reinforcing Bars.	

Antidumping Duty Proceedings	Period to be Reviewed
A–489–807	4/1/05 - 3/31/06
Colakoglu Metalurji A.S. and Colokaglu Dis Ticaret A.S..	
Diler Demir Celik Endustri ve Ticaret A.S., Yazici Demir Celik. Sanayi ve Turizm Ticaret A.S. and Diler Dis Ticaret A.S..	
Ekinciler Demir ve Celik Sanayi A.S. and Ekinciler Dis Ticaret A.S..	
HABAS Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S..	
Kaptan Demir Celik Endustrisi ve Ticaret A.S.and Kaptan Metal Dis Ticaret. ve Nakliyat A.S..	
Countervailing Duty Proceeding.	
None..	
Suspension Agreements.	
None..	

[1] If one of the named companies does not qualify for a separate rate, all other exporters of brake rotors from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the named companies does not qualify for a separate rate, all other exporters of non-malleable cast iron pipe fittings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with FAG Italia v.United States, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: May 24, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, Import Administration.

[FR Doc. E6–8388 Filed 5–30–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–274–804]

Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Stephanie Moore (202) 482–5973 or (202) 482–3692, respectively, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2005, the U.S. Department of Commerce (''the Department'') published a notice of initiation of the administrative review of the antidumping duty order on carbon and alloy steel wire rod from Trinidad and Tobago, covering the period October 1, 2004, to September 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 70 FR 72107 (December 1, 2005). The preliminary results of this review are currently due no later than July 3, 2006.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Consistent with section 751(a)(3)(A) of the Act, the Department may extend the 245-day period to 365 days if it is not practicable to complete the review within a 245-day period.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable. Specifically, we need additional time to thoroughly consider the responses to the supplemental questionnaires the Department has sent to the respondents.

Therefore, we are extending the time period for issuing the preliminary results of review by 120 days to October 31, 2006, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) of the Department's regulations. Therefore, the preliminary results are now due no later than October 31, 2006. The final results continue to be due 120 days after publication of the preliminary results.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 24, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–8391 Filed 5–30–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') has received a timely request to conduct a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (''PRC''). In accordance with 19 CFR 351.214(d)(1), we are initiating a review for Shanghai Strong International Trading Co., Ltd. (Shanghai Strong).

EFFECTIVE DATE: May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Erin C. Begnal or Scot T. Fullerton, 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) 482–1442 or (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received a timely request from Shanghai Strong on March 24, 2006, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the PRC. *See Notice of Amendment to Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 48218 (September 15, 1997).

Pursuant to 19 CFR 351.214(b)(2)(i), 19 CFR 351.214(b)(2)(ii)(A), and 19 CFR 351.214(b)(2)(iii)(A), in its request for review, Shanghai Strong certified that it did not export the subject merchandise to the United States during the period of investigation (POI) and that since the initiation of the investigation it has never been affiliated with any company which exported subject merchandise to the United States during the POI. Furthermore, pursuant to 19 CFR 351.214(b)(2)(ii)(B) and 19 CFR 351.214(b)(2)(iii)(A), Jiangsu Hongda Aquatic Food Co., Ltd. (Jiangsu Hongda), Shanghai Strong's producer, certified that it did not export the subject merchandise to the United States during the POI and that since the initiation of the investigation it has never been affiliated with any company which exported subject merchandise to the United States during the POI.

In accordance with 19 CFR 351.214(b)(2)(iv), Shanghai Strong submitted documentation establishing the following: (1) the date on which it first shipped subject merchandise for export to the United States and the date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

On March 29, 2006, we requested from U.S. Customs and Border Protection (CBP) the entry package for Shanghai Strong, and on April 21, 2006, we received from CBP the entry documentation. However, we found certain discrepancies between the documentation provided by Shanghai Strong in its request for a new shipper review and the entry package we received from CBP.[1] On May 1, 2006, pursuant to 19 CFR 351.302(b), the Department extended the time limit to initiate this new shipper review by 30 days in order to provide Shanghai Strong an opportunity to explain or resolve the inconsistencies in the entry documentation.[2] On May 3, 2006, we received a revised Entry Summary (CF7501) from Shanghai Strong for this shipment, and on May 5, 2006, we spoke with Ms. Yingchao Xiao, of Lee & Xiao, counsel to Shanghai Strong, who informed us that Shanghai Strong's importer's customs broker had made a mistake while filing the entry documentation for this shipment, prompting a revision.[3] On May 9, 2006, we requested from CBP the revised entry package for Shanghai Strong, and received the entry package from CBP on May 12, 2006.[4] We found that the discrepancy between the information provided by Shanghai Strong in its request for a new shipper review and the original entry package provided by CBP was resolved with the revised information provided by both Shanghai Strong on May 3, 2006, and by CBP on May 12, 2006.

Initiation of Reviews

In accordance with section 751(a)(2)(B) of the Act, and 19 CFR 351.214(d)(1), and based on information on the record, we are initiating a new shipper review for Shanghai Strong. See Memorandum to the File through James C. Doyle, New Shipper Initiation Checklist, dated May 23, 2006. The Department will conduct this new shipper review according to the deadlines set forth in section 751(a)(2)(B)(iv) of the Act.

Pursuant to 19 CFR 351.214(g)(1)(i)(B), the period of review (''POR'') for a new shipper review, normally initiated in the month immediately following the semiannual anniversary month, will be the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for the new shipper review of Shanghai Strong will be September 1, 2005, through February 28, 2006.

In cases involving non–market economies, the Department requires that a company seeking to establish eligibility for an antidumping duty rate separate from the country–wide rate demonstrate that it operates free of *de jure* and *de facto* government control over the company's export activities. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991); *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994); *see also Sigma Corp. v. United States*, 117 F. 3d 1401,1405 (Fed. Cir. 1997). Accordingly, we will issue a questionnaire to Shanghai Strong, including a separate rates section. The review will proceed if the response provides sufficient indication that Shanghai Strong is not subject to either *de jure* or *de facto* government control with respect to its exports of freshwater crawfish tail meat. However, if the exporter does not demonstrate the company's eligibility for a separate rate, then the company will be deemed not separate from the PRC–wide entity, which exported during the POI. An exporter unable to demonstrate the company's eligibility for a separate rate does not meet the requirements of CFR 351.214(b)(2)(iii) and its new shipper

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[1] *See* Memorandum to the File, from Michael Quigley, Case Analyst, through Christopher D. Riker, Program Manager, Re: Freshwater Crawfish Tail Meat from the People's Republic of China: Entry Packages from U.S. Customs and Border Protection for Shanghai Strong International Co., Ltd. (May 1, 2006).

[2] *See* Letter from Christopher D. Riker, Program Manager, to Yingchao Xiao of Lee & Xiao, counsel to Shanghai Strong, Re: Extension of Initiation Date of New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China (May 1, 2006).

[3] *See* Memorandum to the File from Christopher D. Riker, Program Manager, Subject: Telephone Conversation with Counsel for Shanghai Strong International Trading Co., Ltd. (May 12, 2006).

[4] *See* Memorandum to the File from Erin Begnal, Case Analyst, through Christopher D. Riker, Program Manager, Re: Freshwater Crawfish Tail Meat from the People's Republic of China: Entry Packages from U.S. Customs and Border Protection (''CBP'') (May 12, 2006).

review will be rescinded. *See*, *e.g.*, *Notice of Preliminary Results of Antidumping Duty New Shipper Review and Rescission of New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China*, 69 FR 53669 (September 2, 2004); *see also Brake Rotors From the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 64 FR 61581 (November 12, 1999).

In accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e), we will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for certain entries of the merchandise exported by Shanghai Strong. We will apply the bonding option under 19 CFR 351.107(b)(1)(i) only to entries from the producer/exporter combination for which Shanghai Strong has requested a new shipper review, *i.e.*, Jiangsu Hongda/Shanghai Strong.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are issued and published in accordance with section 751(a) of the Act and sections 351.214(d) and 351.221(b)(1) of the Department's regulations.

Dated: May 23, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–8390 Filed 5–30–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Hand Trucks and Certain Parts Thereof from the People's Republic of China: Notice of Postponement of Time Limits for New Shipper Antidumping Duty Review in Conjunction with Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 1, 2006, in accordance with 19 CFR 351.214(j)(3), Since Hardware (Guangzhou) Co., Ltd. (Since Hardware) agreed to waive the time limits in section 351.214(i) of the Department of Commerce's (the Department's) regulations so that the Department may conduct the new shipper review of hand trucks and certain parts thereof (hand trucks) from the People's Republic of China (PRC), for the period December 1, 2004, through November 30, 2005, concurrently with the administrative review for the same period. Therefore, we will conduct the administrative and new shipper reviews concurrently.

EFFECTIVE DATE: May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Nichole Zink, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3874 or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 2005, Gleason Industrial Products, Inc. and Precision Products, Inc. (the petitioners) requested an administrative review of several companies. Between December 30, 2005, and January 3, 2006, the Department received several additional administrative review requests from certain PRC exporters and one U.S. importer of subject merchandise. On February 1, 2006, the Department initiated the first administrative review of the antidumping duty order on hand trucks from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006).

On February 3, 2006, the Department initiated a new shipper review on Since Hardware, pursuant to its request for a new shipper review filed on December 27, 2005. *See Hand Trucks and Certain Parts Thereof From the People's Republic of China; Initiation of New Shipper Review*, 71 FR 5810 (Feb. 3, 2006). The Department received a letter from Since Hardware on May 1, 2006, pursuant to 19 CFR 351.214(j)(3), to: (i) waive the time limits for the new shipper review of the antidumping duty order on hand trucks and (ii) allow the Department to conduct Since Hardware's new shipper review concurrently with the separate administrative review of the order on hand trucks and certain parts thereof.

Postponement of New Shipper Review

Pursuant to 19 CFR 351.214(j)(3) and Since Hardware's letter, we will conduct this new shipper review concurrently with the December 1, 2004, through November 30, 2005, administrative review of hand trucks from the PRC. Therefore, the preliminary results of the antidumping new shipper review, as well as the administrative review, will be due 245 days from December 31, 2005, the last day of the anniversary month of the order. *See* section 751 (a)(3)(A) of the Tariff Act of 1930 (as amended) (the Act) and 19 CFR 351.213(h). Thus, the deadline for the preliminary results of this new shipper review, as well as the administrative review, is September 5, 2006. This notice is issued and published pursuant to sections 751(a)(2) and 771(i) of the Act, and 19 CFR 351.214(j)(3).

Dated: May 24, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration

[FR Doc. E6–8386 Filed 5–30–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review, Intent to Rescind, and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on certain polyester staple fiber from the Republic of Korea. The period of review is May 1, 2004, through April 30, 2005. This review covers imports of certain polyester staple fiber from one producer/exporter. We have preliminarily found that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection to assess antidumping duties. Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Yasmin Bordas, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone (202) 482–1174 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2000, the Department of Commerce (''Department'') published an antidumping duty order on certain polyester staple fiber (''PSF'') from the Republic of Korea (''Korea''). *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000). On May 2, 2005, the Department published a notice of ''Opportunity to Request Administrative Review'' of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 22631 (May 2, 2005). On May 31, 2005, Wellman, Inc.; Invista, S.a.r.L.; and DAK Fibers, LLC (collectively, ''the petitioners'') requested administrative reviews of Huvis Corporation (''Huvis''); Saehan Industries, Inc. (''Saehan''); Daehan Synthetic Company, Ltd. (''Daehan''); and Dongwoo Industry Company (''Dongwoo''). On May 31, 2005, Huvis requested an administrative review. On June 30, 2005, the Department published a notice initiating the review for the aforementioned companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 37749, 37756 (June 30, 2005). The period of review (''POR'') is May 1, 2004, through April 30, 2005.

On July 6, 2005, we issued antidumping questionnaires in this review. On August 15, 2005, the petitioners withdrew their request for review of Saehan. On August 22, 2005, the petitioners withdrew their request for review of Dongwoo. On September 9, 2005, the Department received notice that Daehan had ceased operations and had no shipments of the merchandise under review during the POR. *See Memorandum to the File: Questionnaire Response from Daehan Synthetic Fiber, Co., Ltd.* (Mar. 15, 2006).

On July 6, 2005, we instructed Huvis to respond to the cost section of the questionnaire because we had disregarded certain below–cost sales in the most recently completed administrative review. *See Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review and Final Determination to Revoke Order in Part*, 69 FR 61341, 61343 (Oct. 18, 2004). We received sections A through D questionnaire responses from Huvis on August 17, 2005, September 2, 2005, and September 16, 2005. In October 2005, and March 2006, we issued supplemental questionnaires to Huvis. We received responses to these supplemental questionnaires in November 2005, and March 2006, respectively. In February 2006, we requested Huvis to revise its reported model matching characteristics, as described in the ''Product Comparisons'' section, below. We received Huvis's response in February 2006.

Scope of the Order

For the purposes of this order, the product covered is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheading 5503.20.00.20 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low–melt PSF is excluded from this order. Low–melt PSF is defined as a bi–component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Partial Rescission and Intent to Rescind

As noted above, the petitioners withdrew their requests for review of Saehan and Dongwoo. Because these withdrawals were timely filed and no other party requested a review of these companies, pursuant to 19 CFR 351.213(d)(1), we are rescinding this review with respect to Saehan and Dongwoo.

As noted above, the Department was notified by Daehan officials that this company ceased operations and had no shipments of subject merchandise during the POR. The Department confirmed using CBP data that Daehan did not ship subject merchandise to the United States during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), we are preliminarily rescinding this review with respect to Daehan.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (''the Act''), during April 2006, we verified the information provided by Huvis in Korea using standard verification procedures, including examination of relevant sales and financial records, and selection of original documentation containing relevant information. The Department reported its findings on May 23, 2006. *See Memorandum to the File*, ''Verification Report - Huvis Corporation'' dated May 23, 2006. This report is on file in the Central Records Unit (''CRU'') in room B–099 in the main Department building.

Fair Value Comparisons

To determine whether the respondent's sales of PSF to the United States were made at less than normal value (''NV''), we compared export price (''EP'') to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EP of individual U.S. transactions to the weighted–average NV of the foreign like product, where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section, below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with section 773(a)(1) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. For further details, see the ''Normal Value'' section, below.

We compared U.S. sales to monthly weighted–average prices of contemporaneous sales made in the home market. Where there were no

contemporaneous sales of identical merchandise in the home market, we compared sales made within the window period, which extends from three months prior to the POR until two months after the POR. *See, e.g., Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review (''PSF from Korea: 4th Review Preliminary Results'')*, 70 FR 32756, 32757 (June 6, 2005) (unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from the Republic of Korea (''PSF from Korea: 4th Review Final Results'')*, 70 FR 73435 (Dec. 12, 2005)). As directed by section 771(16) of the Act, where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Further, as provided in section 773(a)(4) of the Act, where we could not determine NV because there were no sales of identical or similar merchandise made in the ordinary course of trade in the home market to compare to U.S. sales, we compared U.S. sales to constructed value (''CV'').

Since the investigation, and throughout the administrative reviews of this antidumping duty order, classification of PSF products with certain physical characteristics within the model matching hierarchy has been highly contentious. (*See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea (''LTFV Investigation: PSF from Korea'')*, 65 FR 16880 (Mar. 30, 2000), and accompanying *Issues and Decision Memorandum*, Comment 10; *Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review*, 67 FR 63616 (Oct. 15, 2002), and accompanying *Issues and Decision Memorandum*, Comment 13; *Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Review*, 68 FR 59366 (Oct. 15, 2003), and accompanying *Issues and Decision Memorandum*, Comment 2; *PSF from Korea: 4th Review Final Results*, and accompanying *Issues and Decision Memorandum*, Comment 1. In this review, the Department received new information in Huvis's supplemental questionnaire response regarding the physical characteristics of certain PSF products. *See Nov. 29, 2005 Supplemental Questionnaire Response*, Appendix 13. These events led the Department to reconsider whether the product matching characteristics established in the investigation accurately reflect the physical characteristics of the PSF product under review. For this administrative review and the concurrent administrative review of PSF from Taiwan (A–583–833), the Department requested comments regarding the adequacy of the model match criteria to reflect the physical characteristics of the merchandise under review. *See* letter from Julie H. Santoboni to Interested Parties, *RE: 2004–2005 Administrative Reviews of the Antidumping Duty Orders on Certain Polyester Staple Fiber from Korea and Taiwan*, dated Nov. 9, 2005, which is on file in the Department's CRU; *see also Memorandum to File: Modifications to the Department's Nov. 9, 2005 Letter to Interested Parties*, dated Nov. 10, 2005. On November 16, 2005, we received comments from the petitioners, Huvis, and Far Eastern Textile (''FET''). On November 28, 2005, we received rebuttal comments from Dongwoo; the petitioners; FET; Consolidated Fibers, Inc. (''Consolidated Fibers''); and Huvis. On December 8, 2005, we received additional rebuttal comments from FET.

The comments we received and the facts and information on the record of this review lead us to preliminarily conclude that relying on the model matching criteria established in the *LTFV Investigation: PSF from Korea* does not provide the best product comparisons because the criteria do not adequately reflect the physical differences exhibited by specialty PSF products. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Certain Polyester Staple Fiber From the Republic of Korea*, 64 FR 60776, 60779 (Nov. 8, 1999). Cf. *LTFV Investigation: PSF from Korea*, Comment 10 (recognizing possibility of changing model match criteria as more was learned about PSF, due to the complexities and difficulties in establishing the initial criteria); *Structural Steel Beams from Korea; Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 6837 (Feb. 9, 2005), and accompanying *Issues and Decisions Memorandum*, Comment 1 (''It is appropriate to consider changes when additional expertise and knowledge with regard to the market demands and market realities of the products subject to the scope indicate that such changes allow more accurate comparison of U.S. and normal value products.''). Therefore, to account for the new information regarding physical characteristics of PSF and to increase product matching accuracy, the Department has preliminarily amended the matching criteria that were established in the original investigation. Accordingly, for the preliminary results, we matched the merchandise under review based on the physical characteristics reported by the respondent in the following order: loft; specialty fibers; type; grade; cross section; finish; and denier. *See* letter from Julie H. Santoboni to Huvis Corporation, *RE: 2004–2005 Administrative Reviews of the Antidumping Duty Orders on Certain Polyester Staple Fiber from Korea and Taiwan*, dated Feb. 2, 2006, which is on file in the Department's CRU.

Export Price

For sales to the United States, we calculated EP in accordance with section 772(a) of the Act because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States, and because constructed export price methodology was not otherwise warranted. We calculated EP based on the cost, insurance, and freight (''CIF''); ex–dock duty paid (''EDDP'') - free–on-board (''FOB''); EDDP - cost and freight (''C&F''); or EDDP - CIF price to unaffiliated purchasers in the United States. Where appropriate, we made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: inland freight from the plant to port of exportation, foreign brokerage and handling, international freight, marine insurance, and U.S. customs duty.

We increased EP, where appropriate, for duty drawback in accordance with section 772(c)(1)(B) of the Act. Huvis provided documentation demonstrating that it received duty drawback under Korea's individual–rate system. *See Sept. 2, 2006 Sections B–D Questionnaire Response (''Sept. 2006, Sections B–D Questionnaire Response'')*, at Appendices C–7 and C–8. In prior investigations and administrative reviews, the Department has examined Korea's individual–rate system and found that the government controls in place generally satisfy the Department's requirements for receiving a duty drawback adjustment (*i.e.*, that (1) the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and (2) there were sufficient imports to account for the rebates received). *See, e.g., Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion–Resistant Carbon Steel Flat*

Products from the Republic of Korea, 71 FR 7513 (Feb. 13, 2006), and accompanying Issues and Decisions Memorandum, Comment 2. We examined the documentation submitted by Huvis in this administrative review and confirmed that it meets the Department's two–prong test for receiving a duty drawback adjustment. Accordingly, we are allowing the reported duty drawback adjustment on Huvis's U.S. sales.

Normal Value

A. Selection of Comparison Market

To determine whether there was a sufficient volume of sales of PSF in the home market to serve as a viable basis for calculating NV, we compared the respondent's home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for comparison.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997) (''*CTL Plate*''). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[1] including selling functions,[2] class of customer (''customer category''), and the level of selling expenses for each type of sale. *Id.*

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[3] we consider the starting prices before any adjustments. *See Micron Tech, Inc. v. United States, et al.*, 243 F.3d 1301, 1314–15 (Fed. Cir. 2001) (interpreting Congressional intent, in accordance with this methodology).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. *See, e.g., PSF from Korea: 4th Review Preliminary Results*, 70 FR at 32758 (unchanged in *PSF from Korea: 4th Review Final Results*). In comparing EP sales at a different LOT in the comparison market, where available data show that the difference in LOT affects price comparability, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Huvis reported that it made direct sales to distributors and end users in both the home market and to the United States. *See August 17, 2005 Section A Questionnaire Response (''Aug. 2005 Section A Questionnaire Response*''), at 8. Huvis has reported a single channel of distribution and a single level of trade in each market, and has not requested a LOT adjustment. *See Sept. 2006 Sections B–D Questionnaire Response*, at 16. We examined the information reported by Huvis regarding its marketing process for making the reported home market and U.S. sales, including the type and level of selling activities performed, and customer categories. Specifically, we considered the extent to which sales process, freight services, warehouse/inventory maintenance, and warranty services varied with respect to the different customer categories (*i.e.*, distributors and end users) within each market and across the markets. Based on our analyses, we found a single level of trade to the United States, and a single, identical level of trade in the home market. Thus, it was unnecessary to make a LOT adjustment for Huvis in comparing EP and home market prices.

C. Sales to Affiliated Customers

Huvis made sales in the home market to an affiliated customer. To test whether these sales were made at arm's length, we compared the starting prices of sales to the affiliated customer to those of unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts, and packing. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (Nov. 15, 2002). In accordance with the Department's practice, we included in our margin analysis only sales to an affiliated party that were made at arm's length. *See, e.g., PSF from Korea: 4th Review Preliminary Results*, 70 FR at 32758 (unchanged in *PSF from Korea: 4th Review Final Results*).

D. Cost of Production Analysis

As discussed in the ''Background'' section above, we disregarded some sales by Huvis in a previous review because they were made at prices below the cost of production. Under section 773(b)(2)(A)(ii) of the Act, the previously disregarded below–cost sales provide reasonable grounds to believe or suspect that the respondent made sales of the subject merchandise in its comparison market at prices below the cost of production (''COP'') within the meaning of section 773(b) of the Act. Whenever the Department has this reason to believe or suspect, we are directed by section 773(b) of the Act to determine whether, in fact, there were below–cost sales.

Pursuant to section 773(b)(1), we disregard sales from our calculation of NV that were made at less than the COP if they were made in substantial quantities over an extended period of time at prices that would not permit recovery of costs within a reasonable period. We find that the below–cost sales represent ''substantial quantities,'' when 20 percent or more of the respondent's sales of a given product are at prices less than the COP, in accordance with section 773(b)(2)(C) of the Act. Further, in accordance with section 773(b)(2)(B) of the Act, the Department normally considers sales to have been made within an extended period of time when made during a

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. *CTL Plate*, 62 FR at 61732. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. *CTL Plate*, 62 FR at 61732. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (''SG&A'') expenses, and profit for CV, where possible. *See, e.g., PSF from Korea: 4th Review Preliminary Results*, 70 FR at 32758 (unchanged in *PSF from Korea: 4th Review Final Results*).

period of one year. Finally, prices do not permit recovery of costs within a reasonable period of time if the per unit COP at the time of sale is below the weighted average per unit COP for the POR, in accordance with section 773(b)(2)(D) of the Act.

1. Calculation of COP

We calculated the COP on a product–specific basis, based on the sum of the respondent's costs of materials and fabrication for the merchandise under review, plus amounts for SG&A expenses, interest expenses, and the costs of all expenses incidental to placing the foreign like product packed and in a condition ready for shipment, in accordance with section 773(b)(3) of the Act.

We relied on COP information submitted in Huvis's cost questionnaire responses (*See March 20, 2006 Supplemental Questionnaire Response*, at Appendix S–49), except for the following adjustments. Consistent with the previous administrative review, we adjusted Huvis's reported cost of manufacturing to account for purchases of modified terephthalic acid (''MTA'') and qualified terephthalic acid (''QTA'') from affiliated parties at non–arm's–length prices. In doing so, we preliminarily find that MTA and QTA are interchangeable for the following reasons: (1) the production processes of MTA and QTA are essentially the same; (2) Huvis has stated it may, in certain instances, use a type of terephtalic acid (''TPA'') different from the one normally used in production of a particular chip without significant changes to the end product; and (3) Huvis's decision to use MTA or QTA in the production process is driven by plant proximity to the chemical supplier. *See, e.g., PSF from Korea: 4th Review Preliminary Results*, 70 FR at 32758 (unchanged in *PSF from Korea: 4th Review Final Results*). Huvis did not provide market price information for QTA. *See* Memorandum from Team to the File, *Preliminary Results Calculation Memorandum - Huvis Corporation* (May 23, 2006) (''*Huvis Calculation Memorandum*''), which is on file in the Department's CRU.

Huvis excluded business restructuring expenses from its net SG&A expense calculation. *See Aug. 2005 Section A Questionnaire Response*, at Appendix A–9; Sept. 2005 Sections B–D Questionnaire Response, at Appendix D–12. For the preliminary results, we have included these expenses because it is the Department's normal practice not to consider business restructuring to be an unusual or extraordinary event. *See, e.g., Notice of Final Results and Recision in Part of Antidumping Administrative Review; Oil Country Tubular Goods, Other Than Drillpipe From Argentina*, 68 FR 13262 (Mar. 19, 2003), and accompanying *Issues and Decision Memorandum*, Comment 4; *Silicomanganese from Brazil: Preliminary Results of Antidumping Administrative Review*, 62 FR 1320, 1322 (Jan. 9, 1997) (unchanged in *Silicomanganese From Brazil; Final Results of Antidumping Duty Administrative Review*, 62 FR 37869, 37870–71 (July 15, 1997)); *Huvis Calculation Memorandum*.

In its net interest expense calculation, Huvis offset its interest expenses by deposits for retirement insurance. For the preliminary results, we have excluded this offset because it is not related to interest income incurred on short–term investments of working capital. *See, e.g., PSF from Korea: 4th Review Final Results*, and accompanying *Issues and Decision Memorandum*, Comment 5; *see also Huvis Calculation Memorandum*.

Huvis calculated its interest expenses based on its unconsolidated financial statements. Our practice, however, is to calculate interest expenses based on consolidated financial statements. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from Thailand*, 70 FR 71085 (Nov. 25, 2005) and accompanying *Issues and Decision Memorandum*, Comment 4. Therefore, for the preliminary results, we have recalculated Huvis's interest expenses using Huvis's consolidated financial statements. *See Huvis Calculation Memorandum*.

2. Test of Home Market Prices

On a product–specific basis, we compared the adjusted weighted–average COP figures for the POR to the home market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales were made at prices below the COP. According to our practice, the prices were exclusive of any applicable movement charges and indirect selling expenses. *See, e.g., PSF from Korea: 4th Review Preliminary Results*, 70 FR at 32758 (unchanged in *PSF from Korea: 4th Review Final Results*). In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of COP Test

We found that, for certain products, more than 20 percent of the respondent's home market sales were at prices less than the COP and, thus, the below–cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not permit the recovery of costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales of the same product, as the basis for determining NV, in accordance with section 773(b)(1).

E. Calculation of Normal Value Based on Home Market Prices

We calculated NV based on the price to unaffiliated customers. We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments, where appropriate, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight from the plant to the customer. In addition, we made adjustments for differences in circumstances of sale (''COS''), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, by deducting direct selling expenses incurred on home market sales (*i.e.*, bank charges) and adding U.S. direct selling expenses (i.e., bank charges). *See* 19 CFR 351.410(c).

For some of its home market sales, Huvis reported that payments were made within an open account system, *i.e.*, periodic payments were made on outstanding account balances. *See November 29, 2006, Supplemental Questionnaire Response*, at 17. For these open account sales, Huvis calculated the payment date using an average payment period for each customer. *Id.*, at Appendix 18. For one of Huvis's home market customers, we have adjusted the credit period for open account sales to better reflect sales account activity during the POR. For two of Huvis's home market customers, we have adjusted the credit period for open account sales as a result of verification findings. For two of Huvis's home market customers, we have adjusted the credit period for open account sales to reflect the information submitted by Huvis in its March 20, 2006, supplemental questionnaire response. We also recalculated credit expenses for home market sales that were incurred in U.S. dollars using Huvis's reported U.S. interest rate. *See Huvis Calculation Memorandum*.

Preliminary Results of the Review

We find that the following dumping margin exists for the period May 1, 2004, through April 30, 2005:

Exporter/manufacturer	Weighted–average margin percentage
Huvis Corporation	2.02

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results. See section 751(a)(3) of the Act.

Assessment Rates and Cash Deposit Requirements

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

In its *Sept. 2006, Sections B–D Questionnaire Response*, Huvis submitted evidence demonstrating that it was the importer of record for certain of its POR sales. We examined the customs entry documentation submitted by Huvis and tied it to the U.S. sales listing. We noted that Huvis was indeed the importer of record for certain sales. Therefore, for purposes of calculating the importer–specific assessment rates, we have treated Huvis as the importer of record for certain POR shipments. Pursuant to 19 CFR 351.212(b)(1), for all sales where Huvis is the importer of record, Huvis submitted the reported entered value of the U.S. sales and we have calculated importer–specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Regarding sales where Huvis was not the importer of record, we note that Huvis did not report the entered value for the U.S. sales in question. Accordingly, we have calculated importer–specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer–specific *ad valorem* ratios based on the estimated entered value.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis (i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to CBP.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these preliminary results for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

For Saehan and Dongwoo, the Department is instructing CBP to liquidate any entries from these companies during the POR and to assess antidumping duties at the rate in effect at the time of entry. If the Department rescinds this review for Daehan, and in the event any entries were made during the POR through intermediaries under the CBP case number for Daehan, the Department will instruct CBP to liquidate such entries at the all others rate in effect on the date of entry, consistent with the May 6, 2003 clarification discussed above.

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PSF from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted–average margin is *de minimis, i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less–than-fair–value investigation or a previous review, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 7.91 percent, the ''all others'' rate established in *Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 68 FR 74552 (December 24, 2003).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 23, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–8389 Filed 5–30–06; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–820]

Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 23, 2006, the Department of Commerce published the preliminary results of the 2004 - 2005 administrative review of the antidumping duty order on stainless steel bar from France. The review covers one manufacturer/exporter, Ugitech S.A. (Ugitech). The period of review is March 1, 2004, through February 28, 2005.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: May 31, 2006.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Terre Keaton, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers one manufacturer/exporter: Ugitech. The period of review is March 1, 2004, through February 28, 2005.

On January 23, 2006, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from France (71 FR 3463) (*Preliminary Results*). We invited interested parties to comment on the preliminary results of review.

Ugitech and the petitioners[1] filed case briefs on March 1, 2006, and rebuttal briefs on March 8, 2006. Neither party requested a hearing. We have conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

For purposes of this order, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold–finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the ''Issues and Decision Memorandum'' (*Decision Memo*) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated May 23, 2006, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes from the Preliminary Results

Based on the information submitted and our analysis of the comments received, we have made certain changes to the margin calculations for Ugitech.

Specifically, in the comparison market program, we corrected a programming error associated with the arm's–length test, which caused all of the sales to one home market customer, who was affiliated with Ugitech for only a portion of the POR, to be excluded from the comparison sales data base, rather than only those sales made while it was affiliated with Ugitech. In the margin program, we revised our calculation of the importer–specific assessment rate, which was improperly calculated due to a unit conversion error. (*See* page 2 of the *Decision Memo*).

Final Results of Review

We determine that the following weighted–average margin percentage exists:

Manufacturer/exporter	Margin (percent)
Ugitech S.A	9.68

Assessment

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b). The Department will issue appropriate appraisement instructions for the company subject to this review directly to CBP within 15 days of publication of these final results of review. In accordance with 19 CFR 351.106(c), we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, is not less than 0.50 percent *ad valorem*). We calculated importer–specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all the U.S. sales examined and dividing this amount by the total entered value of the sales examined.

[1] The petitioners include the following companies: Carpenter Technology Corporation; Crucible Specialty Metals Division, Crucible Materials Corporation; and Electroalloy Corporation, a Division of G.O. Carlson, Inc.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by the company included in these final results of review for which the reviewed company did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Ugitech will be 9.68 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.90 percent. This rate is the ''All Others'' rate from the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 23, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix–List of Issues

Comment 1: Levels of Trade in the Home Market
Comment 2: Whether to Allow Certain Additions to the U.S. Sales Price
Comment 3: Whether to Collapse Certain Grade Codes for Product Matching
Comment 4: Whether to Recalculate U.S. Inventory Carrying Expenses for the Further Manufactured U.S. Sales

[FR Doc. E6–8387 Filed 5–30–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars from Turkey; Notice of Amended Final Results Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 13, 2006, the United States Court of International Trade (CIT) sustained the final remand redetermination made by the Department of Commerce (the Department) pursuant to the CIT's remand of the final results of the 2002–2003 administrative review of certain steel concrete reinforcing bars (rebar) from Turkey. *See Colakoglu Metalurji A.S. v. United States*, 2006 Ct. Intl. Trade LEXIS 36; Slip Op. 2006–36 (Mar. 13, 2006) (Colakoglu Remand). In this remand, the Department recalculated the margin for Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret (collectively ''Colakoglu''), a Turkish exporter/producer of subject merchandise, to use Colakolgu's reported ''order'' date as the U.S. date of sale. Because all litigation in this matter has now concluded, the Department is issuing its amended final results in accordance with the CIT's decision.

EFFECTIVE DATE: May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Alice Gibbons, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–0656 or (202) 482–0498, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 2004, the Department published its final results, covering the period of review from April 1, 2002, through March 31, 2003. *See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 69 FR 64731 (Nov. 8, 2004) (*Final Results*), as corrected by *Certain Steel Concrete Reinforcing Bars From Turkey; Corrected Final Results of Antidumping Duty Administrative Review*, 69 FR 68883 (Nov. 26, 2004). In May 2004, Colakoglu contested the Department's date–of-sale methodology for its U.S. sales. On September 27, 2005, the CIT remanded this issue to the Department for further review based on the Department's request to reconsider this issue. *See Colakoglu Metalurji A.S. v. United States*, 394 F.Supp.2d 1379 (CIT 2005).

On November 18, 2005, the Department issued the draft results of redetermination pursuant to remand (draft results) for comment by interested parties. In the draft results, the Department explained that upon reconsideration of the date–of-sale methodology used for Colakoglu, it found that the material terms of sale for Colakoglu's U.S. sales were established at the order date. Therefore, the Department stated that it would recalculate the margin using Colakoglu's reported order date as the date of sale.

On November 28, 2005, the Department received comments on the draft results from Gerdau AmeriSteel Corporation, Commercial Metals Company (SMI Steel Group), and Nucor Corporation (collectively ''the petitioners''). On November 30, 2006, the Department received rebuttal comments from Colakoglu. On January 13, 2006, the Department issued its final results of redetermination pursuant to remand to the CIT. After analyzing the comments submitted by interested parties, the Department continued to find that the appropriate date of sale for Colakolgu's U.S. sales for the time period in question was the order date.

On March 13, 2006, the CIT found that the Department complied with the

CIT's remand order and sustained the Department's remand redetermination. *See Colakoglu Remand*. On March 24, 2006, consistent with the decision of the United States Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F. 2d 337 (Fed. Cir. 1990), the Department notified the public that the CIT's decision was ''not in harmony'' with the Department's November 2004 *Final Results*. *See Certain Steel Concrete Reinforcing Bars from Turkey: Notice of Court Decision Not in Harmony with Final Results of Administrative Review*, 71 FR 14835 (Mar. 24, 2006). No party appealed the CIT's decision. Because there is now a final and conclusive decision in the court proceeding, we are issuing amended final results to reflect the results of the remand determination.

Amended Final Results of Review

We are amending the final results of the 2002–2003 review on the antidumping duty order on rebar from Turkey to reflect a revised weighted–average margin of 4.91 percent for Colakoglu for the period April 1, 2002, through March 31, 2003.

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.

Because Colakoglu did not report the entered value for the U.S. sales in question, we have calculated importer–specific assessment rates by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer–specific *ad valorem* ratios based on the export prices. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to CBP.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: May 23, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–8385 Filed 5–30–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–810]

Preliminary Results of Full Sunset Review: Certain Corrosion–Resistant Carbon Steel Flat Products from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 2005, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty (''CVD'') order on certain corrosion–resistant carbon steel flat products from France, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties, an adequate response from respondent interested parties, and respondent interested parties' arguments regarding post–investigation privatization of Usinor, the Department determined to conduct a full sunset review of this CVD order pursuant to section 751(c) of the Act and 19 CFR 351.218(e)(2). As a result of our analysis, the Department preliminarily finds that revocation of the CVD order would likely lead to continuance or recurrence of a countervailable subsidy.

EFFECTIVE DATE: May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Brandon Farlander, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2005, the Department initiated a sunset review of the CVD order on certain corrosion–resistant carbon steel flat products from France pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 65884 (November 1, 2005). On November 9, 2005, the Department received a notice of intent to participate on behalf of Nucor Corporation (''Nucor''), and on November 16, 2005, on behalf of Mittal Steel USA ISG Inc. (''Mittal Steel USA'') and Ispat–Inland (''Ispat''); United States Steel Corporation (''U.S. Steel''); and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO-CLC (''USW'') (collectively, ''domestic interested parties''). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as domestic producers of a like product and a union engaged in the production of subject merchandise in the United States. The Department received substantive responses from the domestic interested parties as well as from Arcelor S.A. (''Arcelor''), successor–in-interest to Usinor Sacilor; Duferco Coating SA and Sorral SA (''Duferco Sorral''); the European Union (''EU''); and the Government of France (''GOF'') (collectively, ''respondent parties''), within the 30-day deadline specified in 19 CFR 351.218(d)(3)(I). As a result, pursuant to section 751(c)(5) of the Act and 19 CFR 351.218(e)(2)(i), the Department is conducting a full sunset review of this CVD order.

The Department determined that the sunset review of the CVD order on certain corrosion–resistant carbon steel flat products from France is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act). Therefore, on February 28, 2006, the Department extended the time limit for the completion of the preliminary results of this full sunset review until no later than May 22, 2006, 90 days from the original scheduled date, in accordance with section 751(c)(5)(B) of the Act. *See Certain Corrosion–Resistant Carbon Steel Flat Products from France: Extension of Time Limits for Preliminary Results and Final Results of Full Sunset Review*, 71 FR 10011 (February 28, 2006).

Scope of the Order

The merchandise covered by this order includes flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150

millimeters and measures at least twice the thickness, as currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in this order are flat–rolled products of non–rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') -- for example, products which have been beveled or rounded at the edges. Excluded from this order are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin–free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat–rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. The HTSUS numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated May 22, 2006, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy likely to prevail if the order were revoked is 0.16 percent *ad valorem*.

Interested parties may submit case briefs no later than July 11, 2006, in accordance with 19 CFR 351.309 (c)(1)(i). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310 (c). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than July 16, 2006, in accordance with 19 CFR 351.309 (d). The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than September 27, 2006.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 22, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–8393 Filed 5–30–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Thursday, June 8, 2006, from 8:30 a.m. until 5 p.m., and Friday, June 9, 2006, from 8:30 a.m. until 5 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/ispab/*.

DATES: The meeting will be held on June 8, 2006 and June 9, 2006, from 8:30 a.m. until 5 p.m.

ADDRESSES: The meeting will take place at the Doubletree Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland.

Agenda

—Welcome and Overview
—Briefing on Security and Privacy Profiles under the Federal Enterprise Architecture Program
—Board Discussion and Recommendation on the NIAP Program
—Privacy Office Panel Discussion
—OMB Briefing on FISMA Reporting and Privacy Responsibilities
—Agenda Development for September 2006 ISPAB Meeting
—Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation

The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 25 copies of written material were submitted for distribution to the Board and attendees no later than June 2, 2006. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Ms. Pauline Bowen, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop

8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2938.

Dated: May 22, 2006.

Hratch G. Semerjian,

Deputy Director.

[FR Doc. E6–8379 Filed 5–30–06; 8:45 am]

BILLING CODE 3510–CN–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Friday, June 16, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–4997 Filed 5–25–06; 4:06 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Closure and Realignment

AGENCY: Department of Defense, Office of Economic Adjustment.

ACTION: Notice.

SUMMARY: This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realignment pursuant to the 2005 Defense Base Closure and Realignment (BRAC) Report. It also provides a corresponding listing of the Local Redeveloping Authorities (LRAs) recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the points of contact, addresses, and telephone numbers for the LRAs for those installations. Representatives of State and local governments, homeless providers, and other parties interested in the redevelopment of an installation should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of each installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

DATES: *Effective Date:* May 23, 2006.

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustment, Office of the Secretary of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, (703) 604–6020.

Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations

Arkansas

Installation Name: Hot Springs USARC.

LRA Name: City of Hot Springs Local Redevelopment Authority.

Point of Contact: Kent A. Myers, City Manager, City of Hot Springs.

Address: P.O. Box 700, 133 Convention Boulevard, Hot Springs, AR 71902.

Phone: (501) 321–6810.

California

Installation Name: Schroeder Hall USARC.

LRA Name: City of Long Beach.

Point of Contact: Amy J. Beck, Project Development Bureau Manager, City of Long Beach.

Address: 333 W. Ocean Boulevard, 3rd Floor, Long Beach, CA 90802.

Phone: (562) 570–6479.

Iowa

Installation Name: Burlington Memorial USARC.

LRA Name: Des Moines County Local Redevelopment Authority.

Point of Contact: Timothy Hoschek, Supervisor, Des Moines County Board of Supervisors.

Address: Des Moines County Courthouse, 513 North Main, Burlington, IA 52601.

Phone: (319) 753–8282.

Louisiana

Installation Name: Naval Support Activity New Orleans.

LRA Name: City of New Orleans.

Point of Contact: Don J. Hutchinson, Executive Assistant to the Major, Mayor's Office of Economic Development, City of New Orleans.

Address: 1515 Poydras Street, Suite 1150, New Orleans, LA 70112.

Phone: (504) 658–9810.

Texas

Installation Name: Marshall USARC.

LRA Name: City of Marshall.

Point of Contact: Ed Smith, Chairman, Marshall City Commission.

Address: P.O. Box 698, Marshall, TX 75672.

Phone: (903) 935–4421.

Dated: MAy 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4970 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0103]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense is altering a system of records to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on June 30, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Irvin at (703) 696–4940.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records 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 systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on May 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: May 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

DODDS 23

SYSTEM NAME:

Educator Certification/Recertification Files (April 21, 2006, 71 FR 20647).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete the third paragraph and replace with: ''Records may be disclosed to the educational accrediting institution(s) and organization(s) that accredit DoDEA schools, during the accrediting organization(s) review of a school or schools.''

* * * * *

SAFEGUARDS:

Delete the following sentence: ''Access to automated data files is controlled by a user ID and password system.''

* * * * *

DODEA 23

SYSTEM NAME:

Educator Certification/Recertification Files.

SYSTEM LOCATION:

Records are maintained at the schools and the Human Resources Regional Service Center, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

Categories of individuals covered by the system Department of Defense Education Activity (DoDEA) teachers, as the term 'teacher' is defined in 20 U.S.C. 901, and to all DoDEA excepted service and educators classified in the TP/AD–1710 or related series.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of transcripts and/or other documentary evidence needed to substantiate the certification status of a DODEA educator. Records include correspondence relating to amendment, renewal, correction, maintenance, and revocation of the individual educator's certification status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 901–907; 20 U.S.C. 931; 10 U.S.C. 2164; DoD Directive 1342.20, Department of Defense Education Activity; and E.O. 9397 (SSN).

PURPOSE(S):

Department of Defense Education Activity administrators use this information to determine the eligibility of applicable employees to be certified/recertified.

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 information may be supplied to state or professional organizations, such as the National Association of State Directors of Teacher Education and Certification (NASDTEC), with whom to DoDEA has reciprocal agreements affecting certificates issued or revoked by the respective systems.

Records may be disclosed to the educational accrediting institution(s) and organization(s) that accredited DoDEA schools, during the accrediting organization(s) review of a school or schools.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders and electronic information in data bases.

RETRIEVABILITY:

The files are indexed by the educator's full name and Social Security Number.

SAFEGUARDS:

Paper records and automated records are maintained in files which are accessible only to authorized personnel. The offices are secured during non-business hours.

RETENTION AND DISPOSAL:

Records are maintained for the current as well as the upcoming certification cycles. Records for an expired certification cycle are retained for 3 years; then they are destroyed. If a teacher leaves the system, except in the case of an educator who is participating in the DoDEA Administrative Re-employment Rights Program, the file is maintained for three years following the current expiration date of the certificate.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Director, Human Resources Regional Service Center, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

The request should include the educator's full name, Social Security Number, and be signed. Former employees must also include dates and places of employment.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written requests to the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

The request should include the educator's full name, Social Security Number, and be signed. Former employees must also include dates and places of employment.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individuals concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–4957 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

[DoD–2006–OS–0102]

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Inspector General (OIG) is altering a system of records to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on June 30, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, FOIA/BA Office, Inspector General,

Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General notices for systems of records 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 systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted May 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: May 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

CIG–04

SYSTEM NAME:

Case Control System—Investigative (February 22, 1993, 58 FR 10213).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with: ''Primary location: Office of the Inspector General, Department of Defense, Office of the Deputy Inspector General for Investigations, Defense Criminal Investigative Service (DCIS), 400 Army Navy Drive, Arlington, VA 22202–4704.

Decentralized locations: Office of the Deputy Inspector General for Investigations/Defense Criminal Investigative Service Field Offices, Resident Agencies, and Posts of Duty have temporary control over portions of the records.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with: ''Any person or activity which is or has been the subject of an OIG investigation.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with: ''The file is composed of records of investigations to include Reports of Investigation, Information Reports and Case Summaries, which are being or have been conducted by the OIG.''

* * * * *

PURPOSE(S):

Delete entry and replace with: ''The file contains open and closed case listings used to manage investigations, to produce statistical reports, and to control various aspects of the investigative process. Users are OIG employees. Used to determine the existence, location, and status of cases, control workload, and to prepare statistical reports. The records in this system are used for the following purposes: Suitability, loyalty, eligibility, and general trustworthiness of individuals for access or continued access to classified information and suitability for access to government facilities or industrial firms engaged in government projects/contracts; contractor responsibility and suspension/debarment determinations; suitability for awards or similar benefits; use in current law enforcement investigation or program of any type; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; to identify offenders, to provide facts and evidence upon which to base prosecution, to provide information to other investigative elements of the Department of Defense having jurisdiction over the substance of the allegations or a related investigative interest in criminal law enforcement investigations including statutory violations, counter-intelligence, counter-espionage and counter-terrorist activities and other security matters; to effect corrective administrative action and to recover money and property which has been wrongfully used or misappropriated; to make statistical evaluations and reports; to make decisions affecting personnel actions concerning members of the Armed Forces and/or Federal employees; and to respond to other complaint investigations and congressional inquires as appropriate.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with: ''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:

To the U.S. Secret Service in conjunction with the protection of persons under its jurisdiction.

To other Federal, State, or local agencies having jurisdiction over the substance of the allegations or a related investigative interest in criminal law enforcement investigations including statutory violations, counter-intelligence, counter-espionage and counter-terrorist activities and other security matters.

To other Federal Inspector General offices, the President's Council on Integrity and Efficiency, and/or other Federal law enforcement agencies for the purpose of coordinating and conducting administrative inquiries and civil and criminal investigations, or when responding to such offices, Council, and agencies in connection with the investigation of potential violations of law, rule, and/or regulation.

To other Federal Inspector General offices, the President's Council on Integrity and Efficiency, and/or the Department of Justice for purposes of conducting external reviews to ensure that adequate internal safeguards and management procedures continue to exist within the Office of the Inspector General of the Department of Defense.

The 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with: ''Electronic records are retained indefinitely for statistical purposes. Paper records are destroyed after one year.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Office of the Deputy Inspector General for Investigations, Defense Criminal Investigative Service, 400 Army Navy Drive, Arlington, VA 22202–4704.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name (including former names and aliases), date and place of birth, Social Security Number, current home address, telephone number and the request must be signed.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name (including former names and aliases), date and place of birth, Social Security Number, current home address, telephone number and the request must be signed.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''OIG System Administrators.''

* * * * *

CIG–04

SYSTEM NAME:

Case Control System—Investigative.

SYSTEM LOCATION:

Primary location: Office of the Inspector General, Department of Defense, Office of the Deputy Inspector General for Investigations, Defense Criminal Investigative Service (DCIS), 400 Army Navy Drive, Arlington, VA 22202–4704.

Decentralized locations: Office of the Deputy Inspector General for Investigations/Defense Criminal Investigative Service Field Offices, Resident Agencies, and Posts of Duty have temporary control over portions of the records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person or activity which is or has been the subject of an OIG investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file is composed of records of investigations to include Reports of Investigation, Information Reports and Case Summaries, which are being or have been conducted by the OIG.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, (Pub. L. 452), as amended; and DoD Directive 5106.1.

PURPOSE(S):

The file contains open and closed case listings used to manage investigations, to produce statistical reports, and to control various aspects of the investigative process. Users are OIG employees. Used to determine the existence, location, and status of cases, control workload, and to prepare statistical reports. The records in this system are used for the following purposes: Suitability, loyalty, eligibility, and general trustworthiness of individuals for access or continued access to classified information and suitability for access to government facilities or industrial firms engaged in government projects/contracts; contractor responsibility and suspension/debarment determinations; suitability for awards or similar benefits; use in current law enforcement investigation or program of any type; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; to identify offenders, to provide facts and evidence upon which to base prosecution, to provide information to other investigative elements of the Department of Defense having jurisdiction over the substance of the allegations or a related investigative interest in criminal law enforcement investigations including statutory violations, counter-intelligence, counter-espionage and counter-terrorist activities and other security matters; to effect corrective administrative action and to recover money and property which has been wrongfully used or misappropriated; to make statistical evaluations and reports; to make decisions affecting personnel actions concerning members of the Armed Forces and/or federal employees; and to respond to other complaint investigations and congressional inquires as appropriate.

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:

To the U.S. Secret Service in conjunction with the protection of persons under its jurisdiction.

To other Federal, State, or local agencies having jurisdiction over the substance of the allegations or a related investigative interest in criminal law enforcement investigations including statutory violations, counter-intelligence, counter-espionage and counter-terrorist activities and other security matters.

To other Federal Inspector General offices, the President's Council on Integrity and Efficiency, and/or other Federal law enforcement agencies for the purpose of coordinating and conducting administrative inquiries and civil and criminal investigations, or when responding to such offices, Council, and agencies in connection with the investigation of potential violations of law, rule, and/or regulation.

To other Federal Inspector General offices, the President's Council on Integrity and Efficiency, and/or the Department of Justice for purposes of conducting external reviews to ensure that adequate internal safeguards and management procedures continue to exist within the Office of the Inspector General of the Department of Defense.

The ''Blanket Routine Uses'' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and automated data system.

RETRIEVABILITY:

By name, Social Security Number, military service number or case control number and complete text retrieval by single word or word groups for some records.

SAFEGUARDS:

Files are maintained in locked cabinets accessible only to those with an official need-to-know and electronic data system is pass word protected.

RETENTION AND DISPOSAL:

Electronic records are retained indefinitely for statistical purposes. Paper records are destroyed after one year.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Deputy Inspector General for Investigations, Defense Criminal Investigative Service, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name (including former names and aliases) date and place of birth, Social Security Number, current home address, telephone number and the request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written

inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name (including former names and aliases) date and place of birth, Social Security Number, current home address, telephone number and the request must be signed.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

OIG System Administrators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt pursuant to 5 U.S.C. 552(j)(2), as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. 06–4959 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

[DoD–2006–OS–0101]

National Geospatial-Intelligence Agency (NGA); Privacy Act of 1974; System of Records

AGENCY: National Geospatial-Intelligence Agency (NGA).

ACTION: Notice to add a system of records.

SUMMARY: The National Geospatial-Intelligence Agency (NGA) proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on June 30, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Associate General Counsel, National Geospatial-Intelligence Agency, Information Law and Ethics (GCP), 4600 Sangamore Road (CGP (D10)), Bethesda, MD 20816–5003.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Rickert at (301) 227–4156.

SUPPLEMENTARY INFORMATION: The National Geospatial-Intelligence Agency (NGA) notices for systems of records 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 systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on May 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: May 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

B0502–01

SYSTEM NAME:

National Geospatial-Intelligence Agency (NGA) Public Key Enabled NIPRnet.

SYSTEM LOCATION:

Primary location: National Geospatial-Intelligence Agency (NGA) Arnold Facility, 3838 Vogel Road, Arnold, MO 63010–6238.

SECONDARY LOCATION:

National Gospatial-Intelligence Agency (NGA) Bethesda Facility, 4600 Sangamore Road, Bethesda, MD 20816.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Government civilian employees, military personnel, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, phone number, e-mail address, county of origin, citizen status, and contract name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 455, Maps, charts, and geodetic data: Public availability; exceptions.

PURPOSE(S):

The purpose of the system is to manage user access to web applications and other resources.

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 Routine Uses'' set forth at the beginning of NGA's 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:

Records are maintained on magnetic disks.

RETRIEVABILITY:

Records are retrieved by an algorithm which uses last name, first name, e-mail address and duty location as possible inputs.

SAFEGUARDS:

Record are maintained in controlled areas accessible only to authorized personnel. Access to personal information is further restricted by the use of passwords. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Data is destroyed when superseded or when no longer needed or operational purposes, whichever is later.

SYSTEM MANAGERS AND ADDRESSESS:

National Geospatial-Intelligence Agency, Security and Installation Operations, 4600 Sangamore Road, Bethesda, Maryland 20816–5003.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should adderss written inquries to the National Geospatial-Intelligence Agency, Customer Help Desk/L–89, 3833 Vogel Road, Arnold, MO 63010.

The request should contain the full name, address, and telephone number.

Individuals can also access the ''My Account'' link *(https://www.extranet.nga.mil/servlet/RegistrtionForm*) on the NGA PKE NIPRNet.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the National Geospatial-Intelligence Agency, Customer Help Desk/L–89, 3838 Vogel road, Ranold, MO 63010.

The request should contain the full name, address, and telephone number.

Individuals can also access the ''My Account'' link *(https://www.extranet.nga.mil/servlet/RegistrationForm*) on the NGA PKE NIPRNet.

CONTESTING RECORD PROCEDURES:

The NGA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in NGA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals and other Department of Defense Records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–4960 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

[DoD–2006–OS–0094]

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Office of the Inspector General (OIG) is amending 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 June 30, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Chief, FOIA/PA Office, Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General (OIG) 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

CIG–16

SYSTEM NAME:

DoD Hotline Program Case Files (May 9, 2003, 68 FR 24937).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with: ''DoD Hotline Division, Office of the Assistant Inspector General for Policy and Oversight of the Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with: ''Hotline case files not referred are destroyed after 2 years.

Electronic copies created on electronic mail and word processing systems are deleted after a record keeping copy has been produced.

Automated and paper records are retained within the Office of the Defense Hotline Division for a period of 5 years after closure. The records are then retired to the Washington National Records Center for an additional 5 years, and then destroyed.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Director, DoD Hotline Division, Office of the Assistant Inspector General for Policy and Oversight of the Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.''

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the individual's full name, address, and Social Security Number. Requests submitted on behalf of other persons must include their written authorization. Provision of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to records about themselves contained in this system should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the individual's full name, address, and Social Security Number. Requests submitted on behalf of other persons must include their written authorization. Provision of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.''

* * * * *

CIG–16

SYSTEM NAME:

DoD Hotline Program Case Files.

SYSTEM LOCATION:

DoD Hotline Division, Office of the Assistant Inspector General for Policy and Oversight of the Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Individuals filing hotline complaints; individuals alleged to have been involved in criminal or administrative misconduct, including, but not limited to, fraud, waste, or mismanagement; or individuals identified as having been adversely affected by matters being investigated by the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records resulting from the referral of, and inquiry into, hotline complaints, such as the date of the complaint; the hotline control number; the name of the complainant; the actual allegations; referral documents to DoD components requesting investigation into DoD Hotline complaints; referral documents from DoD components transmitting the DoD Hotline Completion Report, which normally contains the name of the examining official(s) assigned to the case; background information regarding the investigation itself, such as the scope of the investigation, relevant facts discovered, information received from witnesses, and specific source documents reviewed; the investigator's findings, conclusions, and recommendations; and the disposition of the case; and internal DoD Hotline forms documenting review and analysis

of DoD Hotline Completion Reports received from DoD components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (Pub. L. 95–452), as amended; DoD Directive 5106.1, Inspector General of the Department of Defense (IG, DoD) (32 CFR part 373); DoD Directive 7050.1, Defense Hotline Program (32 CFR part 98).

PURPOSE(S):

To record information related to official hotline investigations.

To compile statistical information to disseminate to other components within the Department of Defense engaged in the Hotline Program.

To provide prompt, responsive, and accurate information regarding the status of ongoing cases.

To provide a record of complaint disposition. Hotline complaints appearing to involve criminal wrongdoing will be referred to the Defense Criminal Investigative Service or other criminal investigative units of DoD components.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS, AND 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 Routine Uses'' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders and automated records are maintained on a computerized database.

RETRIEVABILITY:

By Hotline case number, by subject matter, by the names of complainant(s), by subject(s) of the complaint, and by individual(s) alleged to have been adversely affected by matters being investigated by the OIG.

SAFEGUARDS:

Access is limited to DoD Hotline staff. Paper and automated records are stored in rooms protected by cipher lock. The automated system is password protected, and regular back-ups of data are performed.

RETENTION AND DISPOSAL:

Hotline case files not referred are destroyed after 2 years. Electronic copies created on electronic mail and word processing systems are deleted after a recordkeeping copy has been produced.

Automated and paper record are retained within the Office of the Defense Hotline Division for a period of 5 years after closure. The record are then retired to the Washington National Records Center for an additional 5 years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DoD Hotline Division, Office of the Assistant Inspector General for Policy and Oversight of the Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the individual's full name, address, and Social Security Number. Requests submitted on behalf of other persons must include their written authorization. Provision of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the individual's full name, address, and Social Security Number. Requests submitted on behalf of other persons must include their written authorization. Provision of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Sources, subjects, witnesses, all levels of Government, private businesses, and nonprofit organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. 06–4967 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

[DoD–2006–OS–0088]

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Office of the Inspector General (OIG) is amending 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 June 30, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Chief, FOIA/PA Office, Inspector General, Department of Defense, 400 Army Navy Drive, Room 2001, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General (OIG) 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

CIG–01

SYSTEM NAME:

Privacy Act and Freedom of Information Act Case Files (February 13, 2006, 71 FR 7547).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with: ''Freedom of Information Act FOIA Requester Service Center/Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Chief, Freedom of Information Act Requester Service Center/Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.''

NOTIFICATION PROCEDURE:

Delete first paragraph and replace with: ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Freedom of Information Act Requester Service Center/Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.''

RECORD ACCESS PROCEDURES:

Delete first paragraph replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Freedom of Information Act and Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.''

* * * * *

CIG–01

SYSTEM NAME:

Privacy Act and Freedom of Information Act Case Files.

SYSTEM LOCATION:

Freedom of Information Act FOIA Requester Service Center/Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who submit Freedom of Information Act (FOIA) and Privacy Act (PA) requests and administrative appeals to the Office of the Inspector General (OIG), DoD and other activities receiving administrative FOIA and Privacy Act support from the OIG; individuals whose FOIA and Privacy Act requests and/or records have been referred by other Federal agencies to the OIG for release to the requester; attorneys representing individuals submitting such requests and appeals, individuals who are the subjects of such requests and appeals, and/or the OIG personnel assigned to handle such requests and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records created or compiled in response to FOIA and Privacy Act requests and administrative appeals, i.e., original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records and records under administrative appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 552a, as amended; DoD 5400.11–R, Department of Defense Privacy Program; 5 U.S.C. 552, The Freedom of Information Act, as amended; DoD 5400.7–R, DoD Freedom of Information Act Program; DoD IG Instruction 5400.7; and DoD IG Instruction 5400.11.

PURPOSE(S):

Information is being collected and maintained for the purpose of processing FOIA and Privacy Act requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; for amendment to records made under the Privacy Act and to document OIG actions in response to these requests; and for assisting the Office of the Inspector General, DoD in carrying out any other responsibilities under the FOIA.

Also, information may be provided to the appropriate OIG element when further action is needed to verify assertions of the requester or to obtain permission to release information obtained from sources.

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: Information from this system may be provided to other Federal agencies and state and local agencies when it is necessary to coordinate responses or denials.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

Retrieved by individual's name, subject matter, date of document, and request number.

SAFEGUARDS:

Records are stored in locked security containers accessible only to authorized personnel.

RETENTION AND DISPOSAL:

FOIA and Privacy Act paper records that are granted in full are destroyed 2 years after the date of reply. Paper records that are denied in whole or part,

no records responses, responses to requesters who do not adequately describe records being sought, do not state a willingness to pay fees, and records which are appealed or litigated, are destroyed 6 years after final FOIA action and 5 years after final Privacy Act action, or three years after final adjudication by courts, whichever is later. Electronic records are deleted within 180 days or when no longer needed to support office business needs.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Freedom of Information Act Requester Service Center/Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Freedom of Information Act Requester Service Center/Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

Please include full information regarding the previous request such as date, subject matter, and if available, copies of the previous OIG reply.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained this system should address written inquires to the Chief, Freedom of Information Act and Privacy Act Office, Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

Please include full information regarding the previous request such as date, subject matter, and if available, copies of the previous OIG reply.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individuals on whom records are maintained and official records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA and Privacy Act action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this FOIA or Privacy Act case record, Office of the Inspector General hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. 06–4969 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the Board of Visitors (BoV) for the Western Hemisphere Institute for Security Cooperation (WHINSEC). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). The Board's charter was renewed on February 1, 2006 in compliance with the requirements set forth in Title 10 U.S.C. 2166.

Date: June 15, 2006.

Time: 9 a.m. to 4 p.m.

Location: Rayburn House Office Building, Room 2212, Washington, DC.

Proposed Agenda: The WHINSEC BoV will be briefed on activities at the Institute since the last Board meeting in December 2005 as well as receive other information appropriate to its interests.

FOR FURTHER INFORMATION CONTACT: WHINSEC Board of Visitors Executive Secretariat at (703) 692–8779 or (703) 614–8721.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The Board will adjourn for lunch between 11:30 a.m. and 1 p.m. Public comment by individuals and organizations may be made from 3 p.m. to 3:30 p.m. Public comments will be limited to three minutes each. Anyone desiring to make an oral statement must register by sending a fax to (703) 614–8920 with their name, phone number, e-mail address, and the full text of their comments by 5 p.m. EST on Friday, June 9, 2006. The first ten requestors will be notified by 5 p.m. EST on Tuesday, June 13 of their time to address the Board during the public comment forum. All other comments will be retained for the record. Public seating is limited and will be available only on a first come, first serve basis.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–5010 Filed 5–30–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Intelligence Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Intelligence Agency is amending a system of records Notice to 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 June 30, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.A. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

LDIA 0014

SYSTEM NAME:

Employee Grievance Files (February 22, 1993, 58 FR 10613).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete zip code and replace with: ''20340–5100''.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with: ''Current and former civilian employees of DIA who have submitted grievances in accordance with DIA Regulation 22–23 ''Civilian Personnel Administration Manual—DIA Employee Grievance System.''

* * * * *

PURPOSE(S):

Remove the following from the third paragraph: ''the Merit Systems Protection Board including the Office of the Special Counsel'' and replace with: ''the Merit Systems Protection Board.''

* * * * *

STORAGE:

Delete entry and replace with: ''Paper records in file folders and electronically in a database.''

RETRIEVABILITY:

Delete entry and replace with: ''Alphabetically by surname of individual or specific types of grievances.''

SAFEGUARDS:

Delete entry and replace with: ''Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information. Electronic records are maintained on a classified and password protected system.''

RETENTION AND DISPOSAL:

Delete entry and replace with: ''Record is destroyed 6 years and 3 months after closing of the case.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Deputy Director for Human Capital, ATTN: HCH, Defense Intelligence Agency, Washington, DC 20340–5100.''

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with: ''DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 'Defense Intelligence Agency Privacy Program'; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.''

* * * * *

LDIA 0014

SYSTEM NAME:

Employee Grievance Files.

SYSTEM LOCATION:

Defense Intelligence Agency, Washington, DC 20340–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilian employees of DIA who have submitted grievances in accordance with DIA Regulation 22–23 ''Civilian Personnel Administration Manual—DIA Employee Grievance System.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain all records and documents relating to grievances filed by Agency employees to include statements of witnesses, reports of interviews and hearings and examiner's findings, recommendations, decisions and related correspondence or exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pursuant to the authority contained in the National Security Act of 1947, as amended, the Secretary of Defense issued Department of Defense Directive 5105.21 which created the Defense Intelligence Agency as a separate agency of the Department of Defense and charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

PURPOSE(S):

To record all information collected in the course of a formal grievance including statements, findings, exhibits, recommendations and decisions.

Files may be used as part of subsequent administrative or judicial proceedings concerning central or peripheral issues.

To disclose information to any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested; to another Federal agency or to a court when the Government is party to a judicial proceeding before the court; by the Agency in the production of summary descriptive statistics, analytical studies and training in support of the function for which the records are collected and maintained or for related work force studies; to officials of the Merit Systems Protection Board, or the Equal Employment Opportunity Commission when requested in performance of their authorized duties; to disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

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 ''Blanket Routine Uses'' set forth at the beginning of the DIA's 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:

Paper records in file folders and electronically in a database.

RETRIEVABILITY:

Alphabetically by surname of individual or specific types of grievances.

SAFEGUARDS:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information. Electronic records are maintained on a classified and password protected system.

RETENTION AND DISPOSAL:

Record is destroyed 6 years and 3 months after closing of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director for Human Capital, ATTN: HCH, Defense Intelligence Agency, Washington, DC 20340–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

By the individual, testimony of witnesses, Agency officials and from related correspondence from organizations or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–4966 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

National Security Agency/Central Security Service

[DoD–2006–OS–0104]

Privacy Act of 1974; System of Records

AGENCY: National Security Agency/ Central Security Service.

ACTION: Notice to add a system of records.

SUMMARY: The National Security Agency/Central Security Service purposes to add a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on June 30, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the National Security Agency/Central Security Service, Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency's record system notices for records systems 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 May 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: May 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

GNSA 22

SYSTEM NAME:

Garnishment Processing Files.

SYSTEM LOCATION:

National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilian employees, employee dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include correspondence, type of garnishment, individual court withholding notices or court orders, garnishment orders, child support account numbers, records on employees and dependents to include name, social security number, address, and phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Agency Act of 1959, as amended, 50 U.S.C. 402 note (Pub. L. 86–36), 50 U.S.C. 403 (Pub. L. 80–253); 44 U.S.C. 3101, Records management by Agency heads; E.O. 9397 (SSN); DoD Directive 5100.20, National Security Agency and Central Security Service; 5 U.S.C. 5520a, Garnishment of Pay; 31 U.S.C. 3701, Debt Collection Act; 42 U.S.C. 659, Consent by United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations; 42 U.S.C. 652–653 Social Security Act.

PURPOSE(S):

To maintain records relating to the processing of court orders for the garnishment of wages.

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:

To state child support agencies, in response to their written requests for information regarding the gross and disposable pay of civilian employees, for purposes of assisting agencies in the discharge of their responsibilities under Federal and state law.

To the Internal Revenue Service to report taxable earnings and taxes withheld, accounting, and tax audits and to compute or resolve tax liability or tax levies.

To private collection contractors to locate a taxpayer and to collect or compromise a claim against, or debt of, the taxpayer.

To consumer or commercial reporting agency in accordance with the Debt Collection Improvement Act of 1996.

The DoD ''Blanket Routine Uses.'' published at the beginning of the NSA/CSS' compilation of record systems also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files and on electronic mediums.

RETRIEVABILITY:

By name, Social Security Number, state of jurisdiction, court of jurisdiction, child support account number, organization, and type of garnishment.

SAFEGUARDS:

Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. With the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is controlled by computer password protection.

RETENTION AND DISPOSAL:

Records are periodically reviewed for retention. Records having no evidential, informational, or historical value or not required to be permanently retained are destroyed. Garnishment and Levy notices are destroyed three years from termination date. Destruction is by pulping, burning, shredding, or erasure or destruction of magnetic media.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Policy, National Security Agency/Central Security Service, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if records about themselves are contained in this record system should address written inquiries to the Director of Policy, National Security Agency/ Central Security Service, 9800 Savage Road, Suite 6248, Ft. George G. Mead, MD 20755–6248.

Written inquiries should include requester's full name, address, and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Deputy Director of Policy, National Security Agency/ Central Security Service, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should include requester's full name, address, and Social Security Number.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/ Central Security Service, Ft. George G. Meade, MD 20755–6000.

RECORD SOURCE CATEGORIES:

Individuals, Federal/state agencies and collection agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–4956 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[DoD–2006–OS–105]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its existing inventory of records 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 June 30, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's 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 reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on May 23, 2006, to the House Committee on gGvernment 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: May 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

NM05100–5

SYSTEM NAME:

Enterprise-wide Safety Applications Management System (ESAMS) (March 7, 2005, 70 FR 10996).

CHANGES:

* * * * *

SYSTEM NAME:

Delete ''-wide''.

SYSTEM LOCATION:

Delete entry and replace with: ''HGW and Associates, LLCI, Suite A–100, 9000 Executive Park Drive, Knoxville, TN 37923–4685 and organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm*.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Department of Navy (DON) military and civilian personnel, non-appropriated personnel, foreign national military and civilian personnel, other U.S. Government personnel, or contractors, who work or receive support from the U.S. Navy, ashore and/or afloat.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with: ''Name, Social Security Number, date of birth, job title, rank/rate/grade, civilian/ military/foreign nationals/contractors indicator, unit identification code (UIC), activity name, major command code, department, sex, training/certifications received, test scores, occupational medical stressors, date of last physical and non-diagnostic information concerning health readiness/restrictive duty, respirator usage and fit test results, chemical and/or environmental exposures, and occupational injuries/ illnesses.''

* * * * *

PURPOSE(S):

Delete energy and replace with: ''To ensure all individuals receive required safety, fire, police force protection, and emergency management training courses necessary to perform assigned duties and comply with Federal, DoD, and Navy related regulations.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete second paragraph and replace with: ''To the Occupational Safety and Health Administration (OSHA) during the course of an on-site inspection.''

STORAGE:

Delete entry and replace with: ''Computerized database and paper records.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with: ''Paper records are retained at the local command for a minimum for five years. Computerized database is retained for the duration of employment plus 30 years and then destroyed.''

SYSTEM MANAGER(S) AND ADDRESS:

Add new first paragraph as follows: ''Policy Official: Commander, Navy Installations Command, 2713 Mitscher Road SW., Ste 300, Anacostia Annex, DC 20373–5802.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individual; personnel files; non-diagnostic extracts from medical records that address medical readiness/restrictions; and office files.

* * * * *

NM05100–5

SYSTEM NAME:

Enterprise Safety Applications Management System (ESAMS).

SYSTEM LOCATION:

HGW and Associates, LLCI, Suite A–100, 9000 Executive Park Drive, Knoxville, TN 37923–4685 and organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Navy (DON) military and civilian personnel, non-appropriated personnel, foreign national military and civilian personnel, other U.S. Government personnel, or contractors, who work or receive support from the U.S. Navy, ashore and/or afloat.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, date of birth, job title, rank/rate/grade, civilian/military/foreign nationals/contractors indicator, unit identification code (UIC), activity name, major command code, department, sex, training/certifications received, test scores, occupational medical stressors, date of last physical and non-diagnostic information concerning health readiness/restrictive duty, respirator usage and fit test results, chemical and/or environmental exposures, and occupational injuries/illnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4101–4118, the Government Employees Training Act of 1958; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5042, Commandant of the Marine Corps; E.O. 12196, Occupational Safety and Health Programs for Federal Employees; and DoD Instruction 6055.7, Accident Investigation, Reporting, and Record Keeping; and E.O. 9397 (SSN).

PURPOSE(S):

To ensure all individuals receive required safety, fire, police, force protection, and emergency management training courses necessary to perform assigned duties and comply with Federal, DoD, and Navy related regulations.

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:

To the Occupational Safety and Health Administration (OSHA) during the course of an on-site inspection.

The DoD ''Blanket Routine Uses'' that appear at the beginning of the Navy's 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:

Computerized database and paper records.

RETRIEVABILITY:

Retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Computer facilities and terminals pre located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Information is password protected. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Paper records are retained at the local command for a minimum of five years. Computerized database is retained for the duration of employment plus 10 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Installations Command, 2713 Mitscher Road SW Ste 300, Anacostia Annex, DC 20373–5802.

Record Holder: Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at: *http://neds.daps.dia.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Commanding Officer of the local activity. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dia.mil/sndl.htm.*

The request should contain individual's full name, Social Security Number, address and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking to access the information about themselves contained in this system of records not accessible through system interfaces should address written inquiries to the Commanding Officer of the local activity. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

The request should contain the individual's full name, Social Security Number, address and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; personnel files; non-diagnostic extracts from medical records that address medical readiness/restrictions; and office files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–4958 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[DoD–2006–OS–0100]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on June 30, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's 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 reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on May 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: May 24, 2006

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

N01770–2

SYSTEM NAME:

Casualty Information Support System (April 28, 1999, 64 FR 22840).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with: ''Primary System-Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055–0600; the local activity for which individual is assigned; and the Washington National Records Center, Suitland, MD. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm*.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete ''5 U.S.C. 301, Departmental Regulations;'' and replace with ''10 U.S.C. 5013, Secretary of the Navy;''

PURPOSE(S):

Add the following paragraph: ''To assist severely injured service members and the families to recovery and/or transition.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055–0600.''

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055–0600; or to the local activity where assigned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm*.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file numter), rank/rate, military status, date of casualty and status at time of casualty, and signature of the requester.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055–0600, or to the local activity where assigned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, military status, date of casualty and status at time of casualty, and signature of the requester.''

* * * * *

N01770–2

SYSTEM NAME:

Casualty Information Support System.

SYSTEM LOCATION:

Primary System-Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055–0600; the local activity for which individual is assigned; and the Washington National Records Center, Suitland, MD. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel who are reported missing, Missing in Action, Prisoner of War or otherwise detained by armed force; deceased in either an active or inactive duty status; reported seriously ill/injured in an active duty status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, reports, and records in both automated and nonautomated form concerning circumstances of casualty, next-of-kin data, survivor benefit information, personal and service data, and casualty program data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; OPNAVINST 1770.1, Casualty Assistance Calls and Funeral Honors Support Program Coordination; and E.O. 9397 (SSN).

PURPOSE(S):

To assist in the management of the casualty assistance program and to provide swift accurate responses to beneficiaries and survivors of Navy military personnel; to aid in the efficient settlement of the service member's estate and other affairs.

To assist severely injured service members and the families to recovery and/or transition.

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. 552(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(a)(3) as follows:

To officials and employees of the Social Security Administration in connection with eligibility, notification and assistance in obtaining benefits due.

To officials and employees of the Department of Veterans Affairs and the

Selective Service Administration in connection with eligibility, notification and assistance in obtaining benefits due.

To officials of other federal, state, and local government agencies in connection with eligibility, notification and assistance in obtaining benefits due.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on media. Manual records may be stored in paper files, microfiche or microfilm.

RETRIEVABILITY:

Records may be retrieved by name and/or Social Security Number.

SAFEGUARDS:

Computer files are accessible only to authorized persons that are properly screened, trained and cleared.

Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Records are maintained for seven years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055–0600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055–0600; or to the local activity where assigned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, military status, date of casualty and status at time of casualty, and signature of the requester.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055–0600, or to the local activity where assigned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, military status, date of casualty and status at time of casualty, and signature of the requester.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy, Department of Defense, Public Health Service, Department of Veterans Affairs and components, in performance of their official duties as specified by current instructions and regulations promulgated by competent authority; casualty reports may also be received from state and local agencies, hospitals and other agencies having knowledge of casualties to Navy personnel; general correspondence concerning member.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–4961 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[DoD–2006–OS–0099]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Navy is amending 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 June 30, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

N06110–1

SYSTEM NAME:

Physical Readiness Information Management System (PRIMS) (September 8, 2003, 68 FR 52911).

CHANGES

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SYSTEM LOCATION:

Delete entry and replace with ''Records are located at Navy Installations. Millington Detachment (N251), 5720 Integrity Drive, Millington, TN 38055–6000. Local command fitness leaders and assistant command fitness leaders at Navy installations/bases have access to the information about command personnel assigned to their Unit Identification Code (UIC).''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Commander, Navy Installations, Millington Det (N251), 5720 Integrity Drive, Millington, TN 38055–6000 and/or the local command fitness leader/assistant command fitness leader.''

NOTIFICATION PROCEDURE:

Delete and replace with ''All active duty and active Reserve Navy members with internet capabilities who are seeking to determine whether this system of records contains information about themselves can access this record system online at *https://prims.bol.navy.mil* by using their Social Security Number and the BUPERS ONLINE (BOL) password.

Former service members who are seeking to determine whether this system of records contains information

about themselves should address written inquiries to the Commander, Navy Installations, Millington Det (N251), 5720 Integrity Drive, Millington, TN 38055–6000 or to the command where they were last assigned.

Requests must be signed and individuals should include their full name, Social Security Number, name or unit identification code of last command assigned, and dates of last assignment.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''All active duty and active Reserve Navy members with Internet capabilities seeking access to records about themselves in this system of records may do so at *https://prims.bol.navy.mil* by using their Social Security Number and the BUPERS ONLINE (BOL) password.

Former service members seeking access to records about themselves in this system of records may receive a copy of the records by making written inquiries to the Commander, Navy Installations, Millington Det (N251), 5720 Integrity Drive, Millington, TN 38055–6000 or to the command where they were last assigned.

Requests must be signed and individuals should include their full name, Social Security Number, name or unit identification code of last command assigned and dates of last assignment.

* * * * *

N06110–1

SYSTEM NAME:

Physical Readiness Information Management System (PRIMS).

SYSTEM LOCATION:

Records are located at Navy Installations. Millington Detachment (N251), 5720 Integrity Drive, Millington, TN 38055–6000. Local command fitness leaders and assistant command fitness leaders at Navy installations/bases have access to the information about command personnel assigned to their Unit Identification Code (UIC).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy active duty and reserve personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Physical Readiness Information Management System (PRIMS) consists of command information, authorization information, member personnel data (such as name, Social Security Number, Unit Identification Code, Department, Division, gender, service, rank, date of birth, Navy Enlisted Code/Designator, physical date, date reported to command, medical waivers, body composition assessment (such as weight, height, neck, abdomen, waist, hips, body fat)) and Physical Readiness Test data, Fitness Enhancement Program data, and Ship Shape data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; OPNAVINST 6110.1G, Physical Readiness Program; and E.O. 9397 (SSN).

PURPOSE(S):

To provide a standardized Navy database to monitor and track the progress of members' Physical Fitness Assessment (PFA) data and to identify, screen, train, educate, counsel, monitor and rehabilitate members who do not meet the Physical Fitness Assessment standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PROPOSE OF SUCH USERS:

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:

To qualified personnel for the purpose of conducting scientific research, management audits or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit or evaluation or otherwise disclose member identities in any manner.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic storage media. Paper records may be printed from the database.

RETRIEVABILITY:

Name of member and Social Security Number.

SAFEGUARDS:

Computer facilities are located in restricted areas accessible only to authorized persons who are properly screened, cleared and trained. Access to records is controlled by the use of need-to-know ''roles'' in the application. Paper records downloaded from the database are marked ''For official Use Only.''

RETENTION AND DISPOSAL:

Records are maintained for a period of five years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Installations, Millington Det (N251), 5720 Integrity Drive, Millington, TN 38055–6000 and/or the local command fitness leader/assistant command fitness leader.

NOTIFICATION PROCEDURE:

All active duty and active Reserve Navy members with internet capabilities who are seeking to determine whether this system of records contains information about themselves can access this record system online at *https://prims.bol.navy.mil* by using their Social Security Number and the BUPERS ONLINE (BOL) password.

Former service members who are seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Installations, Millington Det (N251), 5720 Integrity Drive, Millington, TN 38055–6000 or to the command where they were last assigned.

Requests must be signed and individuals should include their full name, Social Security Number, name or unit identification code of last command assigned, and dates of last assignment.

RECORDS ACCESS PROCEDURES:

All active duty and active Reserve Navy members with Internet capabilities seeking access to records about themselves in this system of records may do so at *https://prims.bol.navy.mil* by using their Social Security Number and the BUPERS ONLINE (BOL) password.

Former service members seeking access to records about themselves in this system of records may receive a copy of the records by making written inquiries to the Commander, Navy Installations, Millington Det (N251), 5720 Integrity Drive, Millington, TN 38055–6000 or to the command where they were last assigned.

Requests must be signed and individuals should include their full name, Social Security Number, name or unit identification code of last command assigned and dates of last assignment.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and for contesting contents and appealing initial agency determinations are published in the Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, command personnel, and/or medical personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–4962 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[DoD–2006–OS–0098]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: the Department of the Navy is amending 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 June 30, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject tot he 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

N01754–3

SYSTEM NAME:

Navy Child Development Services Program (February 23, 2001, 66 FR 11278).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with: ''Navy Child Development or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 5013, Secretary of the Navy; and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with : ''Paper and automated records.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Policy Official: Commander, Navy Installations, Millington Detachment (N23), 5720 Integrity Drive, Millington, TN 38055–6500.

Record Holder: Navy Child Development or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*''

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate Navy or Marine Corps activity concerned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*

Individuals should submit a signed request with provided proof of identity and full name.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate Navy or Marine Corps activity concerned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*

Individuals should submit a signed request with proof of identity and full name.''

* * * * *

N01754–3

SYSTEM NAME:

Navy Child Development Services Program.

SYSTEM LOCATION:

Navy Child Development or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps service members and their families or dependents. In certain locations, DoD civilian employees may be eligible for services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; case number; home address and telephone number; insurance coverage; names of parents and children; payment records; performance rating; complaints; background information, including medical, educational references, and prior work experience, information from the Naval Criminal Investigative Service (NCIS), the family advocacy program, base security, and state and local agencies; information related to screening, training, and implementation of the Family Child Care program; and reports of fire, safety, housing, and environmental health inspections. Children's records will also include developmental profiles.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; and E.O. 9397 (SSN).

PURPOSE(S):

To develop child care programs that meet the needs of children and families, provide child and family program eligibility and background information; verify health status of children and verify immunizations, note special program requirements; consent for access to emergency medical care; data required by USDA programs.

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 my specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal officials involved in Child Care Services, including child abuse for

the purpose of investigation and litigation.

To State and local officials involved with Child Care Services if required in the performance of their official duties relating to investigations.

The DoD ''Blanket Routine Uses'' that appear at the beginning of the Navy's 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:

Paper and automated records.

RETRIEVABILITY:

By last name of member and Social Security Number.

SAFEGUARDS:

Records are maintained in monitored or controlled areas accessible only to authorized personnel. Building or rooms are locked outside regular working hours. Computer files are protected by software programs that are password protected.

RETENTION AND DISPOSAL:

Records are kept for two years after individual is no longer in the Child Development Program and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Installations, Millington Detachment (N23), 5720 Integrity Drive, Millington, TN 38055–6500.

Record Holder: Navy Child Development or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate Navy or Marine Corps activity concerned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*

Individuals should submit a signed request with provide proof of identity and full name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate Navy or Marine Corps activity concerned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*

Individuals should submit a signed request with proof of identity and full name.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from individuals either applying as child care providers or participant of the Family Child Care program; background checks from State and local authorities; housing officers; information from the Family Advocacy program; base security officers and base fire, safety and health officers; and local family child care monitors and parents of children enrolled.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identify of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 06–4963 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[DoD–2006–OS–0096]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Navy is amending a system of records notice in its existing inventory or record systems subject to t he Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 30, 2006, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

N07320–1

SYSTEM NAME:

Property Accountability records (May 9, 2003, 68 FR 24959).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with: ''NM07320–1''.

* * * * *

SYSTEM LOCATION:

Delete first paragraph and replace with: ''Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://neds.daps.dla.mil/sndl.htm.*''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Add the following to the entry: ''Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://neds.daps.dla.mil/sndl.htm*.''

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether system records contain information pertaining to them may do so by making application to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have an identification card. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://neds.daps.dia.mil/sndl.htm*.

''Written request must contain name and social security number and be signed.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have an identification card. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://neds.daps.dla.mil/sndl.htm*.

''Written request must contain name and social security number and be signed.''

* * * * *

NM07320–1

SYSTEM NAME:

Property Accountability Records.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://neds.daps.dla.mil/sndl.htm*.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who receives and signs for government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

The receipts maintained are any of the following: Logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, charge cards, or any other statement of individual accountability for receipt of government property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To identify individuals to whom government property has been issue.

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 Routine Uses' that appear at the beginning of the Navy's 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:

The receipts may be maintained in any of the following formats: Logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, computerized data base, charge out cards or any other statement of individual accountability for receipt of government property.

RETRIEVABILITY:

Retrievability may be any of the following: Name, Social Security Number, badge number, tool number, property serial number, or any other locally determined method of property receipt accountability.

SAFEGUARDS:

Access is limited and provided on a need-to-know basis only. Computerized data bases are password protected.

RETENTION AND DISPOSAL:

Property accounting records are destroyed when two years old. Custody receipts are destroyed when material or equipment is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether system records contain information pertaining to them may do so by making application to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making applications must have an identification card. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://neds.daps.dla.mil/sndl.htm.*

Written request must contain name and social security number and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have an identification card. Official mailing addresses are published in the Standard Navy Distribution List (SNDL that is available at *http://neds.daps.dla.mil/sndl.htm.*

Written request must contain name and social security number and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is collected directly from the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–4964 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[DoD–2006–OS–0097]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Navy is amending 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 June 30, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

N01710–1

SYSTEM NAME:

Recreation Association Membership Files (April 28, 1999, 64 FR 22840).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with: ''Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''10 U.S.C. 5013, Secretary of the Navy and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with: ''Paper and automated records.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Policy Official: Commander, Navy Installations, Millington Detachment (N253), 5720 Integrity Drive, Millington, TN 38055–6500.''

System Manager: ''Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*''

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at http://neds.nebt.daps.mil/sndl.htm.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.''*

* * * * *

N01710–1

SYSTEM NAME:

Recreation Association Membership Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Name, rank, Social Security Number, room and telephone number, membership card number and dates purchased.

CATEGORIES OF RECORDS IN THE SYSTEM:

This record lists the names, internal codes, room and telephone numbers of each membership card and dates purchased.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy and E.O. 9397 (SSN).

PURPOSE(S):

To indicate income from sale of membership cards; to provide an audit trial for the auditors; and to confirm memberships, upon request.

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 'Blanket Routine Uses' that appear at the beginning of the Navy's 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:

Paper and automated records.

RETRIEVABILITY:

Name, Social Security Number, Case number, organization.

SAFEGUARDS:

Password control system, file, and element access based on predefined need-to-know. Physical access is controlled by locked terminals and rooms, guards, personnel screening and visitor control.

RETENTION AND DISPOSAL:

Records are destroyed one year after individual terminates membership.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Installations, Millington Detachment (N253), 5720 Integrity Drive, Millington, TN 38055–6500.

System Manager: Commanding Officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–4965 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[DoD–OS–2006–93]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Navy is amending 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 acton will be effective without further notice on June 30, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

N12410–1

SYSTEM NAME:

MWR Training Student Database (May 11, 1999, 64 Fr 25312).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with: ''NM12410–1''

* * * * *

SYSTEM LOCATION:

Delete entry and replace with: ''Navy Installations, Millington Detachment (N253), 5720 Integrity Drive, Millington, TN 38055–6500.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with: ''Civilian and military employees attached to non-appropriated fund activities under the Commander, Navy Installations Command and the Commandant of the Marine Corps.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with: ''Training records pertaining to the enrollment and completion status of persons attending Morale Welfare and Recreation (MWR) related training provided through the Navy Installations Command.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''10 U.S.C. 5013, Secretary of the Navy and E.O. 9397 (SSN).''

PURPOSE(S):

Delete entry and replace with: ''To manage, supervise, and administer the centrally managed MWR training program for civilian and military employees attached to non-appropriated fund activities under the Commander, Navy Installations Command and Commandant of the Marine Corps. This includes providing information to supervisors on their employee's training and providing a record of Continuing Education Credits earned.''

SAFEGUARDS:

Delete entry and replace with: ''Computer processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared, and trained. Manual records are computer printouts are only available to authorized personnel having a need to know. Access to individual computers is password protected. Access to the database is limited to personnel with a need to know. Each user has an individual password for access to the database.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Commander, Navy Installations, Millington Detachment (N253), 5720 Integrity Drive, Millington, TN 38055–6500.''

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Navy Installations, Millington Detachment (N253), 5720 Integrity Drive, Millington, TN 38055–6500.

Request should contain full name, Social Security Number, activity at which employed/attached, and signature of the requester.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Installations, Millington Detachment (N253), 5720 Integrity Drive, Millington, TN 38055–6500.

Request should contain full name, Social Security Number, activity at which employed/attached, and signature of the requester.''

* * * * *

NM12410–1

SYSTEM NAME:

MWR Training Student Database.

SYSTEM LOCATION:

Navy Installations, Millington Detachment (N253), 5720 Integrity Drive, Millington, TN 38055–6500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military employees attached to non-appropriated fund activities under the Commander, Navy Installations Command and the Commandant of the Marine Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

Training records pertaining to the enrollment and completion status of persons attending Morale Welfare and Recreation (MWR) related training provided through the Navy Installations Command.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy and E.O. 9397 (SSN).

PURPOSE(S):

To manage, supervise, and administer the centrally managed MWR training program for civilian and military employees attached to non-appropriated fund activities under the Commander, Navy Installations Command and Commandant of the Marine Corps. This includes providing information to supervisors on their employee's training and providing a record of Continuing Education Credits earned.

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 ''Blanket Routine Uses'' that appear at the beginning of the Navy and Marine Corps' compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated and manual records.

RETRIEVABILITY:

Name, Social Security Number, class, and/or date of training.

SAFEGUARDS:

Computer processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared, and trained. Manual records are computer printouts are only available to authorized personnel having a need to know. Access to individual computers is password protected. Access to the database is limited to personnel with a need to know. Each user has an individual password for access to the database.

RETENTION AND DISPOSAL:

Destroy 3 years after completion of the annual period or when no longer required for activity review and/or analysis, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6610.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained i n this system should address written inquiries to the Navy Personnel Command (Pers–654), 5720 Integrity Drive, Millington, TN 38055–6540. Request should contain full name, Social Security Number, activity at which employed/attached, and signature of the requester.

The individual may visit the Navy Personnel Command (Pers–654), located in the Lassen Building, at 7736 Kitty Hawk Avenue, Millington, TN 38055–6540, for assistance with records located in that building.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Navy Personnel Command (Pers–654), 5720 Integrity Drive, Millington, TN 38055–6540. Request should contain full name, Social Security Number, activity at which employed/attached, and signature of the requester.

The individual may visit the Navy Personnel Command (Pers–654), located in the Lassen Building, at 7736 Hawk Avenue, Millington, TN 38055–6540, for assistance with records located in that building.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and local activity where assigned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–4968 Filed 5–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 31, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 24, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Assistive Technology Act: Data Collection Instrument for Statewide AT Programs.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 1,232.

Abstract: This instrument will be the basis for developing an electronic, web-based data collection system into which

Statewide AT Programs report annual data on their activities funded under the Assistive Technology Act of 1998, as amended (AT Act). The data reported by states is required under the AT Act, and will be used for reporting to Congress, for program planning, and for assessing program performance consistent with GPRA and PART.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3125. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–8383 Filed 5–30–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Pell Grant, Academic Competitiveness Grant, National Science and Mathematics Access To Retain Talent Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of revision of the Federal Need Analysis Methodology for the 2007–2008 award year.

SUMMARY: The Secretary of Education announces the annual updates to the tables that will be used in the statutory ''Federal Need Analysis Methodology'' to determine a student's expected family contribution (EFC) for award year 2007–2008 for the student financial aid programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). An EFC is the amount a student and his or her family may reasonably be expected to contribute toward the student's postsecondary educational costs for purposes of determining financial aid eligibility. The Title IV programs include the Federal Pell Grant, Academic Competitiveness Grant, National Science and Mathematics Access to Retain Talent Grant, campus-based (Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs), Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs (Title IV HEA Programs).

FOR FURTHER INFORMATION CONTACT: Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, Union Center Plaza, 830 First Street, NE., Washington, DC 20202. Telephone: (202) 377–3385. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Part F of Title IV of the HEA specifies the criteria, data elements, calculations, and tables used in the Federal Need Analysis Methodology EFC calculations.

Section 478 of Part F of the HEA requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year to adjust for general price inflation. The changes are based, in general, upon increases in the Consumer Price Index.

For award year 2007–2008 the Secretary is charged with updating the income protection allowance, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 2005 and December 2006. However, because the Secretary must publish these tables before December 2006, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for All Urban Consumers for 2005. The Secretary estimates that the increase in the Consumer Price Index for All Urban Consumers (CPI–U) for the period December 2005 through December 2006 will be 2.8 percent. Additionally, the Higher Education Reconciliation Act of 2005 (Pub. L. 109–171) modified the updating procedure for the income protection allowance table for independent students with dependents other than a spouse. These table values are increased by the greater of 5 percent or the Secretary's estimated increase in the CPI–U (2.8 percent). The updated tables are in sections 1, 2, and 4 of this notice.

The Secretary must also revise, for each award year, the education savings and asset protection allowances as provided for in section 478(d) of the HEA. The Education Savings and Asset Protection Allowance table for award year 2007–2008 has been updated in section 3 of this notice. Section 478(h) of the HEA also requires the Secretary to increase the amount specified for the Employment Expense Allowance, adjusted for inflation. This calculation is based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-worker compared to a one-worker family for food away from home, apparel, transportation, and household furnishings and operations. The Employment Expense Allowance table for award year 2007–2008 has been updated in section 5 of this notice.

The HEA provides for the following annual updates:

1. *Income Protection Allowance.* This allowance is the amount of living expenses associated with the maintenance of an individual or family that may be offset against the family's income. It varies by family size. The income protection allowance for the dependent student is $3,000. The income protection allowances for parents of dependent students for award year 2007–2008 is:

PARENTS OF DEPENDENT STUDENTS

Family size	Number in college				
	1	2	3	4	5
2	$15,000	$12,430	.....	.....	.....
3	18,680	16,130	$13,560	.....	.....

PARENTS OF DEPENDENT STUDENTS—Continued

Family size	Number in college				
	1	2	3	4	5
4	23,070	20,510	17,950	$15,390	
5	27,220	24,660	22,100	19,540	$16,980
6	31,840	29,280	26,720	24,160	21,600

For each additional family member add $3,590.

For each additional college student subtract $2,550.

The income protection allowances for independent students with dependents other than a spouse for award year 2007–2008 is:

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

Family size	Number in college				
	1	2	3	4	5
2	$15,320	$12,700			
3	19,070	16,470	$13,850		
4	23,560	20,940	18,330	$15,710	
5	27,800	25,170	22,570	19,950	$17,340
6	32,510	29,890	27,290	24,660	22,060

For each additional family member add $3,670.

For each additional college student subtract $2,610.

The income protection allowances for single independent students and independent students without dependents other than a spouse for award year 2007–2008 are:

Marital status	Number in college	IPA
Single	1	$6,050
Married	2	6,050
Married	1	9,700

2. *Adjusted Net Worth (NW) of a Business or Farm.* A portion of the full net value of a farm or business is excluded from the calculation of an expected contribution because—(1) The income produced from these assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0
$1 to $105,000	$0 + 40% of NW.
$105,001 to $320,000	$42,000 + 50% of NW over $105,000.
$320,001 to $535,000	$149,500 + 60% of NW over $320,000.
$535,001 or more	$278,500 + 100% of NW over $535,000.

3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

DEPENDENT STUDENTS

If the age of the older parent is—	And there are	
	Two parents	One parent
	then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,500	1,000
27	5,100	2,100
28	7,600	3,100
29	10,200	4,200

DEPENDENT STUDENTS—Continued

	And there are	
	Two parents	One parent
30	12,700	5,200
31	15,200	6,300
32	17,800	7,300
33	20,300	8,400
34	22,900	9,400
35	25,400	10,500
36	27,900	11,500
37	30,500	12,600
38	33,000	13,600
39	35,600	14,700
40	38,100	15,700
41	39,100	16,100

DEPENDENT STUDENTS—Continued

	And there are	
	Two parents	One parent
42	40,100	16,400
43	41,100	16,800
44	42,100	17,200
45	43,100	17,500
46	44,200	17,900
47	45,300	18,300
48	46,400	18,800
49	47,600	19,200
50	48,700	19,700
51	50,200	20,100
52	51,500	20,500
53	53,000	21,000
54	54,300	21,600
55	55,900	22,100
56	57,300	22,700
57	59,000	23,200
58	60,700	23,900
59	62,500	24,400
60	64,300	25,100
61	66,200	25,700
62	68,100	26,400
63	70,400	27,200
64	72,400	27,900
65 or older	74,800	28,700

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

	And they are	
	Married	Single
If the age of the student is—	then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,500	1,000
27	5,100	2,100
28	7,600	3,100
29	10,200	4,200
30	12,700	5,200
31	15,200	6,300
32	17,800	7,300
33	20,300	8,400
34	22,900	9,400
35	25,400	10,500
36	27,900	11,500
37	30,500	12,600
38	33,000	13,600
39	35,600	14,700

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE—Continued

	And they are	
	Married	Single
40	38,100	15,700
41	39,100	16,100
42	40,100	16,400
43	41,100	16,800
44	42,100	17,200
45	43,100	17,500
46	44,200	17,900
47	45,300	18,300
48	46,400	18,800
49	47,600	19,200
50	48,700	19,700
51	50,200	20,100
52	51,500	20,500
53	53,000	21,000
54	54,300	21,600
55	55,900	22,100
56	57,300	22,700
57	59,000	23,200
58	60,700	23,900
59	62,500	24,400
60	64,300	25,100
61	66,200	25,700
62	68,100	26,400
63	70,400	27,200
64	72,400	27,900
65 or older	74,800	28,700

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is—	And they are	
	married	single
	then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,500	1,000
27	5,100	2,100
28	7,600	3,100
29	10,200	4,200
30	12,700	5,200
31	15,200	6,300
32	17,800	7,300
33	20,300	8,400
34	22,900	9,400
35	25,400	10,500
36	27,900	11,500
37	30,500	12,600
38	33,000	13,600
39	35,600	14,700

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

If the age of the student is—	And they are	
	married	single
40	38,100	15,700
41	39,100	16,100
42	40,100	16,400
43	41,100	16,800
44	42,100	17,200
45	43,100	17,500
46	44,200	17,900
47	45,300	18,300
48	46,400	18,800
49	47,600	19,200
50	48,700	19,700
51	50,200	20,100
52	51,500	20,500
53	53,000	21,000
54	54,300	21,600
55	55,900	22,100
56	57,300	22,700
57	59,000	23,200
58	60,700	23,900
59	62,500	24,400
60	64,300	25,100
61	66,200	25,700
62	68,100	26,400
63	70,400	27,200
64	72,400	27,900
65 or older	74,800	28,700

4. *Assessment Schedules and Rates.* Two schedules that are subject to updates, one for parents of dependent students and one for independent students with dependents other than a spouse, are used to determine the EFC toward educational expenses from family financial resources. For dependent students, the EFC is derived from an assessment of the parents' adjusted available income (AAI). For independent students with dependents other than a spouse, the EFC is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which considers both income and assets.

The parents' contribution for a dependent student is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than −$3,409	−$750
−$3,409 to $13,400	22% of AAI
$13,401 to $16,800	$2,948 + 25% of AAI over $13,400
$16,801 to $20,200	$3,798 + 29% of AAI over $16,800
$20,201 to $23,700	$4,784 + 34% of AAI over $20,200
$23,701 to $27,100	$5,974 + 40% of AAI over $23,700
$27,101 or more	$7,334 + 47% of AAI over $27,100

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than −$3,409	−$750
−$3,409 to $13,400	22% of AAI
$13,401 to $16,800	$2,948 + 25% of AAI over $13,400
$16,801 to $20,200	$3,798 + 29% of AAI over $16,800
$20,201 to $23,700	$4,784 + 34% of AAI over $20,200
$23,701 to $27,100	$5,974 + 40% of AAI over $23,700
$27,101 or more	$7,334 + 47% of AAI over $27,100

5. *Employment Expense Allowance.* This allowance for employment-related expenses, which is used for the parents of dependent students and for married independent students, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-worker family compared to a one-worker family for food away from home, apparel, transportation, and household furnishings and operations.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $3,200 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* The allowance for State and other taxes protects a portion of the parents' and students' income from being considered available for postsecondary educational expenses.

There are four categories for State and other taxes, one each for parents of dependent students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse. Section 478(g) of the HEA directs the Secretary to update the tables for State and other taxes after reviewing the Statistics of Income file data maintained by the Internal Revenue Service.

State	Parents of dependents and independents with dependents other than a spouse		Dependents and independents without dependents other than a spouse
	Under $15,000 (Percent)	$15,000 & up (Percent)	All (Percent)
Alabama	3	2	2
Alaska	2	1	0
Arizona	4	3	2
Arkansas	4	3	3
California	7	6	4
Colorado	4	3	3
Connecticut	7	6	4
Delaware	4	3	3
District of Columbia	7	6	6
Florida	2	1	0
Georgia	5	4	3
Hawaii	4	3	3
Idaho	5	4	3
Illinois	5	4	2
Indiana	4	3	2
Iowa	5	4	3
Kansas	5	4	3
Kentucky	5	4	4
Louisiana	2	1	2
Maine	6	5	3
Maryland	7	6	5
Massachusetts	6	5	4
Michigan	5	4	3
Minnesota	6	5	4
Mississippi	3	2	2
Missouri	5	4	3
Montana	5	4	3
Nebraska	5	4	3
Nevada	2	1	1
New Hampshire	4	3	1
New Jersey	8	7	4
New Mexico	4	3	3
New York	8	7	5
North Carolina	6	5	4
North Dakota	2	1	1
Ohio	6	5	4
Oklahoma	4	3	3
Oregon	8	7	5
Pennsylvania	5	4	3
Rhode Island	7	6	4
South Carolina	5	4	3

State	Parents of dependents and independents with dependents other than a spouse		Dependents and independents without dependents other than a spouse
	Under $15,000 (Percent)	$15,000 & up (Percent)	All (Percent)
South Dakota	1	0	0
Tennessee	1	0	0
Texas	2	1	0
Utah	5	4	3
Vermont	6	5	3
Virginia	5	4	3
Washington	2	1	0
West Virginia	3	2	2
Wisconsin	7	6	4
Wyoming	1	0	0
Other	3	2	3

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.268 William D. Ford Federal Direct Loan Program; 84.375 Academic Competitiveness Grant; 84.376 National Science and Mathematics Access to Retain Talent Grant)

Dated: May 25, 2006.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. E6–8403 Filed 5–30–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, June 15, 2006, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (859) 219–4001.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

5:30 p.m. Informal Discussion.
6 p.m. Call to Order, Introductions, Review of Agenda, Approval of May Minutes.
6:15 p.m. Deputy Designated Federal Officer's Comments.
6:35 p.m. Federal Coordinator's Comments.
6:40 p.m. Ex-officios' Comments.
6:50 p.m. Public Comments and Questions.
7 p.m. Task Forces/Presentations.
- Southwest Plume Site Investigation.
- Status of Land Acquisition Study.
- Water Disposition/Water Quality Task Force.

8 p.m. Public Comments and Questions.
8:10 p.m. Break.
8:20 p.m. Administrative Issues.
- Preparation for July Presentation.
- Budget Review.
- Review of Work Plan.
- Review of Next Agenda.

8:30 p.m. Review of Action Items.
8:35 p.m. Subcommittee Report.
- Executive Committee—Chairs Meeting Review.

8:50 p.m. Final Comments.
9 p.m. Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday through Friday or by writing to David Dollins, Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on May 25, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–8394 Filed 5–30–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–361–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 23, 2006.

Take notice that on May 17, 2006, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets attached to Appendix B to the filing, with an effective date of November 1, 2008.

Maritimes states that it is also filing a negotiated rate letter agreement and a firm service agreement under Rate Schedule MN365, attached to Appendix A to the filing, both will become effective November 1, 2008, or the date on which service commences on Maritimes' Phase IV Project facilities.

Maritimes states that copies of its filing have been mailed or, if requested, emailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8332 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–231–002]

Norstar Operating, LLC v. Columbia Gas Transmission Corporation; Notice of Compliance Filing

May 24, 2006.

Take notice that on May 22, 2006, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, pro forma tariff sheet, Second Revised Sheet No. 407.

Columbia states that this filing is being made pursuant to Ordering Paragraph B of the Commission's April 21, 2006 order in the captioned docket, 115 FERC ¶ 61,094 (2006).

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8337 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–72–001]

Northern Border Pipeline Company; Notice of Compliance Filing

May 23, 2006.

Take notice that on May 3, 2006, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective May 1, 2006:

Substitute Third Revised Sheet No. 102A
Substitute Fifth Revised Sheet No. 103
Substitute Seventh Revised Sheet No. 105
Substitute Fourth Revised Sheet No. 106
Substitute First Revised Sheet No. 270A

Northern Border states that this filing is being made to comply with the Commission's Order issued on April 28, 2006 in Docket No. RP06–72–000, et al. (115 FERC ¶ 61,126).

Northern Border states that copies of the filing have been sent to all parties of record in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8326 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–302–001]

Northern Natural Gas Company; Notice of Compliance Filing

May 24, 2006.

Take notice that on May 22, 2006, Northern Natural Gas Company (Northern) tendered for filing information regarding certain non-conforming service agreements, in compliance with the Commission's May 5, 2006 order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8338 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–353–001]

Northern Natural Gas Company; Notice of Supplemental Filing

May 24, 2006.

Take notice that on May 19, 2006, Northern Natural Gas Company (Northern) tendered for filing the non-conforming service agreement and the redlined service agreement highlighting the non-conforming provisions. Northern states that the service agreement was inadvertently omitted from the May 8, 2006 filing in this docket.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 31, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8339 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–363–000]

Sabine Pipe Line LLC; Notice of Proposed Changes in FERC Gas Tariff

May 24, 2006.

Take notice that on May 19, 2006, Sabine Pipe Line LLC (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Attachment A to the filing, with a proposed effective date of June 19, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that

document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8341 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–746–000; ER06–746–001; ER06–747–000; ER06–747–001; ER06–748–000; ER06–748–001; ER06–763–000; ER06–763–001]

Equilon Enterprises LLC dba Shell Oil Products US, (Los Angeles QF); Equilon Enterprises LLC dba Shell Oil Products US, (Martinez QF); Shell Chemical LP; Motiva Enterprises LLC; Notice of Issuance of Order

May 23, 2006.

Equilon Enterprises LLC dba Shell Oil Products US—Los Angeles QF, Equilon Enterprises LLC DBA Shell Oil Products US—Martinez QF, Shell Chemical LP and Motiva Enterprises LLC (Shell Companies) filed applications for market-based rate authority, with accompanying tariffs. The proposed market-based rate tariffs provide for the sale of energy, capacity and ancillary services at market-based rates. The Shell Companies also requested waiver of various Commission regulations. In particular, the Shell Companies requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by the Shell Companies.

On May 22, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by the Shell Companies should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is June 21, 2006.

Absent a request to be heard in opposition by the deadline above, the Shell Companies are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the Shell Companies, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of the Shell Companies' issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8333 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–364–000]

Trailblazer Pipeline Company; Notice of Revenue Crediting Report

May 24, 2006.

Take notice that on May 19, 2006, Trailblazer Pipeline Company (Trailblazer) tendered for filing its Penalty Revenue Report. Trailblazer states that the purpose of this filing is to inform the Commission that Trailblazer collected no penalty revenues in quarter ended March 31, 2006.

Trailblazer states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the

Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time May 31, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8335 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–362–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 24, 2006.

Take notice that on May 18, 2006, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective June 18, 2006:

Third Revised Sheet No. 123
Fifth Revised Sheet No. 135F
Fourth Revised Sheet No. 283
Fifth Revised Sheet No. 312
Tenth Revised Sheet No. 313
Tenth Revised Sheet No. 322

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8340 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–802–000]

United Wisdom Energy, LLC; Notice of Issuance of Order

May 23, 2006.

United Wisdom Energy, LLC (UWE) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, and capacity. UWE also requested waiver of various Commission regulations. In particular, UWE requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by UWE.

On May 22, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by UWE should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is June 21, 2006.

Absent a request to be heard in opposition by the deadline above, UWE is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of UWE, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of UWE's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8327 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

May 22, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER98–4515–008.

Applicants: Cadillac Renewable Energy LLC.

Description: Cadillac Renewable Energy, LLC submits a notification of a non-material change in status related to market rate authority in compliance with the reporting requirements of order 652.

Filed Date: May 4, 2006.

Accession Number: 20060517–0026.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER01–316–020.

Applicants: ISO New England Inc.

Description: ISO New England, Inc submits its Index of Customers for the first quarter of 2006 in response to the Commission's letter order issued June 1, 2001.

Filed Date: May 1, 2006.

Accession Number: 20060517–0024.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER04–230–024; ER01–3155–016; ER01–1385–025; EL01–45–024.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits its Seventh Quarterly Report.

Filed Date: May 9, 2006.

Accession Number: 20060509–5024.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER05–515–002.

Applicants: Atlantic City Electric Company.

Description: Atlantic City Electric Company submits its 2006 Formula Rate Annual Update pursuant to Settlement Agreement issued April 19, 2006.

Filed Date: May 15, 2006.

Accession Number: 20060515–5005.

Comment Date: 5 p.m. Eastern Time on Monday, June 5, 2006.

Docket Numbers: ER05–515–003.

Applicants: Delmarva Power & Light Company.

Description: Delmarva Power & Light Company submits its 2006 Formula Rate Annual Update pursuant to Settlement Agreement issued April 19, 2006.

Filed Date: May 15, 2006.

Accession Number: 20060515–5007.

Comment Date: 5 p.m. Eastern Time on Monday, June 5, 2006.

Docket Numbers: ER05–515–004.

Applicants: Baltimore Gas and Electric Company.

Description: Baltimore Gas and Electric Company submits its 2006 Formula Rate Annual Update pursuant to Settlement Agreement issued April 19, 2006.

Filed Date: May 15, 2006.

Accession Number: 20060515–5037.

Comment Date: 5 p.m. Eastern Time on Monday, June 5, 2006.

Docket Numbers: ER05–515–006.

Applicants: Potomac Electric Power Company.

Description: Potomac Electric Power Company submits its 2006 Formula Rate Annual Update pursuant to Settlement Agreement issued April 19, 2006.

Filed Date: May 15, 2006.

Accession Number: 20060515–5009.

Comment Date: 5 p.m. Eastern Time on Monday, June 5, 2006.

Docket Numbers: ER05–636–004.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc submits its Large Generator Interconnection Agreement among itself, Columbia Community Windpower LLC and American Transmission Company, LLC.

Filed Date: May 8, 2006.

Accession Number: 20060517–0017.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER05–652–006; RT04–1–021; ER05–109–005; ER04–48–021.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits its compliance filing providing for a revision to its Open Access Transmission Tariff.

Filed Date: May 8, 2006.

Accession Number: 20060517–0016.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER05–1352–003; RT04–1–020; ER04–48–020.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits its compliance filing revising its Bylaws to establish a process for providing waivers of annual membership fees.

Filed Date: May 5, 2006.

Accession Number: 20060517–0018.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–477–001.

Applicants: Aquila Networks, L&P, Aquila, Inc.

Description: Aquila, Inc dba Aquila Networks, L&P submits a redesignated Facilities Modifications and Construction Agreement for Cooper South Flowgate Upgrades pursuant to FERC's March 7, 2006order.

Filed Date: May 8, 2006.

Accession Number: 20060517–0023.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–933–001.

Applicants: ZZ Corporation.

Description: ZZ Corporation submits its petition for acceptance of initial tariff (FERC Electric Tariff, Original Volume 1), waivers and blanket authority.

Filed Date: May 10, 2006.

Accession Number: 20060517–0029.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 31, 2006.

Docket Numbers: ER06–989–000.

Applicants: American Electric Power Service Corp.

Description: American Electric Power Service Corp as agent for Ohio Power Co and Columbus Southern Power Company submit their fourth revision to the Interconnection & Local delivery Agreement with Buckeye Power, Inc.

Filed Date: May 10, 2006.

Accession Number: 20060517–0030.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 31, 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.

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(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8323 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 23, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER01–48–006.

Applicants: Powerex Corp.

Description: Powerex Corp. submits a notice of a non-material change in status with respect to events that have taken place since the date of its last change in status filing.

Filed Date: May 12, 2006.

Accession Number: 20060519–0127.

Comment Date: 5 p.m. Eastern Time on Friday, June 2, 2006.

Docket Numbers: ER01–1760–005.

Applicants: Haleywest L.L.C.

Description: Haleywest L.L.C. submits an amendment to its March 27, 2006 compliance filing for its market-based rate schedule pursuant to FERC's February 2, 2006 Order.

Filed Date: May 9, 2006.

Accession Number: 20060519–0063.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER01–2214–007.

Applicants: Entergy Services Inc.

Description: Entergy Services, Inc. acting as agent for Entergy Operating Companies submits a refund report related to refunds ordered by FERC.

Filed Date: May 11, 2006.

Accession Number: 20060519–0157.

Comment Date: 5 p.m. Eastern Time on Thursday, June 1, 2006.

Docket Numbers: ER01–3103–012; ER04–617–001; ER04–809–001; ER99–3911–004; ER02–1884–004; ER99–3502–005.

Applicants: Energy Investors Funds Group LLC; Project Finance Fund III, L.P., United States Power Fund L.P.; United States Power Fund II, L.P.; USPF II Institutional Fund, L.P.

Description: Energy Investors Funds Group LLC et al. submit a Notice of Change in Status to reflect various changes in upstream ownership.

Filed Date: May 15, 2006.

Accession Number: 20060519–0118.

Comment Date: 5 p.m. Eastern Time on Monday, June 5, 2006.

Docket Numbers: ER06–685–002.

Applicants: UGI Development Company.

Description: UGI Utilities, Inc. submits an amendment to its March 28, 2006 compliance filing.

Filed Date: May 11, 2006.

Accession Number: 20060519–0089.

Comment Date: 5 p.m. Eastern Time on Thursday, June 1, 2006.

Docket Numbers: ER03–693–003.

Applicants: ISG Sparrows Point LLC.

Description: ISG Sparrows Point LLC submits its triennial updated power market analysis in compliance with FERC's order issued May 7, 2003 *et al.*

Filed Date: May 9, 2006.

Accession Number: 20060519–0062.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–974–000.

Applicants: MEP Flora Power, LLC.

Description: Aquila Merchant Services, Inc on behalf of MEP Flora Power, LLC. submits a notice of cancellation of its Rate Schedule FERC No. 1 and on May 10, 2006 submitted an errata to its May 9, 2006 filing.

Filed Dates: May 9, 2006 and May 10, 2006.

Accession Numbers: 20060518–0202 and 20060515–0004.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–990–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corp. submits amendments to update the FERC Form 1 references in its formula rates for the W–1A and W–2A Tariffs and Rate Schedule No. 51.

Filed Date: May 11, 2006.

Accession Number: 20060519–0087.

Comment Date: 5 p.m. Eastern Time on Thursday, June 1, 2006.

Docket Numbers: ER06–991–000.

Applicants: Texas Power Marketer.

Description: Texas Power Marketer submits its petition for acceptance of initial rate schedule, waivers and blanket authority.

Filed Date: May 11, 2006.

Accession Number: 20060519–0122.

Comment Date: 5 p.m. Eastern Time on Thursday, June 1, 2006.

Docket Numbers: ER06–992–000.

Applicants: Otter Tail Power Company.

Description: Otter Tail Power Co. submits its Contract for Interconnection and Load Control Boundary Agreement with Western Area Power Administration.

Filed Date: May 11, 2006.

Accession Number: 20060519–0123.

Comment Date: 5 p.m. Eastern Time on Thursday, June 1, 2006.

Docket Numbers: ER06–993–000.

Applicants: Orion Power MidWest, L.P.

Description: Orion Power MidWest, L.P. submits tariff sheets to implement Cost of Service Recovery Rates for the 244 megawatt combined cycle generating facility at its Brunot Island generating station.

Filed Date: May 15, 2006.

Accession Number: 20060519–0086.

Comment Date: 5 p.m. Eastern Time on Monday, June 5, 2006.

Docket Numbers: ER06–994–000; ER06–995–000.

Applicants: Western Kentucky Energy Corp.; LG&E Energy Marketing Inc.

Description: Western Kentucky Energy Corp. submits notice of succession and LG&E Energy Marketing Inc. submits notice of cancellation of Rate Schedule No. 40.

Filed Date: May 15, 2006 and May 16, 2006.

Accession Number: 20060519–0155.

Comment Date: 5 p.m. Eastern Time on Monday, June 5, 2006.

Docket Numbers: ER06–996–000.

Applicants: Public Service Electric & Gas Company.

Description: Public Service Electric & Gas Co. submits four Interconnection Agreements with Camden Cogen, LP *et al.*

Filed Date: May 16, 2006.

Accession Number: 20060519–0091.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 6, 2006.

Docket Numbers: ER06–997–000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co. submits a proposed Restated Power Service Agreement with Alger Delta Cooperative Association and on May 15, 2006 submitted the original signed Certificate of Attestation to this filing.

Filed Date: May 12, 2006 and May 15, 2006.

Accession Number: 20060519–0090.

Comment Date: 5 p.m. Eastern Time on Friday, June 2, 2006.

Docket Numbers: ER06–998–000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co. submits its proposed Restated Power Service Agreement w/City of Crystal Falls, Michigan and on May 15, 2006 submitted the original signed Certificate of Attestation to this filing.

Filed Dates: May 12, 2006 and May 15, 2006.

Accession Numbers: 20060519–0145 and 20060519–0144.

Comment Date: 5 p.m. Eastern Time on Friday, June 2, 2006.

Docket Numbers: ER06–999–000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co. submits its proposed Restated Power Service Agreement w/Ontonagon County Electrification Association and on May 15, 2006 submitted the original signed Certificate of Attestation to this filing.

Filed Dates: May 12, 2006 and May 15, 2006.

Accession Numbers: 20060519–0139 and 20060519–0138.

Comment Date: 5 p.m. Eastern Time on Friday, June 2, 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.

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Magalie R. Salas,

Secretary.

[FR Doc. E6–8324 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

May 23, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER05–6–065; EL04–135–067; EL02–111–085; EL03–212–081.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: PJM Transmission Owners submits revised tariff sheets to its April 24, 2006 filing.

Filed Date: May 16, 2006.

Accession Number: 20060519–0121.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 6, 2006.

Docket Numbers: ER05–1452–002.

Applicants: Duke Power Company LLC.

Description: Duke Power Company LLC submits an amendment to its Second Revised Service Agreement No. 342 and Affected System Operating Agreement.

Filed Date: May 16, 2006.

Accession Number: 20060519–0088.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 6, 2006.

Docket Numbers: ER06–191–002; ER06–193–002.

Applicants: ISO New England Inc.; New England Participating Transmission Owners; Maine Electric Power Company; New England Power Pool Participants Committee.

Description: ISO New England, Inc. et al. submit modifications to parts of Schedules 22 & 23 of the OATT, *et al.*

Filed Date: May 15, 2006.

Accession Number: 20060519–0158.

Comment Date: 5 p.m. Eastern Time on Monday, June 5, 2006.

Docket Numbers: ER06–593–002.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits the revised agreement as Exhibit I and II to the executed Agreement to Sponsor Facilities Upgrades with Redbud Energy, LP *et al.* filed on April 26, 2006 pursuant to Order 614.

Filed Date: May 17, 2006.

Accession Number: 20060519–0066.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 2006.

Docket Numbers: ER06–796–001.

Applicants: Emera Energy U.S. Subsidiary No. 2, Inc.

Description: Emera Energy U.S. Subsidiary 2, Inc. submits a letter clarifying its March 29, 2006 filing.

Filed Date: May 15, 2006.

Accession Number: 20060519–0117.

Comment Date: 5 p.m. Eastern Time on Monday, June 5, 2006.

Docket Numbers: ER06–878–001.

Applicants: MMC Chula Vista LLC.

Description: MMC Chula Vista LLC submits a replacement for Attachment A & B to its market-based rate application and tariff sheets for FERC Electric Tariff, Original Volume No. 1.

Filed Date: May 17, 2006.

Accession Number: 20060519–0065.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 2006.

Docket Numbers: ER06–879–001.

Applicants: MMC Escondido LLC.

Description: MMC Escondido LLC submits a replacement for Attachment A & B to its market-based rate application and tariff sheets for FERC Electric Tariff, Original Volume No. 1.

Filed Date: May 17, 2006.

Accession Number: 20060519–0064.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 2006.

Docket Numbers: ER06–891–001.

Applicants: Gauley River Power Partners, L.P.

Description: Gauley River Power Partner, L.P. submits an errata to its notice of cancellation filed on April 27, 2006.

Filed Date: May 17, 2006.

Accession Number: 20060519–0067.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 2006.

Docket Numbers: ER06–1000–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services Inc. on behalf of Entergy Operating Companies submits revisions to Schedule 2 of its OATT.

Filed Date: May 12, 2006.

Accession Number: 20060512–4007.

Comment Date: 5 p.m. Eastern Time on Friday, June 2, 2006.

Docket Numbers: ER06–1001–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc. submits proposed revisions to Schedule 10 of its OAT&EM Tariff, Third Revised Volume No. 1.

Filed Date: May 12, 2006.

Accession Number: 20060519–0058.

Comment Date: 5 p.m. Eastern Time on Friday, June 2, 2006.

Docket Numbers: ER06–1002–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits its first Capital Projects Report and the schedule of the unamortized costs of its funded capital expenditures for the first Quarter of 2006.

Filed Date: May 15, 2006.

Accession Number: 20060519–0059.

Comment Date: 5 p.m. Eastern Time on Monday, June 5, 2006.

Docket Numbers: ER06–1003–000.

Applicants: Mirant Corporation.

Description: Mirant Americas Energy Marketing, LP submits a notice of cancellation of Third Revised Rate Schedule FERC No. 1.

Filed Date: May 15, 2006.

Accession Number: 20060519–0057.

Comment Date: 5 p.m. Eastern Time on Monday, June 5, 2006.

Docket Numbers: ER06–1004–000.

Applicants: Western Systems Power Pool, Inc.

Description: Western Systems Power Pool Inc. submits its request for FERC to amend its WSPP Agreement to include Cinergy Marketing & Trading LP, Mirant Energy Trading LLC and Old Lane Commodities, LP as members of the WSPP.

Filed Date: May 15, 2006.

Accession Number: 20060519–0056.

Comment Date: 5 p.m. Eastern Time on Monday, June 5, 2006.

Docket Numbers: ER06–1005–000.

Applicants: Avista Corporation.

Description: Avista Corp. dba Avista Utilities submits a non-conforming Long-Term Service Agreement with Morgan Stanley Capital Group, designated as FERC Rate Schedule 471.

Filed Date: May 17, 2006.

Accession Number: 20060519–0055.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 2006.

Docket Numbers: ER06–1006–000.

Applicants: International Transmission Company; Midwest Independent Transmission Operator, Inc.

Description: International Transmission Co. et al. submits revised tariff sheets to Midwest ISO's Open Access Transmission and Energy Market Tariff, FERC Electric Tariff, Third Revised Volume 1, to become effective July 1, 2006.

Filed Date: May 17, 2006.

Accession Number: 20060519–0053.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 2006.

Docket Numbers: ER06–1007–000.

Applicants: IEP Power Marketing LLC.

Description: IEP Power Marketing LLC submits a Petition for Acceptance of Initial Waiver and Blanket Authority of FERC Electric Tariff, Original Volume No. 1.

Filed Date: May 17, 2006.

Accession Number: 20060519–0051.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 2006.

Docket Numbers: ER06–1008–000.

Applicants: Southern Company Services, Inc.; Alabama Power Company

Description: Southern Company Services, Inc., agent for Alabama Power Co, submits a notice of cancellation of their Interconnection Agreement with Mobile Energy Services Co. designated as Service Agreement 465.

Filed Date: May 17, 2006.

Accession Number: 20060519–0052.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 2006.

Docket Numbers: ER06–1009–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co. submits 4 interconnection agreements with the City of Vernon, CA.

Filed Date: May 17, 2006.

Accession Number: 20060519–0017.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 2006.

Docket Numbers: ER06–1010–000.

Applicants: Southern Company Services, Inc.; Alabama Power Company

Description: Southern Company Services, Inc., agent for Alabama Power Co., submits a notice of cancellation of Interconnection Agreement w/Lone Oak Energy Center etc.

Filed Date: May 17, 2006.

Accession Number: 20060519–0050.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 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.

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Magalie R. Salas,

Secretary.

[FR Doc. E6–8325 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–120–000, et al.]

Duke Energy Trading and Marketing, L.L.C., et al.; Electric Rate and Corporate Filings

May 23, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Duke Energy Trading and Marketing, L.L.C.; Duke Energy Marketing America, LLC; The Cincinnati Gas & Electric Company d/b/a Duke Energy Ohio, Inc.

[Docket No. EC06–120–000]

Take notice that on May 18, 2006, Duke Energy Trading and Marketing, L.L.C., (DETM), Duke Energy Marketing America, LLC (DEMA) and the Cincinnati Gas & Electric Company d/b/a/ Duke Energy Ohio (Duke Energy Ohio), filed a request pursuant to

section 203 of the Federal Power Act and part 33 of the Commission's regulations, for authorization of a transaction in which DETM and DEMA will transfer to Duke Energy Ohio contracts under which DETM and DEMA sell electric power at wholesale to the unaffiliated third parties.

Comment Date: 5 p.m. Eastern Time on June 8, 2006.

2. Ocean Peaking Power, L.L.C. v. Jersey Central Power & Light Company

[Docket No. EL05–142–002]

Take notice that on May 3, 2006, Jersey Central Power & Light Company (Jersey Central) and Ocean Peaking Power, L.P. (OPP) concluded a Settlement Agreement. Jersey Central states that it will provide a refund to OPP with interest compounded to the date of the Commission's approval of the settlement.

Comment Date: 5 p.m. Eastern Time on June 5, 2006.

3. Ocean Peaking Power, L.L.C. v. Jersey Central Power & Light Company

[Docket No. EL05–142–003]

Take notice that on May 3, 2006, Jersey Central Power & Light Company (Jersey Central) and Ocean Peaking Power, L.L.C. submitted a revised Generation Facility Transmission Interconnection Agreement designated Second Revised Service Agreement No. 604 under the PJM Open Access Transmission Tariff. Jersey Central states that the revised Agreement implements the Settlement Agreement approved by the Commission in the April 3, 2006 letter order in Docket No. EL05–142–000.

Comment Date: 5 p.m. Eastern Time on June 5, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8334 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–121–000, et al.]

American Electric Power Service Corporation, et al.; Electric Rate and Corporate Filings

May 24, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Electric Power Service Corporation

[Docket No. EC06–121–000]

Take notice that on May 19, 2006, American Electric Power Service Corporation (AEP) on behalf of AEP Texas North Company (TNC) and AEP Texas North Generation Company, LLC (TNGC) filed an application pursuant to section 203 of the Federal Power Act seeking an order approving a transaction whereby TNC will transfer the ownership of seven mothballed/retired generation facilities to TNGC, a wholly owned subsidiary of TNC. AEP states that this transaction will enable AEP to comply with the Texas unbundling statutes.

Comment Date: 5 p.m. Eastern Time on June 9, 2006.

2. Interstate Power & Light Company

[Docket No. ER06–587–002]

Take notice that on April 27, 2006, IES Utilities, Inc. FERC Schedule No. RES–4 and the Interstate Power Company, FERC Schedule No. 499 tariff sheets are cancelled April 1, 2006 and July 1, 2006 respectively.

Comment Date: 5 p.m. Eastern Time on May 31, 2006.

3. Intermountain Industries, Inc.

[Docket No. PH06–65–000]

Take notice that on May 17, 2006, Intermountain Industries, Inc. filed a notice of petition for waiver of the Commission's regulations under the Public Utility Holding Company Act of 2005.

Comment Date: 5 p.m. Eastern Time on June 7, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8343 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–480–NC]

Duke Power; A Division of Duke Energy Corporation; Notice of Availability of Environmental Assessment

May 23, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application for non-project use of project lands and waters at the Catawba-Wateree Project (FERC No. 2232), and has prepared an environmental assessment (EA) for the proposed non-project use. The project is located on Lake Wylie in Mecklenburg County, North Carolina.

In the application, Duke Power (licensee) requests Commission authorization to lease to The Sanctuary at Lake Wylie, LLC and The Sanctuary Property Owners Association (The Sanctuary) 0.461 acre of project land for a commercial residential marina. The Sanctuary proposes to construct one cluster dock with ten boat slips and a covered fishing pier located adjacent to the cluster dock, an irrigation intake structure, and install 20,000 feet of shoreline stabilization. The EA contains Commission staff's analysis of the probable environmental impacts of the proposal and concludes that approving the licensee's application, with staff's recommended environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled ''Order Modifying and Approving Non-Project Use of Project Lands and Waters'', issued May 23, 2006. The EA is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the dock number (prefaced by P–2232) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8329 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 20–065]

PacifiCorp; Notice of Availability of Environment Assessment

May 23, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, the Office of Energy Projects has reviewed the application requesting the Commission's authorization to remove its Cove development and reduce the minimum flow required in the bypassed reach of the Grace development. The project is located on the Bear River in Caribou and Franklin Counties, Idaho. An environmental assessment (EA) has been prepared.

In the EA, the Commission's staff concludes that approval of the licensee's application, with adoption of staff's recommendations, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled ''Order Amending License and Revising Annual Charges'', issued May 23, 2006, and is available at the Commission's Public Reference Room. A copy of the EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–20) in the docket field to access the document. For assistance, call (202) 502–8222 or (202) 502–8659 (for TTY).

Magalie R. Salas,

Secretary.

[FR Doc. E6–8328 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–018–000]

Tennessee Gas Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Essex-Middlesex Project

May 24, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed to be constructed by Tennessee Gas Pipeline Company (Tennessee Gas) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of:

- 7.8 miles of 24-inch-diameter pipeline in Essex and Middlesex Counties, Massachusetts;
- One tie-in facility at the northern terminus, milepost 7.83;
- One new pig receiver at the north end, milepost 7.62; and
- One tie-in facility at the southern terminus, milepost 0.0.

The purpose of the proposed project is to increase its ability to receive and transport gas into the Northeast natural gas pipeline network by constructing its facilities in Essex and Middlesex Counties, Massachusetts, to provide up to 82,300 decatherms per day of incremental firm transportation capacity.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502–8371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to

ensure that your comments are received in time and properly recorded:

Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

Label one copy of the comments for the attention of the Gas Branch 2, PJ11.2.

Reference Docket No. CP06–018–000; and

Mail your comments so that they will be received in Washington, DC on or before June 23, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments, you will need to create a free account which can be created by clicking on ''Sign-up.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERCOnlineSupport@FERC.* The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov,* click on ''eSubscription'' and then click on ''Sign-up.''

Magalie R. Salas,

Secretary.

[FR Doc. E6–8342 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06–023]

Gulf South Pipeline Company, LP; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Mississippi Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

May 23, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will address the environmental impacts of the Mississippi Expansion Project proposed by Gulf South Pipeline Company, LP (Gulf South). The Commission will use the EIS in its decision-making process to determine whether or not to authorize the project. This notice explains the scoping process we [1] will use to gather input from the public and interested agencies on the project. Your input will help us determine the issues that need to be evaluated in the EIS. Please note that the scoping period will close on June 23, 2006.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. Public scoping meetings are designed to provide another opportunity to offer comments on the proposed project. In lieu of sending written comments, we invite you to attend the public scoping meetings we have scheduled as follows:

Date and time	Location
Monday June 12, 2006, 7 p.m. to 10 p.m. (CST).	Eagle Ridge Conference Center, 1500 Raymond Lake Road, Raymond, MS 39154. Phone: 601–857–7100.
Tuesday June 13, 2006, 7 p.m. to 10 p.m. (CST).	Vicksburg Convention Center & Auditorium, 1600 Mulberry Street, Vicksburg, MS 39180. Phone: 1–866–822–6338.

Interested groups and individuals are encouraged to attend these meetings and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of each meeting will be generated so that comments are accurately recorded.

This notice is being sent to affected landowners; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a Gulf South representative about the acquisition of an easement to construct, operate, and maintain the proposed project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings.

Summary of the Proposed Project

Gulf South proposes to construct, own, operate, and maintain a natural gas pipeline to provide new pipeline capacity to transport domestic onshore gas supplies to producers in eastern

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

Texas and northern Louisiana with an outlet for a significant portion of their production from the Barnett Shale, Bossier Sand, and other fields. The Mississippi Expansion Project would also provide additional transportation option for natural gas delivered into the north central Louisiana area. The Mississippi Expansion Project facilities would be located in Richland and Madison Parishes, Louisiana, and in Warren, Hinds, Copiah, and Simpson Counties, Mississippi.[2] The general location of the proposed pipeline is shown in the figure included as Appendix 1.[3]

The Mississippi Expansion Project facilities under FERC jurisdiction would include:

- An approximately 88.7-mile-long, 42-inch-diameter natural gas pipeline from Gulf South's East Texas Expansion Facility near Delhi in Richland Parish, Louisiana, to an interconnection with Gulf South's existing Index 130 transportation pipeline in Simpson County, Mississippi.
- A new 40,311 horsepower (hp) Tallulah Compressor Station at approximate milepost (MP) 18.4 in Madison Parish, Louisiana.
- Two meter and regulator stations at receipt points with two intrastate pipelines, including:

—Texas Eastern M&R Station at MP 70.9 in Warren County, Mississippi.
—Gulf South M&R Station at the proposed pipeline's terminus with Gulf South's Index 130 Pipeline at MP 88.7 in Simpson County, Mississippi.

- Five mainline valves and two launcher/receiver sites.

The project would be designed and constructed to receive and transport about 1.5 billion cubic feet of natural gas per day. Gulf South proposes to have the project constructed and operational by September 2007.

Land Requirements for Construction

As proposed, the typical construction right-of-way for the project pipeline would be 100 feet wide. Following construction, Gulf South would retain a 60-foot-wide permanent right-of-way for operation of the project. Additional, temporary extra workspaces beyond the typical construction right-of-way limits would be required at certain feature crossings (e.g., roads, railroads, wetlands, or waterbodies), in areas with steep side slopes, or in association with special construction techniques.

Based on preliminary information, construction of the proposed project facilities would affect a total of about 1,228 acres of land. Following construction, about 645 acres would be maintained as permanent right-of-way, and about 12.3 acres of land would be maintained as new aboveground facility sites. The remaining 571 acres of temporary workspace (including all temporary construction rights-of-way, extra workspaces, and pipe storage and contractor yards) would be restored and allowed to revert to its former use.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action when it considers whether or not an interstate natural gas pipeline should be approved. The FERC will use the EIS to consider the environmental impact that could result if the Gulf South project is authorized under section 7 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public may have about proposals to be considered by the Commission. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. With this Notice of Intent (NOI), the Commission staff is requesting public comments on the scope of the issues to be addressed in the EIS. All comments received will be considered during preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources;
- Wetlands and vegetation;
- Fish and wildlife;
- Threatened and endangered species;
- Cultural resources;
- Land use, recreation, and visual resources;
- Socioeconomics;
- Air quality and noise;
- Reliability and safety;
- Alternatives; and
- Cumulative impacts.

In the EIS, we will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on affected resources.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; commentors; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. We will consider all comments on the final EIS before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this notice.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under its NEPA Pre-filing Process. The purpose of the Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

With this notice, we are asking federal, state, and local governmental agencies with jurisdiction and/or special expertise with respect to environmental issues to express their interest in becoming cooperating agencies for the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should send a letter expressing that interest and expected level of involvement to the Secretary of the Commission at the address provided in the public participation section of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities, the environmental information provided by Gulf South, and early input from intervenors. This preliminary list of issues may be changed based on your comments and our analysis.

Geology and Soils:

Potential impacts to fossil fuel and non-fossil fuel mineral resources.
—Impacts on agricultural, prime farmland, and pastureland soils.

[2] FERC staff is currently reviewing another Gulf South project, the Texas East Expansion Project (under pre-filing Docket No. PF06–017–000), that would bring natural gas from Texas to the starting point of the Mississippi Expansion Project.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the Public Participation section of this mail notice. Copies of the appendices were sent to all those receiving this notice in the. Request for detailed maps of the proposed facilities should be made directly to Gulf South.

—Impacts on Conservation Reserve Program and Wetland Reserve Program soils.
—Impacts on unconsolidated soils with severe erosion potential.

Water Resources and Wetlands:

—Potential effects on groundwater resources.
—Impacts on ephemeral, intermittent and perennial streams, including the Bayou Macon, Joes Bayou, Tensas River, Bayou Despair, Mothiglam Bayou, Brushy Bayou, Walnut Bayou, Big Black River, and Pearl River. Potential impacts on waterbodies greater than 100 feet in width including the Mississippi River.
—Impacts on wetlands.

Vegetation and Wildlife:

—Impacts on vegetation.
—Impacts on wildlife, wildlife habitat, and fisheries.
—Potential impacts on federally and state-listed threatened and endangered species.
—Potential impacts to the Tensas National Wildlife Refuge.

Cultural Resources:

—Impacts on archaeological sites and other historic properties.

Land Use, Recreation, and Visual Resources:

—Potential impacts to existing land uses, including residences, suburban housing developments, cemeteries, agricultural lands, orchards, and managed forested lands.
—Visual effects of the proposed Tallulah Compressor Station and M&R Stations on surrounding areas.
—Potential impacts on the Natchez Trace Parkway.

Socioeconomics:

—Potential impacts and benefits of construction workforce on local housing, infrastructure, public services and economy.

Air and Noise Quality:

—Effects on air and noise quality from construction and operation of the Tallulah Compressor Station.

Reliability and Safety:

—Public safety and potential hazards associated with the transport of natural gas.

Alternatives:

—Assessment of route variations and route alignments to reduce or avoid environmental impacts.

Cumulative Impacts:

—Assessment of the effect of the proposed project when combined with other past, present, or reasonably foreseeable future actions in the project area

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposed project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please carefully follow these instructions:

• Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

• Label one copy of your comments for the attention of Gas Branch 2, DG2E.

• Reference Docket No. PF06–023 on the original and both copies.

• Mail your comments so that they will be received in Washington, DC on or before June 23, 2006.

The Commission strongly encourages electronic filing of any comments in response to this Notice of Intent. For information on electronically filing comments, please see the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide, as well as information in 18 CFR 385.2001(a)(1)(iii). Before you can submit comments you will need to create a free account, which can be created on-line.

Once Gulf South formally files its application with the Commission, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you received this notice, you are on the environmental mailing list for this project. If you do not want to send comments at this time, but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be removed from the Commission's environmental mailing list.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary link.'' Click on the eLibrary link, select ''General Search'' and enter the project docket number excluding the last three digits (i.e., PF06–23) in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, Gulf South has established an Internet Web site for this project: *http://www.gulfsouthpl.com/*. You can also request additional information or provide comments directly to Gulf South at 1–877/972–8533 or Stephens,

Kyle (Gulf South) *kyle.stephens@gulfsouthpl.com.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–8330 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions to Intervene

May 24, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12634–000.

c. *Date Filed:* January 3, 2006.

d. *Applicant:* Alaska Power & Telephone Company.

e. *Name and Location of Project:* The proposed Connelly Lake Hydroelectric Project would be located at the existing Connelly Lake on an unnamed tributary of the Chilkoot River in Haines Borough, Alaska, partially on Federal lands administered by the Bureau of Land Management.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Robert S. Grimm, President, Alaska Power & Telephone Co., P.O. Box 3222, Port Townsend, WA 98368, (360) 385–1733 x120.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12634–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Proposed Project:* The proposed project would operate as a storage project and would consist of the following new facilities: (1) A proposed 48-foot-high, 575-foot-long rockfill dam at the Lake outlet, (2) Connelly Lake, which would have a minimum water surface elevation of 2,280 feet above mean sea level (msl), its current level, and a maximum water surface elevation of 2,312 feet msl, (3) a screened intake structure at elevation 2,270 feet msl, (4) a 6,188-foot-long, 48-inch-diameter penstock, which connects to a valve house with an auxiliary release adjacent to the dam, then decreases to a 30-inch-diameter penstock, (5) a powerhouse containing one generating unit with an installed capacity of 6.2 megawatts, (6) a 14-mile-long, 34.5-kilovolt underground transmission line connecting to an existing power line; and (7) appurtenant facilities. The project would have an annual generation of 23 GWh.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-

filing'' link. The Commission strongly encourages electronic filing.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8336 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

May 22, 2006.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Date received	Presenter or requester
Prohibited:		
1. ER00–2268–011, EL05–10–003, ER99–4124–009, EL05–11–003, ER00–3312–010, EL05–12–003, ER99–4122–012, EL05–13–003.	5–17–06	Kenneth R. Saline.[1]
Exempt:		
1. CP98–150–006/007	5–17–06	Jennifer Kerrigan.
2. CP06–12–000, *et al.*	5–17–06	Daniel T. Gregg.
3. CP06–54–000, CP06–55–000	5–17–06	James Martin.
4. EL05–121–000	5–17–06	Hon. Jon W. McKinney. Hon. Edward H. Staats. Hon. R. Michael Shaw.
5. Project No. 2603–012	5–17–06	Chris Goodreau.
6. Project No. 2630–000	5–17–06	Arianne Poindexter.
7. Project No. 11858–002	5–17–06	W. Davis Smith.
8. Project No. 11858–002	5–17–06	Pat Weslowsk. Jot Splenda.
9. Project No. 11858–002	5–19–06	Tolga Yetis.

[1] One of two e-mails sent on April 25, 2006, from Mr. Saline.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8331 Filed 5–30–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0285; FRL–8070–1]

Notice of Requests to Voluntarily Cancel Certain Pesticide Registrations; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 28, 2005, EPA issued a Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations. That Notice did not explicitly provide for a 30–day period in which the public may comment, in accordance with section 6(f)(1)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. Accordingly, EPA is reopening the comment period for 30 days to allow the public to comment on any requests for voluntary cancellation listed in the October 28, 2005 Notice.

DATES: Comments on the October 28, 2005 Notice must be received by June 30, 2006.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0285. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

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

II. What Action is the Agency Taking?

On October 28, 2005, EPA issued a notice announcing the receipt by EPA of applications from registrants to cancel certain pesticide products registered under section 3 or section 24(c) of FIFRA. (See 70 FR 62112, October 28,2005)(FRL–7743–6). Those registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of that Notice. Table 2 of that Notice includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

Under FIFRA section 6(f)(1)(B), EPA must ''provide for a 30–day period in which the public may comment'' before acting on any request to cancel or amend a pesticide registration submitted under section 6(f)(1)(A). Although the October 28, 2005 Notice allowed registrants 180 days to withdraw any requests for voluntary cancellation, it did not explicitly refer to a 30–day public comment period. Therefore, EPA is issuing this notice to provide specifically for a public comment period on the requests for voluntary cancellation contained in the October 28, 2005 Notice. EPA will not issue any cancellation orders for any products contained in the October 28, 2005 Notice before June 30, 2006.

Because FIFRA section 6(f)(1)(A) allows a registrant to request cancellation of its pesticide registrations at any time, users or anyone else desiring retention of those pesticides listed in the October 28, 2005 Notice may want to contact the applicable registrant in Table 2 of the October 28, 2005 Notice directly to request that the registrant retain the pesticide registration or to discuss the possibility of transferring the registration. A user seeking to apply for its own registration of that pesticide may submit comments requesting EPA not to cancel a registration until its ''me-too'' registration is granted.

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** and provide for a 30–day period in which the public may comment. Thereafter, the Administrator may approve such a request.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 18, 2006.

Robert Forrest

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. E6–8144 Filed 5–30–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0368; FRL–8068–9]

Notice of Filing of a Pesticide Petition for Establishment of an Exemption from the Requirement of Tolerances for Residues of Poly(2-Ethylhexyl Acrylate/2-Hydroxyethyl Acrylate/N-(Hydroxymethyl)-2-Methylacrylamide/ Methacrylic Acid/Methyl Methacrylate/ Styrene, Ammonium Salt in or on Various Food Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of an exemption from the requirement of tolerances for residues of poly(2-ethylhexyl acrylate/2-hydroxyethyl acrylate/N-(hydroxymethyl)-2-methylacrylamide/methacrylic acid/ methyl methacrylate/styrene, ammonium salt in or on various commodities when used as an inert in pesticide products.

DATES: Comments must be received on or before June 30, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0368, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0368. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-8380; e-mail address: *gandhi.bipin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

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

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C.346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the

docket for the pesticide including the petition summary.

New Exemption from Tolerance

PP 6E7063. IE. I. du Pont de Nemours & Company, Inc., 1007 Market St., Wilmington, DE 19898, proposes to establish an exemption from the requirement of tolerances for residues of the inert poly(2-ethylhexyl acrylate/2-hydroxyethyl acrylate/N-(hydroxymethyl)-2-methylacrylamide/methacrylic acid/methyl methacrylate/styrene, ammonium salt in or on food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 16, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–8145 Filed 5–30–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0397; FRL–8069–3]

TSCA Section 21 Petition; Notice of Receipt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of a petition submitted by the Sierra Club and requests comments on issues raised by the petition. The petitioner is concerned about the risks of toy jewelry containing lead and requests that EPA take four actions under the Toxic Substances Control Act (TSCA). The petitioner requests that EPA: (1) Require TSCA section 8(d) health and safety data reporting; (2) submit a report to the Consumer Product Safety Commission (CPSC) under TSCA section 9; (3) issue a significant new use rule pursuant to TSCA section 5; and (4) issue quality control orders under TSCA section 6(b). Of the actions requested by the petitioner, TSCA section 21 applies only to requests for actions under TSCA sections 6(b) and 8(d). The Agency must either grant or deny a section 21 petition within 90 days. The Agency will therefore respond to the requests for action under TSCA sections 6(b) and 8(d) by July 20, 2006. EPA will carefully consider the requests for action under TSCA sections 5 and 9, which are not subject to section 21 and will respond to them at a later time.

DATES: Comments must be received on or before June 15, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2006–0397, by one of the following methods.

http://www.regulations.gov. Follow the on-line instructions for submitting comments.

Mail: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Hand Delivery: OPPT Document Control Office (DCO, EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2006–0397. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2006–0397. 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 regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: EPA has established an official public docket for this action under docket ID number EPA–HQ–OPPT–2006–0397. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other related information. All documents in the docket are listed in the regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through regulations.gov or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Room 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.

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 numbers: (202) 554–1401; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Doreen Cantor, 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) 566–0486; e-mail address:*cantor.doreen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may potentially be affected by this action if you manufacture, import, or distribute in commerce toy jewelry containing lead, or if you manufacture, import, process, or distribute in commerce lead. Potentially affected entities may include, but are not limited to:

• (NAICS code 339914) Costume jewelry and novelty manufacturing

• (NAICS code 339932) Game, toy, and children's vehicle manufacturing

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

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

v. If you estimate potential costs or burdens, explain how you arrived at the estimate.

vi. Provide specific examples to illustrate your concerns, and suggested alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

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

II. Background

A. What is a TSCA Section 21 Petition?

TSCA section 21 allows citizens to petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth facts that the petitioner believes establish the need for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. Within 60 days of denial, or the expiration of the 90–day period, if no action is taken, the petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding.

B. What Action is Requested Under this TSCA Section 21 Petition?

On April 21, 2006, the Sierra Club petitioned EPA to take four actions intended to reduce risks from toy jewelry containing lead. The Sierra Club defines toy jewelry as ''any item that serves a decorative but no or minimal functional purpose that is valued at less than $20 per item.'' The requested actions are:

• Require TSCA section 8(d) health and safety data reporting for lead and lead salts.

• Submit a TSCA section 9 report to the Consumer Product Safety Commission (CPSC) regarding lead and lead salts.

• Issue a TSCA section 5 Significant New Use Rule regarding lead and lead salts in toy jewelry.

• Issue TSCA section 6(b) quality control orders regarding production of toy jewelry.

The petition also requested certain actions by CPSC, which will be considered by that agency.

The petition sets forth the following incidents in support of its requests. In February 2006, a child died from lead poisoning after ingesting toy jewelry that contained lead. In 2004, 4 importers recalled 150 million metal toy jewelry items pursuant to an agreement with CPSC. Another case of severe lead poisoning occurred from a toy necklace in 2003. Finally, the petition notes that both poisonings, and the recalled jewelry, concerned products distributed in violation of CPSC's 1998 Codification of Guidance Policy on Lead in Consumer Products.

The Sierra Club petition also refers to the federal government's goal of eliminating lead poisoning by 2010. It concludes that the current system is not working and that stronger action is needed if the federal government's goal is to be met.

The petitioner therefore asks EPA to take action under TSCA. EPA has commenced a review of this petition. Comments on the petition may be submitted by any of the methods identified in Unit I.

C. EPA Seeks Additional Information

In considering how to respond to the petition, EPA seeks a better factual understanding of the potential and actual risks to human health and the environment associated with lead in toy jewelry. Therefore, EPA seeks data and information regarding the potential risks to human health associated with lead in toy jewelry, including ongoing uses of lead in toy jewelry, the extent and degree of use, and other information.

Under TSCA section 21, which is applicable to requests for rulemaking proceedings under TSCA sections 6(b) and 8(d), the Agency must either grant or deny a petition within 90 days. Because the Agency must respond to the requests for action under TSCA sections 6(b) and 8(d) by July 20, 2006, EPA will allow the public until June 15, 2006 to reply with any additional information relevant to the issues identified below. EPA will carefully consider the requests for action under TSCA sections 5 and 9, and will respond to them at a later time. In assisting the Agency by supplying this additional information, please follow the procedures in Unit I.B.

In assessing the usability of any data or information that may be submitted, EPA plans to follow the guidelines in EPA's ''A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information'' (EPA 100/B–03/001), referred to as the ''Assessment Factors Document.'' This document is available at the following website:*http://www.epa.gov/osa/spc/assess.htm.* The **Federal Register** notice for this document is available at the following Web site: *http://www.epa.gov/fedrgstr/EPA-GENERAL/2003/July/Day-01/g16328.htm.*

In particular, EPA seeks information on the following:

1. Quantitative information, data and/or reports (e.g., incident reports, recent scientific and technical studies)

associated with the presence of lead in toy jewelry. This would include any information on how and why lead is used in toy jewelry, the extent and prevalence of lead in toy jewelry, and the concentrations of lead found in toy jewelry (including lead used by design or by inadvertent contamination). The Agency is also interested in information on the manner and methods of manufacturing, processing, distribution in commerce, and disposal of toy jewelry containing lead.

2. Quantitative information, data and/or case examples (e.g., incident reports, recent scientific and technical studies) associated with the health effects, particularly to children, from toy jewelry or similar objects containing lead. This would include any case studies or other information relating to exposure of human beings or the environment to lead in toy jewelry, particularly any exposure of children to lead in toy jewelry. Also useful would be information on exposure to lead in similar objects which are available to children via direct mouthing or ingestion, or hand-to-mouth behavior. This would include any studies or other information relating lead concentration or quantity to blood lead level or health effects.

3. Information on and evidence of quality control procedures for the manufacture, import, distribution, and sale of toy jewelry, particularly those procedures that would measure and monitor lead content of various components of toy jewelry. This would include information of the cost and effectiveness of these procedures.

4. Information on the availability, cost, and health effects of alternatives to lead in toy jewelry.

5. Information on whether the definition of toy jewelry used by the Sierra Club (''any item that serves a decorative but no or minimal functional purpose that is valued at less than $20 per item'') is clear and otherwise appropriate.

List of Subjects

Environmental protection.

Dated: May 23, 2006.

Wendy C. Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. E6–8246 Filed 5–30–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

May 17, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 31, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0719.

Title: Quarterly Report of IntraLATA Carriers Listing Payphone Automatic Number Identifications (ANIs).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 400 respondents; 1,600 responses.

Estimated Time Per Response: 3.5 hours.

Frequency of Response: Quarterly reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 5,600 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (after this 60 day comment period) to OMB in order to obtain the full three year clearance.

IntraLATA carriers must submit a quarterly report listing payphone automatic number identifications (ANIs) to the interexchange carriers (IXCs). This will facilitate resolution of disputed ANIs in the per-call compensation context. The report allows interexchange carriers to determine which dial-around calls are made from payphones. Without provision of this report, resolution of disputed ANIs would be rendered very difficult. IXCs would not be able to discern which ANIs pertain to payphones and therefore would not be able to ascertain which dial-around calls were originated by payphones for compensation purposes. The data which must be maintained for at least 18 months after the close of a compensation period, and will facilitate verification of disputed ANIs.

OMB Control Number: 3060–0775.

Title: Section 64.1903, Obligations of All Incumbent Independent Local Exchange Carriers.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10.

Estimated Time per Response: 6,056 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 60,563 hours.

Total Annual Cost: $1,215,000.

Privacy Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (after this

60 day comment period) to OMB in order to obtain the full three year clearance. The Commission imposes this recordkeeping requirement to ensure that independent local exchange carriers (LECs) providing international, interexchange services through a separate affiliate are in compliance with the Communications Act of 1934, as amended, and with Commission policies and regulations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–8158 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 04–424; DA 06–1048]

SBC and Global Crossing Petitions for Declaratory Ruling

AGENCY: Federal Communications Commission.

ACTION: Notice, termination of proceeding.

SUMMARY: This document provides notice of the termination of the petitions for declaratory ruling of SBC and Global Crossing. The petitions for declaratory ruling have been withdrawn by the petitioners.

DATES: Effective June 30, 2006, unless the Wireline Competition Bureau receives an opposition to the termination prior to that date.

ADDRESSES: Oppositions to the proceeding termination should be mailed to the Commission's Secretary through the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Lynne Hewitt Engledow, Wireline Competition Bureau, Pricing Policy Division, (202) 418–2350.

SUPPLEMENTARY INFORMATION: On October 27, 2004 Global Crossing filed a petition for declaratory ruling with the Commission seeking clarification of the meaning and application of two provisions of the Southwestern Bell Telephone, L.P. interstate access tariff. On November 12, 2004, SBC filed a petition for declaratory ruling with the Commission seeking affirmation that its tariff permits it to use the telephone numbers of the calling and called parties to determine whether to bill long distance carriers interstate or intrastate terminating switched access rates for wireless originated long distance calls when there is no accurate or reliable information included in the call detail. The Commission subsequently sought comment on the petitions. On April 20, 2006, Global Crossing filed a letter withdrawing its petition. AT&T, Inc. filed a letter withdrawing its petition on April 21, 2006. The Global Crossing and SBC petitions are dismissed without prejudice. This proceeding will be terminated effective 30 days after publication of this Public Notice in the **Federal Register**, unless the Wireline Competition Bureau receives an opposition to the termination before that date.

Parties filing oppositions to the termination of this proceeding must file an original and four copies of each filing. The filings should reference WC Docket No. 04–424. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

—The filing hours at this location are 8 a.m. to 7 p.m.

—All hand deliveries must be held together with rubber bands or fasteners.

—Any envelopes must be disposed of before entering the building.

—Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

—U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A361, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *lynne.engledow@fcc.gov.* Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

Authority: 47 U.S.C. 152, 154, 155, 303; 47 CFR 0.291, 1.749.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. E6–8408 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 95–116, CCB/CPD File No. 01–16, DA 06–1058]

Petition for Waiver of Section 52.33(a) of the Commission's Number Portability Rules

AGENCY: Federal Communications Commission.

ACTION: Notice, termination of proceeding.

SUMMARY: This document provides notice of the termination of the petition for waiver of section 52.33(a) of the Commission's number portability rules. The petition for waiver has been withdrawn by the petitioner.

DATES: Effective June 30, 2006, unless the Wireline Competition Bureau receives an opposition to the termination prior to that date.

ADDRESSES: Oppositions to the proceeding termination should be mailed to the Commission's Secretary through the Commission's contractor, Natek, Inc. at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Margaret Dailey, Wireline Competition Bureau, Pricing Policy Division, (202) 418–2396.

SUPPLEMENTARY INFORMATION: On June 26, 2001, Citizens Communications Company (Citizens) filed a petition for waiver of section 52.33(a) of the Commission's rules. On February 14, 2005 Citizens filed a request to withdraw its petition. Based on its request to withdraw, Citizens' Petition is dismissed without prejudice and the waiver proceeding will be terminated effective 30 days after publication of this Public Notice in the **Federal Register**, unless the Wireline Competition Bureau receives an opposition to the termination before that date.

Parties filing oppositions to the termination of this proceeding must file an original and four copies of each filing. The filings should reference CC Docket No. 95–116 and CCB/CPD File No. 01–16. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or

overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

—The filing hours at this location are 8 a.m. to 7 p.m.
—All hand deliveries must be held together with rubber bands or fasteners.
—Any envelopes must be disposed of before entering the building.
—Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
—U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Margaret Dailey, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A232, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *margaret.dailey@fcc.gov*. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com*.

Authority: 47 U.S.C. 152, 154, 155, 303; 47 CFR 0.291, 1.749.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. E6–8409 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 94–1, 96–262, DA 06–1061]

Reconsideration of Price Cap Performance Review for Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice, termination of proceeding.

SUMMARY: This document provides notice of the termination of the petitions for reconsideration of a 1997 Commission order, which established a 6.5 percent productivity-based X-factor and eliminated the sharing requirements in the Commission's price cap rules. The petitions for reconsideration have been withdrawn by the petitioners.

DATES: Effective June 30, 2006, unless the Wireline Competition Bureau receives an opposition to the termination prior to that date.

ADDRESSES: Oppositions to the proceeding termination should be mailed to the Commission's Secretary through the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: On August 5, 2004, the Wireline Competition Bureau released a Public Notice asking parties that filed petitions for reconsideration of the *1997 Price Cap Review Order*, 62 FR 31939, June 11, 1997, to file a supplemental notice identifying those issues from their reconsideration petitions that they still wished the Commission to consider. The Public Notice stated that, to the extent parties did not indicate an intent to pursue their petitions, the Commission would deem the petitions withdrawn. The only petitioner that filed in response to the Public Notice was AT&T therefore, we deem all other petitions for reconsideration to have been withdrawn. On May 8, 2006, AT&T filed a letter withdrawing its petition for reconsideration. As all pending petitions for reconsideration have been withdrawn, this proceeding will be terminated effective June 30, 2006 unless the Wireline Competition Bureau receives an opposition to the termination before that date.

Parties filing oppositions to the termination of this proceeding should reference CC Docket Nos. 94–1 and 96–262. All pleadings may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Multiple docket or rulemaking numbers appear in the caption of this proceeding; therefore, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, CC Docket No. 94–1 and CC Docket No. 96–262. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. More than one docket or rulemaking number appears in the caption of this proceeding; therefore, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- The filing hours at this location are 8 a.m. to 7 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Jennifer McKee, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A263, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *jennifer.mckee@fcc.gov*. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com*.

Documents filed in CC Docket Nos. 94–1 and 96–262 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or by e-mail at *fcc@bcpiweb.com*.

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. 47 CFR 1.1200 *et seq.* Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Authority: 47 U.S.C. 152, 153, 154, 155, 44 FR 18501, 67 FR 13223, 47 CFR 0.291, 1.749.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. E6–8411 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–237, DA 06–1062]

Qwest Petition for Clarification of Verizon Physical Collocation Discontinuance Order

AGENCY: Federal Communications Commission.

ACTION: Notice, termination of proceeding.

SUMMARY: This document provides notice of the termination of Qwest's petition for clarification of a 2003 Commission order, which granted Verizon authority to discontinue providing federally-tariffed physical collocation services pursuant to section 201 of the Communications Act. The petition for clarification has been withdrawn by the petitioner.

DATES: Effective June 30, 2006, unless the Wireline Competition Bureau receives an opposition to the termination prior to that date.

ADDRESSES: Oppositions to the proceeding termination should be mailed to the Commission's Secretary through the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: On October 22, 2003, the Commission released an order granting the Verizon Telephone Companies (Verizon) authority to discontinue providing federally-tariffed physical collocation services pursuant to section 201 of the Communications Act. On November 21, 2003, Qwest Communications Corporation (Qwest) filed a petition for clarification of the order. No comments were received on Qwest's petition. Qwest filed a letter withdrawing its petition on March 16, 2005. The Qwest Petition is dismissed without prejudice. This proceeding will be terminated effective June 30, 2006, unless the Wireline Competition Bureau receives an opposition to the termination before that date.

Parties filing oppositions to the termination of this proceeding should reference WC Docket No. 02–237. All pleadings may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, WC Docket No. 02–237. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- The filing hours at this location are 8 a.m. to 7 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Jennifer McKee, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A263, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *jennifer.mckee@fcc.gov.* Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

Qwest's petition for clarification in WC Docket No. 02–237 is available for review through the ECFS and is available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or by e-mail at *fcc@bcpiweb.com.*

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Authority: 47 U.S.C. 152, 153, 154, 155, 44 FR 18501, 67 FR 13223, 47 CFR 0.291, 1.749.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. E6–8412 Filed 5–30–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0937–0166; 60-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision, of a currently approved collection;

Title of Information Collection: HHS 42 CFR subpart B; Sterilization of Person in Federally Assisted Family Planning Projects.

Form/OMB No.: OS–0937–0166;

Use: These regulations and informed consent procedures are associated with Federally funding sterilization services. Selected consent forms are audited during the site visits and program reviews by Federal programs to ensure compliance with the regulations and protection of individual's rights.

Frequency: Reporting, on occasion;

Affected Public: Business or other for-profit, not-for-profit institutions, and Federal government;

Annual Number of Respondents: 100,000;

Total Annual Responses: 100,000;

Average Burden Per Response: 1 hours & 15 minutes;

Total Annual Hours: 125,000;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 60 days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Sherrette Funn-Coleman (0937–0166), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: May 22, 2006.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–8380 Filed 5–30–06; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New; 60-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular Clearance, New collection.

Title of Information Collection: Research Integrity Officer Study (RIO Study).

Form/OMB No.: OS–0990–New.

Use: The purpose of this evaluation study is to learn about the level of knowledge, experience, qualifications, authority, position in the organizations, access to resources and other responsiblities that Research Integrity Officers have. This will allow us to evaluate how well the institutions are prepared and able to implement the PHS policies on research misconduct.

Frequency: Reporting, on one occasion.

Affected Public: Business or other for-profit, not-for-profit institutions.

Annual Number of Respondents: 1,420.

Total Annual Responses: 1,420.

Average Burden Per Response: 1,300 for .5 hour; 120 for 1 hour.

Total Annual Hours: 770.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/ocio/infocollect/pending/* or e-mail your request, including your address, phone

number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 60 days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–New), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: May 22, 2006.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–8381 Filed 5–30–06; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Availability of Funds for Cooperative Agreement to the California Outreach Office To Strengthen Public Health Services at the California-Baja California Border

AGENCY: Office of Global Health Affairs, Office of the Secretary, DHHS.

Announcement Type: Cooperative Agreement—FY 2006 Initial Announcement. Single Source.

Catalog of Federal Domestic Assistance: 93.018.

DATES: *Application Availability:* May 31, 2006. Applications must be received by June 30, 2006.

SUMMARY: The Office of Global Health Affairs (OGHA) announces that up to $335,916 in fiscal year (FY) 2006 funds is available for a cooperative agreement to the California Department of Health Services, who will work through the California Outreach Office of the U.S.–Mexico Border Health Commission, to strengthen the binational public health projects and programs along the California-Baja California border. This initiative addresses outreach and health promotion activities, evaluation and assessments, health data analysis and surveillance, Healthy Border/Healthy Gente activities, and programmatic and administrative support to the members and staff of the U.S.-Mexico Border Health Commission. The budget period will be one year with a project period of five years for a total of $335,916 (including indirect costs). Funding for the cooperative agreement is contingent upon the availability of funds.

I. Funding Opportunity Description

Under the authority of section 4 of the U.S.-Mexico Border Health Commission Act (the Act), Public law 103–400, the Office of Global Health Affairs (OGHA) announces the intent to allocate fiscal year (FY) 2006 funds for a cooperative agreement to the California Department of Health Services, California Outreach Office of the U.S.-Mexico Border Health Commission, to strengthen the binational public health projects and programs along the California-Baja California border. Activities to be addressed through the cooperative agreement will relate to the following topic areas: (1) Access to Care; (2) Cancer; (3) Diabetes; (4) Environmental Health; (5) HIV/AIDS, and (6) Immunization and Infectious Diseases. Funding will be provided by OGHA, through the U.S.-Mexico Border Health Commission, to the awardee.

This assistance is geared to support current, on-going and proposed public health initiatives in this border region that support the goals and objectives of the U.S.-Mexico Border Health Commission serve to strengthen access to health care, disease prevention, and public health along the California-Baja California border.

Background: The U.S.-Mexico Border Health Commission (USMBHC), in collaboration with the U.S. Department of Health and Human Services, works toward creating awareness about the U.S.-Mexico border, its people, and its environment. It educates others about the unique challenges at the border through outreach efforts, data collection and analysis, and joint collaborative efforts with public and private partners in the border health community. The USMBHC serves as a rallying point for shared concerns about the U.S.-Mexico border and as a catalyst for action to develop plans directed toward solving specific health related problems.

Outreach offices of the USMBHC work with the border states to address public health concerns and needs affecting the border region. The California Department of Health Services will work with the California Outreach Office and Mexican counterparts to promote and strengthen binational health initiatives along the California-Baja California border.

Purpose: The overall objective of this cooperative agreement is to support and coordinate the USMBHC's objectives and the development of the outreach health activities along the California and Baja California border. Awardee activities for this program will be focused in the following areas:

- Outreach and health promotion activities to establish or strengthen linkages between public health and border activities;
- Evaluation and assessments of health services, health research, health care technologies, and delivery systems;
- Health data analysis and surveillance;
- Programmatic and administrative support to the members and staff for the USMBHC; and
- Implementation of Healthy Border/Healthy Gente projects and activities.

Measurable outcomes of the cooperative agreement will be in alignment with one or more of the following performance goals:

- Increase access to care and improve quality of care;
- Improve disease prevention and health education;
- Improve workforce development and retention; and
- Improve public health infrastructure.

Activities: Awardee activities for this program will be focused in the following areas:

(1) Outreach and health promotion activities to establish or strengthen linkages between public health and border activities;

(2) Evaluation and assessments of health services, health research, health care technologies, and delivery systems;

(3) Health data analysis and surveillance;

(4) Administrative and programmatic support to the members and staff for the USMBHC; and

(5) Support and development of Healthy Border/Healthy Gente projects and activities.

II. Award Information

The administrative and funding instrument to be used for this program will be the cooperative agreement in which substantial OGHA/HHS scientific and/or programmatic involvement is anticipated during the performance of the project. Under the cooperative agreement, OGHA/HHS will support and/or stimulate awardee activities by working with them in a non-directive partnership role. Awardee will also be expected to work directly with and in support of the U.S.–Mexico Border Health Commission and its stated goals and initiatives as outlined in the submitted work plan.

The administrative and funding instrument to be used for this program will be the cooperative agreement in which substantial HHS/OGHA scientific and/or programmatic involvement is anticipated during the performance of the project. Under the cooperative

agreement, HHS/OGHA will support and/or stimulate awardee activities by working with them in a non-directive partnership role. Awardee will also be expected to work directly with and in support of the U.S.–Mexico Border Health Commission and its stated goals and initiatives as outlined in the submitted work plan.

Approximately $335,916 in FY 2006 funds is available to support the agreement. The anticipated start date is May 31, 2006. There will only be one single award made from this announcement. The grant may be approved for a budget period of one year and a project period of up to five years. Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds.

III. Eligibility Information

1. Eligible Applicants

This is a single eligibility cooperative agreement offered to the California Department of Health Services. The California Department of Health Services, California Outreach Office (ORO) to accomplish the goals and objectives of the USMBHC. The ORO has extensive past experience working with the USMBHC and supporting its binational goals, objectives and initiatives. The California ORO also has an existing working relationship and on-going initiatives with Mexico which makes it unique to other organizations in carrying out the workplans as approved by the U.S.–Mexico Border Health Commission in support of health initiatives and activities along the border. Continuity and consistency in this binational effort within this region is essential to the productivity and success of public health efforts in this region. The California ORO, given it's role as a partner with the U.S.-Mexico Border Health Commission, is uniquely qualified to maintain the continuity and consistency the Border Health Commission requires.

2. Cost Sharing or Matching

Cost sharing, matching funds, and cost participation is not a requirement of this agreement.

IV. Application and Submission Information

1. Address To Request Application Package

Application kits may be requested by calling (240) 453–8822 or writing to: Office of Grants Management, Office of Public Health Science (OPHS), 1101 Wootton Parkway, Suite 550, Rockville, MD, 20852. Applications must be prepared using Form OPHS–1. Applicants may fax a written request to the OPHS Office of Grants Management to obtain a hard copy of the application kit at (240) 453–8823.

2. Content and Form of Application Submission

All applications must be accompanied by a Project Abstract submitted on 3.5 inch floppy disk. The abstract must be typed, single-spaced, and not exceed 2 pages. Reviewers and staff will refer frequently to the information contained in the abstract, and therefore it should contain substantive information about the proposed projects in summary form. A list of suggested keywords and a format sheet for your use in preparing the abstract will be included in the application packet.

All grant applications must be accompanied by a Project Narrative. In addition to the instructions provided in OPHS–1 (Rev 8/2004) for project narrative, the specific guidelines for the project narrative are provided in the program guidelines. Format requirements are the same as for the Project Abstract Section; margins should be 1 inch at the top and 1 inch at the bottom and both sides; and typeset must be no smaller than 12 cpi and not reduced. Biographical sketches should be either typed on the appropriate form or plain paper and should not exceed two pages, with publications listed being limited only to those that are directly relevant to this project.

Application Format Requirements

If applying on paper, the entire application may not exceed 80 pages in length, including the abstract, project and budget narratives, face page, attachments, any appendices and letters of commitment and support. Pages must be numbered consecutively.

Applications submitted electronically that exceed 80 pages when printed will be deemed non-compliant. All non-compliant applications will be returned to the applicant without further consideration.

Number of Copies

Please submit one (1) original and two (2) unbound copies of the application.

Please do not bind or staple the application. Application must be single sided.

Font

Please use an easily readable serif typeface, such as Times Roman, Courier, or CG Times. The text and table portions of the application must be submitted in not less than 12 point and 1.0 line spacing. Applications not adhering to 12 point font requirements may be returned.

Paper Size and Margins

For scanning purposes, please submit the application on 8½″ × 11″ white paper. Margins must be at least one (1) inch at the top, bottom, left and right of the paper. Please left-align text.

Numbering

Please number the pages of the application sequentially from page 1 (face page) to the end of the application, including charts, figures, tables, and appendices.

Names

Please include the name of the applicant on each page.

Section Headings

Please put all section headings flush left in bold type.

Application Format

Applications for funding must consist of the following documents in the following order:

Application Face Page

Public Health Service (PHS) Application Form OPHS–1, provided with the application package. Prepare this page according to instructions provided in the form itself.

DUNS Number

All applicant organizations are required to have a Data Universal Numbering System (DUNS) number in order to apply for a grant from the Federal Government. The DUNS number is a unique nine-character identification number provided by the commercial company, Dun and Bradstreet. There is no charge to obtain a DUNS number. Information about obtaining a DUNS number can be found at *https://www.dnb.com/product/eupdate/requestOptions.html* or call 1–866–705–5711. Please include the DUNS number next to the OMB Approval Number on the application face page.

Additionally, the applicant organization will be required to register with the Federal Government's Central Contractor Registry (CCR) in order to do electronic business with the Federal Government. Information about registering with the CCR can be found at *http://www.hrsa.gov/grants/ccr.htm.*

Finally, applicants applying electronically through Grants.gov are required to register with the Credential Provider for Grants.gov. Information

about this requirement is available at *http://www.grants.gov/CredentialProvider.*

Applicants applying electronically through the OPHS E–Grants System are required to register with the provider. Information about this requirement is available at *https://egrants.osophs.dhhs.gov.*

Program Narrative

This section provides a comprehensive framework and description of all aspects of the proposed program. It should be succinct, self-explanatory and well organized so that reviewers can understand the proposed project.

Use the following section headers for the Narrative:

- *Executive Summary*—This section should briefly describe the proposed project and supporting initiatives as well as summarize goals that the program intends to achieve through the project initiatives.
- *Work Plan*—Describe the current and proposed activities or steps that will be used to achieve the stated goals and objectives. Describe expected outcomes resulting from activities as well as any evaluation mechanisms that will be used to measure the success of the initiatives.
- *Mechanism for Administration*—Describe how resources and funds will be administered with regards to the proposed projects.
- *In-Kind Support/Resources*—Describe any in-kind support from other sources, if any, that will be used to support the proposed initiatives and activities.

Appendices

Please provide the additional relevant information (including tables, charts, and other relevant documents) to complete the content of the application. Please note that these are supplementary in nature, and are not intended to be a continuation of the project narrative. Be sure each appendix is clearly labeled.

3. Submission Dates and Times

The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the Grants.gov Web Site Portal is encouraged.

Electronic grant application submissions must be submitted no later than 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement using one of the electronic submission mechanisms specified below. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions Via the Grants.gov Web Site Portal

The Grants.gov Web Site Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov.*

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, must be submitted separately via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by the terms and conditions of the grant award.

Electronic applications submitted via the Grants.gov Web Site Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All required mail-in items must received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission via the Grants.gov Web Site Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Web Site Portal will be validated by Grants.gov. Any applications deemed ''Invalid'' by the Grants.gov Web Site Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Web Site Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Web Site Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Web Site Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of

the application submitted using the Grants.gov Web Site Portal.

Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Web Site Portal.

Electronic Submissions Via the OPHS eGrants System

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov,* or may be requested from the OPHS Office of Grants Management at (240) 453–8822.

When submitting applications via the OPHS eGrants system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (e.g., Program Certifications) with the original signature of an individual authorized to act for the applicant agency.

Electronic applications submitted via the OPHS eGrants system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however these mail-in items must be entered on the eGrants Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission, the OPHS eGrants system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

4. Intergovernmental Review

This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). Applicants shall submit a copy of the application face page (SF–424) and a one page summary of the project, called the Public Health System Impact Statement. The PHSIS is intended to provide information to State and local health officials to keep them apprised on proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OGHA/HHS.

This program is also subject to the requirements of Executive Order 12372 that allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States that have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC in each affected State. A complete list of SPOCs may be found at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.* The due date for State process recommendations is 60 days after the application deadline. The OGHA/HHS does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

5. Funding Restrictions

Funds may not be used for construction, building alterations, equipment purchase, medical treatment, renovations, or to purchase food. Allowability, allocability, reasonableness, and necessity of direct and indirect costs that may be charged are outlined in the following documents: OMB–21 (Institutes of Higher Education); OMB Circular A–122 (Nonprofit Organizations) and 45 CFR part 74, Appendix E (Hospitals). Copies of these circulars can be found on the Internet at: *http://www.whitehouse.gov/omb.* Pre-award costs are not allowable under this award.

V. Application Review Information

1. Criteria

Applications will be screened by OGHA staff for completeness and for responsiveness to the program guidance. Applicants should pay strict attention addressing these criteria, as they are the

basis upon which applications will be judged. Those applications judged to be non-responsive or incomplete will be returned to the applicant without review.

Applications that are complete and responsive to the guidance will be evaluated for scientific and technical merit by an appropriate peer review group specifically convened for this solicitation and in accordance with HHS policies and procedures. As part of the initial merit review, all applications will receive a written critique. All applications recommended for approval will be discussed fully by the ad hoc peer review group and assigned a priority score for funding. Eligible applications will be assessed according the following criteria:

(1) Technical Approach (45 Points)

- The applicant's presentation of a sound and practical technical approach for executing the requirements with adequate explanation, substantiation and justification for methods for handling the projected needs of the USMBHC.
- The successful applicant must demonstrate a clear understanding of the scope and objectives of the cooperative agreement, recognition of potential difficulties that may arise in performing the work required, presentation of adequate solutions, and understanding of the close coordination necessary between the California Department of Health Service's Office of Border Health.

(2) Experience and Capabilities of the Organization (45 Points)

- Applicants should submit documented relevant experience of the organization in managing projects of similar complexity and scope of the activities.
- Clarity and appropriateness of lines of communication and authority for coordination and management of the project. Adequacy and feasibility of plans to ensure successful coordination of a multiple-partner collaboration.

(3) Facilities and Resources (10 Points)

- Documented availability and adequacy of facilities, equipment,and resources necessary to carry out the activities.

2. Review and Selection Process

Applications will be reviewed in competition with other submitted applications, by a panel of peer reviewers. Each of the above criteria will be addressed and considered by the reviewers in assigning the overall score. Final award will be made on the basis of score, program relevance and, availability of funds.

VI. Award Administration Information

1. Award Notices

OGHA/HHS does not release information about individual applications during the review process until final funding decisions have been made. The official document notifying the applicant of approval and availability of funding is the Notice of Grant Award, which specifies to the awardee the amount of money awarded, the purpose of the agreement, the terms and conditions of the agreement, and the amount of funding, if any, to be contributed by the awardee to the project costs.

2. Administrative and National Policy Requirements

The regulations set out at 45 CFR parts 74 and 92 are the Department of Health and Human Services (HHS) rules and requirements that govern the administration of grants. Part 74 is applicable to all recipients except those covered by part 92, which governs awards to state and local governments. Applicants funded under this announcement must be aware of and comply with these regulations. The CFR volume that includes parts 74 and 92 may be downloaded from: *http://www.access.gpo.gov/nara/cfr/waisidx_03/45cfrv1_03.html.*

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitation, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total cost of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

Reporting

All projects are required to have an evaluation plan, consistent with the scope of the proposed project and funding level that conforms to the project's stated goals and objectives. The evaluation plan should include both a process evaluation to track the implementation of project activities and an outcome evaluation to measure changes in knowledge and skills that can be attributed to the project. Project funds may be used to support evaluation activities.

In addition to conducting their own evaluation of projects, successful applicants must be prepared to participate in an external evaluation, to be supported by OGHA/HHS and conducted by an independent entity, to assess efficiency and effectiveness for the project funded under this announcement.

Within 30 days following the end of each of quarter, a performance report no more than ten pages in length must be submitted to OGHA/HHS. A sample monthly performance report will be provided at the time of notification of award. At a minimum, monthly performance reports should include:

Concise summary of the most significant achievements and problems encountered during the reporting period, *e.g.* number of training courses held and number of trainees.

A comparison of work progress with objectives established for the quarter using the grantee's implementation schedule, and where such objectives were not met, a statement of why they were not met.

Specific action(s) that the grantee would like the OGHA/HHS to undertake to alleviate a problem.

Other pertinent information that will permit monitoring and overview of project operations.

A quarterly financial report describing the current financial status of the funds used under this award. The awardee and OGHA will agree at the time of award for the format of this portion of the report.

Within 90 days following the end of the project period a final report containing information and data of interest to the Department of Health and Human Services, Congress, and other countries must be submitted to OGHA/HHS. The specifics as to the format and content of the final report and the summary will be sent to successful applicants. At minimum, the report should contain:

A summary of the major activities supported under the agreement and the major accomplishments resulting from activities to improve mortality in partner country.

An analysis of the project based on the problem(s) described in the application and needs assessments, performed prior to or during the project period, including a description of the specific objectives stated in the grant application and the accomplishments and failures resulting from activities during the grant period.

Quarterly performance reports and the final report may be submitted to: Department of Health and Human Services, Office of the Secretary, Office of Global Health Affairs, 5600 Fishers

Lane, Suite 18–105, Rockville, Maryland 20857.

A Financial Status Report (FSR) SF–269 is due 90 days after the close of each 12-month budget period and submitted to OPHS-Office of Grants Management.

VII. Agency Contacts

For programmatic requirements, please contact: Jeff Waggoner, Office of Global Health Affairs, DHHS, 5600 Fishers Lane, Suite 18–105, Rockville, MD, 20857. Phone: (301) 443–6279.

For administrative requirements, please contact: Eric West, Office of Grants Management, Office of Public Health and Science, DHHS, 1101 Wootton Parkway, Suite 550, Rockville, Maryland 20857. Telephone: (240) 453–8822.

VIII. Tips for Writing a Strong Application

Include DUNS Number. You must include a DUNS Number to have your application reviewed. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please include the DUNS number next to the OMB Approval Number on the application face page.

Keep your audience in mind. Reviewers will use only the information contained in the application to assess the application. Be sure the application and responses to the program requirements and expectations are complete and clearly written. Do not assume that reviewers are familiar with the applicant organization. Keep the review criteria in mind when writing the application.

Start preparing the application early. Allow plenty of time to gather required information from various sources.

Follow the instructions in this guidance carefully. Place all information in the order requested in the guidance. If the information is not placed in the requested order, you may receive a lower score.

Be brief, concise, and clear. Make your points understandable. Provide accurate and honest information, including candid accounts of problems and realistic plans to address them. If any required information or data is omitted, explain why. Make sure the information provided in each table, chart, attachment, etc., is consistent with the proposal narrative and information in other tables.

Be organized and logical. Many applications fail to receive a high score because the reviewers cannot follow the thought process of the applicant or because parts of the application do not fit together.

Be careful in the use of appendices. Do not use the appendices for information that is required in the body of the application. Be sure to cross-reference all tables and attachments located in the appendices to the appropriate text in the application.

Carefully proofread the application. Misspellings and grammatical errors will impede reviewers in understanding the application. Be sure pages are numbered (including appendices) and that page limits are followed. Limit the use of abbreviations and acronyms, and define each one at its first use and periodically throughout application.

Dated: May 24, 2006.

Sandra R. Manning,

Deputy Director for Operations, Office of Global Health Affairs.

[FR Doc. E6–8384 Filed 5–30–06; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Availability of Funding Opportunity Announcement

Funding Opportunity Title/Program Name: Senior Medicare Patrol Integration Projects.

Announcement Type: Initial.

Funding Opportunity: Number: HHS–2006-AoA-SM–0608.

Statutory Authority: The Older Americans Act, Public Law 106–501.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.048, Title IV and Title II, Discretionary Projects, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191).

Dates: The deadline date for the receipt of applications is July 19, 2006.

I. Funding Opportunity Description

In 2004, AoA announced a new competitive grant program to support Senior Medicare Patrol (SMP) project efforts to advance collaborative and innovative approaches for integration of Medicare and Medicaid fraud awareness and prevention activities within states and communities, and to support development of models for program integration to be shared with SMP projects throughout the country. Fourteen grants were awarded for a two-year period that were designed to support the SMP projects' efforts to integrate the SMP program into other areas of health care fraud awareness. Models developed by these integration grantees, which are focused on Medicaid fraud, home health care fraud, and fraud related to the new prescription drug benefits of the Medicare Modernization Act (MMA) are being disseminated by AoA and the National Consumer Technical Support Center (the Center) to enable SMP projects to adapt these strategies to their states and target populations.

Further information may be found at *http://www.aoa.gov/doingbus/fundopp/fundopp.asp* or *http://www.grants.gov*.

SMP Program Objectives

In 2006, the Assistant Secretary for Aging approved five strategic objectives for the SMP Program. The objectives guide the development of program requirements, including grants, and the measurement of performance and program outcomes. The SMP program objectives include:

1. Foster national and statewide program coverage.
2. Improve beneficiary education and inquiry resolution for other areas of health care fraud.
3. Foster national program visibility and consistency.
4. Improve the efficiency of the SMP Program while increasing results for both operational and quality measures.
5. Target training and education to isolated and hard-to-reach populations.

Applications are sought from organizations with expertise and experience required to focus the integration of the SMP program message, outreach and materials to either a targeted population OR a targeted area of health care integrity. Criteria and requirements for the two application options are provided below. *Applicants may apply under either Option I or Option II.*

Option I: Targeted Health Care Integrity. This option is provided to enhance program efforts in support of SMP program objective #2, to improve beneficiary education and inquiry resolution for other areas of health care fraud. Applications are limited to existing SMP projects that were not awarded FY 2004 Integration Grant funding. This is to ensure that additional states are provided the opportunity for integration of the SMP program into other areas of health care fraud awareness.

Grantees must develop models for integrating beneficiary education, and inquiry resolution through effective partnering with new organizations in order to leverage these resources to disseminate the fraud prevention and control message. The grantee may target either one or two of the following areas for integration:

- Medicaid fraud;
- Home health care fraud;

• Durable Medical Equipment fraud; or

• Medicare Part D prescription drug benefit related fraud.

Grantees will be required to demonstrate how the proposal will advance the integration of the SMP program into the fabric of the aging and fraud prevention networks in states and communities.

Option II: Targeted Populations. This option is provided to enhance program efforts in support of SMP Program Objective #5, target training and education to isolated and hard-to-reach populations. The opportunity provided with Option II provides a new opportunity to more fully integrate beneficiary education and awareness of health care error, fraud and abuse within populations thus far generally underserved by the SMP program. These include minority, ethnically or culturally diverse, non-English speaking, tribal, isolated or rural populations, as well as others not traditionally reached, such as the homebound or long-term care residents.

Applications are sought from public/private non-profit organizations with expertise in the culture, language, and demographics of the targeted population group. Status as a current or previous SMP project grantee is not required. However, applicants must demonstrate expertise and experience in serving or representing the target population group. Knowledge of the SMP program and health care integrity issues impacting seniors is preferred but not mandatory.

II. Award Information

1. Funding Instrument Type

The award is a cooperative agreement because the Administration on Aging will be substantially involved in the development and execution of the activities of the projects. The cooperative agreement will describe training, technical assistance, and support that will be provided by AoA and the Center to the integration grantees. The cooperative agreement will also specify performance goals and criteria, as well as measures of project outcomes. The AoA project officer for the SMP project grant will provide technical assistance and support on grant management and implementation issues, including execution of the cooperative agreement.

The Administration on Aging, primarily through services of the Center, will provide technical assistance and support to the project as required and appropriate for the specific integration activities of the grantee. The Administration on Aging will conduct at least one national conference and one regional meeting in alternate years for the purpose of providing technical assistance and training to SMP projects. Participation of integration grantees in these conferences is specified as part of the cooperative agreement.

The SMP integration grantee and the Administration on Aging will work cooperatively to determine the performance goals and priority activities required by the project to achieve these goals, and develop the work plan for each year of the project. Within 45 days of the award and 45 days of each continuation award, the grantee will agree upon and adhere to a work plan that details expectations for major activities, products, and reports during the current budget period. The plan will also specify actions to integrate the specific targeted population or special area of health care fraud, as appropriate. The work plan will also include staff assignments, work locations, and other areas that require Administration on Aging consultation, review, and/or prior approval. Either the Administration on Aging or the project can propose a revision of the final work plan at any time. The Administration on Aging (AoA) will define project performance criteria and expectations, and will monitor, evaluate and support the project's efforts in achieving performance goals. AoA will provide mentoring, on-line training, and other technical support through the Center. Grantees are encouraged to contact the Center to receive information on the SMP program and specialized areas related to the integration project. The Administration on Aging will evaluate grantee performance, and provide support and technical assistance, in coordination with the Center, to assist projects in achieving performance goals.

The Administration on Aging will assist the project leadership in understanding the strategic goals and objectives, policy perspectives and priorities of the Assistant Secretary for Aging and the Department of Health and Human Services by sharing such information via e-mail, conference calls, briefings and other consultations. The Administration on Aging will also share information with the project about other SMP projects, including statewide project grants, other integration grants, and other federally sponsored projects and activities relevant to the interests of SMP projects.

Anticipated Total Priority Area Funding per Budget Period

Funding Instrument Type: Cooperative Agreement.

Anticipated Total Funding: $1.17 Million.

Individual Award Ceiling: $100,000.

Anticipated Number of Awards: Up to 14.

Length of Project Period: Up to two years.

III. Eligibility Criteria and Other Requirements

1. Eligible Applicants

Option I is limited to existing SMP projects from states not previously awarded integration grants. Integration Grants were previously awarded in: Arkansas, Idaho, Illinois, Indiana, Iowa, California, Missouri, New Jersey, Pennsylvania, Puerto Rico, Texas, and Wisconsin.

Option II is open to public and private organizations organized under IRS section 501(C)(3) with expertise and experience serving or representing the target population. Status as a current or former SMP grantee is not required. Faith-based organizations and federally financed tribes are encouraged to apply.

Existing SMP projects that submit Option I applications may not apply under Option II.

In order to ensure the program reaches Medicare/Medicaid beneficiaries in the maximum number of states, given available funding, only one project from each state or territory will be funded.

It is strongly recommended that statewide collaborative efforts be forged with organizations with experience working with or representing the targeted population.

2. Cost Sharing or Matching

Under this Older Americans Act (OAA) program, AoA will fund no more than 75% of the project's total cost, which means the applicant must cover at least 25% of the project's total cost with non-Federal resources. In other words, for every three (3) dollars received in Federal funding, the applicant must contribute at least one (1) dollar in non-Federal resources toward the project's total cost (*i.e.*, the amount on line 18 in Attachment A). You can use this formula to calculate your minimum required match. A common error applicants make is to match 25% of the federal share, rather than 25% of the project's total cost. Match is not one of the responsiveness criteria as noted in Section III, 3 Application Screening Criteria.

3. DUNS Number

The Office of Management and Budget requires applicants to provide a Dun and Bradstreet (D&B) Data Universal

Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. It is entered on the SF 424. It is a unique, nine-digit identification number, which provides unique identifiers of single business entities. The DUNS number is free and easy to obtain. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or by using this link: *https://www.whitehouse.gov/omb/grants/duns_num_guide.pdf.*

4. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Application and Submission Information

All applicants are required to submit electronically through *http://www.grants.gov* by midnight July 19, 2006. Exceptions to this requirement may only be made by the AoA grants management officer, Stephen Daniels on (202) 357–3464. Exceptions may only be made to allow for catastrophic events such as tornadoes, floods, etc. Applicants are responsible for mailing or hand delivering applications to AoA in sufficient time to be received by 5:30 PM Eastern Time July 19, 2006.

Please note AoA is requiring applications for this announcement to be submitted electronically through *www.grants.gov.* The Grants.gov registration process can take several days. If your organization is not currently registered with *www.grants.gov*, please begin this process immediately. For assistance with *www.grants.gov*, please contact Arthur Miller at AoA's Grants.gov helpdesk at (202)357–3438. At *www.grants.gov*, you will be able to download a copy of the application packet, complete it off-line, and then upload and submit the application via the Grants.gov website.

Applicants unable to submit their application via *www.grants.gov* may request permission to submit a hard copy from AoA Grants Management Officer, Stephen Daniels, (202) 357–3464, *Stephen.Daniels@aoa.hhs.gov.*

1. Address for Application Submission

Hard copy submissions for which approval has been requested and received (per section IV(6) of the announcement), may be mailed to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, attn: Stephen Daniels HHS–2006–AoA–SM–0608), or hand-delivered (in person, via messenger) to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Avenue, NW., Room 4604, Washington, DC 20001, attn: Stephen Daniels (HHS–2006–AoA–SM–0608).

Applications not submitted electronically must include one original and two copies of the application. Please include a stamped self addressed postcard for acknowledgement of receipt. Instructions for electronic mailing of grant applications are available at *http://www.grants.gov/.*

2. Submission Dates and Times

To receive consideration, applications must be received by the deadline listed in the ''Dates'' section of this Notice.

V. Responsiveness Criteria

Each application submitted will be screened to determine whether it was received by the closing date and time. Applications received by the closing date and time will be screened for completeness and conformity with the requirements outlined in Sections III and IV of this Notice and the Program Announcement. Only complete applications that meet these requirements will be reviewed and evaluated competitively.

VI. Application Review Information

Eligible applications in response to this announcement will be reviewed according to the following evaluation criteria: Purpose and Need for Assistance (20 points); Approach, Work Plan and Activities (30 points); Project Outcomes, Evaluation and Dissemination (30 points); and Level of Effort (20 points).

VII. Agency Contacts

Direct inquiries regarding programmatic and grant issues to:

Project Officer

U.S. Department of Health and Human Services, Administration on Aging, Washington, DC 20201, Attn: Barbara Lewis, Telephone: (202) 357–3532, e-mail: *Barbara.Lewis@aoa.hhs.gov.*

Grants Management Specialist

U.S. Department of Health and Human Services, Administration on Aging, Washington, DC 20201, Attn: Stephen Daniels, Telephone: (202) 357–3464, e-mail: *Stephen.Daniels@aoa.hhs.gov.*

Dated: May 24, 2006.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E6–8365 Filed 5–30–06; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Availability of Funding Opportunity Announcement

Funding Opportunity Title/Program Name: Model Approaches to Statewide Legal Assistance Systems.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2006–AoA–SL–0609.

Statutory Authority: Title IV of the Older Americans Act, Public Law 106–501.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.048.

Dates: The deadline date for the receipt of applications is July 24, 2006.

I. Funding Opportunity Description

This announcement seeks proposals from eligible states (as defined in Section III below) to develop model systems for incorporating low-cost legal assistance mechanisms into the statewide legal services development and delivery program. A detailed description of the funding opportunity, including the program objectives and application materials, may be obtained at *http://www.aoa.gov/doingbus/fundopp/fundopp.asp* or *http://www.grants.gov*.

II. Award Information

1. Funding Instrument Type

Cooperative Agreement. The award is a cooperative agreement because the Administration on Aging (AoA) will be substantially involved in the development and execution of the activities of the projects. The cooperative agreement will describe the technical assistance and support to be provided by the AoA project officer. The cooperative agreement will also specify project performance criteria and measures relative to the 2006 AoA Legal Assistance Program goal and objectives. The AoA project officer for these new cooperative agreements will provide technical assistance and support on grant management and implementation issues, including execution of the cooperative agreement.

The grantees and the AoA will work cooperatively to determine the priority activities to be completed by the project and develop the work plan for each year

of the project. Within 45 days of the award and 45 days of each continuation award, the grantee will agree upon and adhere to a work plan that details expectations for major activities, products, and reports during the current budget period. The work plan will include a timetable for project and activity implementation, staff assignments, and other areas that require AoA consultation, review, and/or prior approval. Either the AoA or the project can propose a revision of the final work plan at any time.

The AoA will define project performance criteria and expectations, and will monitor, evaluate, and support the projects' efforts in achieving performance goals through mentoring, listserv communications, and other technical support. The AoA will assist the project leadership in understanding the strategic goals and objectives, policy perspectives, and priorities of the Assistant Secretary for Aging and the Department of Health and Human Services by sharing such information via e-mail, conference calls, briefings and other consultations. The AoA will also share information with the project about other federally sponsored projects and activities relevant to the interests of the AoA Legal Assistance Program.

2. Anticipated Total Priority Area Funding per Budget Period

The AoA intends to make available, under this program announcement, grant awards for up to four (4) cooperative agreements at a federal share of approximately $100,000 per year for a project period of up to three (3) years, contingent upon the availability of Federal funds. Grantees are required to cover 25% of the total cost of the project from non-Federal cash or in-kind assistance.

III. Eligibility Criteria and Other Requirements

1. Eligible Applicants

Awards will be made to the agency within each eligible state that currently houses (or proposes to house) the Legal Services Developer. This agency must partner with an entity experienced in providing legal services to older persons within that state through a low-cost service delivery mechanism, such as the senior legal helpline model, funded by AoA under the Title IV Legal Assistance Grants Program.

Eligible states include all those not currently receiving AoA Title IV Legal Assistance Grants initially awarded in 2005 (Connecticut, Florida, Michigan, Nebraska, New York, Pennsylvania, and Vermont). This is in keeping with AoA's goal of maximizing the number of states utilizing low-cost legal assistance mechanisms as part of their statewide legal services development and delivery program.

2. Cost Sharing or Matching

Grantees are required to provide at least 25 percent of the total program costs from non-Federal cash or in-kind resources in order to be considered for the award.

3. DUNS Number

The Office of Management and Budget requires applicants to provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. It is entered on the SF 424. It is a unique, nine-digit identification number, which provides unique identifiers of single business entities. The DUNS number is *free and easy* to obtain.

Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or by using this link: *https://www.whitehouse.gov/omb/grants/duns_num_guide.pdf*.

4. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Application and Submission Information

All applicants are required to submit electronically through *http://www.grants.gov* by midnight July 24, 2006.

Exceptions to this requirement may only be made by the AoA grants management officer, Stephen Daniels on (202) 357–3464. Exceptions may only be made to allow for catastrophic events such as tornadoes, floods, etc. Applicants are responsible for mailing or hand delivering applications to AoA in sufficient time to be received by 5 p.m. Eastern Time July 24, 2006. Please note AoA is requiring applications for this announcement to be submitted electronically through *http://www.grants.gov*. The Grants.gov registration process can take several days. If your organization is not currently registered with *http://www.grants.gov*, please begin this process immediately. For assistance with *http://www.grants.gov*, please contact Arthur Miller at AoA's Grants.gov helpdesk at (202) 357–3438. At *http://www.grants.gov*, you will be able to download a copy of the application packet, complete it off-line, and then upload and submit the application via the Grants.gov Web site.

Applicants unable to submit their application via *http://www.grants.gov* may request permission to submit a hard copy from AoA Grants Management Officer, Stephen Daniels, (202) 357–3464, *Stephen.Daniels@aoa.hhs.gov.*

1. Address for Application Submission

Hard copy submissions for which approval has been requested and received (per section IV(6) of the announcement), may be mailed to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, attn: Stephen Daniels (HHS–2006–AoA–SL–0609), or hand-delivered (in person, via messenger) to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Avenue, NW., Room 4604, Washington, DC 20001, attn: Stephen Daniels (HHS–2006–AoA–SL–0609).

Applications not submitted electronically must include one original and two copies of the application. Please include a stamped self addressed postcard for acknowledgement of receipt. Instructions for electronic mailing of grant applications are available at *http://www.grants.gov/.*

2. Submission Dates and Times

To receive consideration, applications must be received by the deadline listed in the **DATES** section of this Notice.

V. Responsiveness Criteria

Each application submitted will be screened to determine whether it was received by the closing date and time. Applications received by the closing date and time will be screened for completeness and conformity with the requirements outlined in Sections III and IV of this Notice and the Program Announcement. Only complete applications that meet these requirements will be reviewed and evaluated competitively.

VI. Application Review Information

Eligible applications in response to this announcement will be reviewed according to the following evaluation criteria: Purpose and Need for Assistance (20 points); Approach, Work Plan and Activities (30 points); Project Outcomes, Evaluation and Dissemination (30 points); and Level of Effort (20 points).

VII. Agency Contacts

Direct inquiries regarding programmatic and grant issues to:

Project Officer: U.S. Department of Health and Human Services, Administration on Aging, Washington, DC 20201, Attn: Valerie Soroka. Telephone: (202) 357–3531, e-mail: *Valerie.Soroka@aoa.hhs.gov.*

Grants Management Specialist: U.S. Department of Health and Human Services, Administration on Aging, Washington, DC 20201, Attn: Stephen Daniels. Telephone: (202) 357–3464, e-mail: *Stephen.Daniels@aoa.hhs.gov.*

Dated: May 24, 2006.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E6–8364 Filed 5–30–06; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation for Nominations for New Primary and Secondary Public Health Topics To Be Considered for Review by the Task Force on Community Preventive Services

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Solicit for new topic nominations.

SUMMARY: The Centers for Disease Control and Prevention (CDC) invites individuals and organizations to nominate public health topic areas or related population-oriented interventions (i.e., interventions delivered to groups of people in communities or healthcare systems) for the Task Force on Community Preventive Services (Task Force) to consider for review. Topics that have been recently reviewed by the Task Force or are currently under review are listed below in the **SUPPLEMENTARY INFORMATION** section.

The Task Force is an independent panel of experts that makes evidence-based recommendations regarding use of population-based interventions, which are selected from broad topic areas. Recommendations are based on the evidence gathered in rigorous and systematic scientific reviews of published studies conducted by Guide to Community Preventive Services (Community Guide) scientific teams. The findings from reviews are published in peer-reviewed journals and made available through the Community Guide Web site (*http://thecommunityguide.org*). Community Guide topics coordinate with Healthy People 2010 objectives; address topics related to the large preventable burden of disease; provide guidance on ways to reduce disease, injury, and impairment; and address social challenges.

Topics can be nominated by individuals or organizations. The Task Force will consider nominations and prioritize topics for review using the following criteria: Public health importance (burden of disease, injury, impairment, or exposure); preventability (amount of burden that could realistically be reduced given adequate resources); relationship to other public health initiatives; and usefulness of the package of topics selected and level of current research and intervention activity in the public and private sectors. The Task Force will also prioritize topics for which there are gaps in the evidence and the potential to significantly improve public health decisionmaking. Nominations can be for new topics or topics previously reviewed by the Task Force.

Basic Topic Nomination Requirements: Nominations must be no more than 250 words long and must include the following information. (A separate appendix, not included in the word count, can contain references and supporting documents.)

1. Name of topic or intervention.

2. Rationale for consideration by the Task Force, to include as appropriate:

a. Justification that topic area addresses risk behaviors related to the largest burden of disease; provides guidance on ways to reduce disease, injury, and impairment; or addresses environmental and social challenges.

b. Description of public health importance (burden of disease, injury, impairment, or exposure). Citations and supporting documents are recommended.

c. Public health relevance (amount of burden that could realistically be reduced given adequate resources).

d. Summary of new evidence, if any, that has potential to affect the Task Force's recommendation on a previously reviewed topic. Please refer to *http://thecommunityguide.org* for current Task Force recommendations. Citations and supporting documents are recommended.

e. In topic areas that have already been addressed or identified as high priority by the Task Force, important interventions that have not yet been addressed or where additional new information may lead to updated conclusions can be identified. Please refer to *http://thecommunityguide.org* for existing Task Force recommendations. Citations and supporting documents are recommended.

DATES: Topic nominations should be submitted by June 23, 2006, to be considered for 2006–2008. CDC will not reply to submissions but will consider all topic nominations during the selection process. If a topic is selected for review by the Task Force, the nominator will be notified by CDC.

ADDRESSES: Please submit nominations to: Detrice Sherman, MPH, ATTN: Task Force Topic Nominations, National Center for Health Marketing, Community Guide, Centers for Disease Control and Prevention, 4770 Buford Highway, MS K–95, Atlanta, GA 30341, Fax: 404–498–0979, E-mail: *dsherman@cdc.gov.* For further information please contact: Detrice Sherman at *dsherman@cdc.gov* or Peter Briss at *pbriss@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The scientific literature on specific health problems can be large, inconsistent, uneven in quality, or inaccessible. Through rigorous and systematic scientific reviews of published studies, the Guide to Community Preventive Services (Community Guide) serves as a filter for this information—using systematic review methods to summarize what is known about the effectiveness, economic efficiency, and feasibility of interventions to promote community health and prevent disease. The Task Force on Community Preventive Services makes recommendations for the use of various interventions based on the evidence gathered in these reviews. The findings from the reviews are published in peer-reviewed journals and also made available on the Internet at *http://www.thecommunityguide.org.*

The Task Force is an independent panel of experts that makes evidence-based recommendations regarding population-based interventions. The group was convened in 1996 by the Department of Health and Human Services to provide leadership in the evaluation of community, population, and healthcare system strategies to address a variety of public health and health promotion topics such as physical activity. The Task Force's membership is multi-disciplinary, and includes perspectives representative of state and local health departments, managed care, academia, behavioral and social sciences, communications sciences, mental health, epidemiology, quantitative policy analysis, decision

and cost-effectiveness analysis, information systems, primary care, and management and policy.

Solicitation of Topic Nominations

The purpose of this solicitation for new topics by CDC and the Task Force is to create a balanced portfolio of relevant topics for the current Task Force library. The current library is based on reviews and recommendations across a broad range of high burden, high interest topic areas: Changing health risk behaviors (adolescent health, physical activity, tobacco product use, nutrition, sexual behavior, alcohol abuse and misuse, substance abuse); addressing specific health conditions (cancer, diabetes, mental health, motor vehicle occupant injury, obesity, oral health, vaccine-preventable diseases, and violence prevention); and addressing the environment (improving health through changing the social environment, worksite health promotion). Selection of suggested topics will be made on the basis of qualifications of nominations as outlined above (see basic topic nomination requirements) and the current expertise of the Task Force.

Topics That Have Been Reviewed:

Diabetes, Informed Decision Making for Cancer Screening, Motor Vehicle Occupant Injury, Oral Health, Physical Activity, Skin Cancer Prevention, Social Environment, Tobacco, Vaccine Coverage, Vaccine Coverage in Adults at High Risk.

Topics Currently Under Review:

Adolescent Health, Alcohol, Cancer Screening (Breast, Cervical, and Colorectal), Improving Pregnancy Outcomes, Mental Health, Nutrition, Obesity, Sexual Behavior, Violence Prevention, Worksite Health Promotion.

Dated: May 23, 2006.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–8351 Filed 5–30–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): HIV IV—Rapid Test Algorithms for Diagnosis of HIV Infection and Improved Linkage to Care, Program Announcement Number (PA) PS06–002.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): HIV IV—Rapid Test Algorithms for Diagnosis of HIV Infection and Improved Linkage to Care, PA PS06–002.

Time and Date: 12 p.m.–5 p.m., June 23, 2006 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to ''HIV IV—Rapid Test Algorithms for Diagnosis of HIV Infection and Improved Linkage to Care, PA PS06–002.''

For Further Information Contact: Jim Newhall, PhD, Scientific Review Administrator, Office of Public Health Research, CDC, 1600 Clifton Road NE, Mailstop D72, Atlanta, GA 30333, Telephone 404–639–4641.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 24, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–8346 Filed 5–30–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Vaccine Information Statement for Hepatitis A Vaccine; Revised Instructions for Use of Vaccine Information Statements

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Under the National Childhood Vaccine Injury Act (NCVIA) (42 U.S.C. § 300aa–26), the CDC must develop vaccine information materials that all health care providers are required to give to patients/parents prior to administration of specific vaccines. On July 28, 2005, CDC published a notice in the **Federal Register** (70 FR 43694) seeking public comments on proposed new vaccine information materials for hepatitis A vaccine. Following review of the comments submitted and consultation as required under the law, CDC has finalized the hepatitis A vaccine information materials. The final hepatitis A materials are contained in this notice. Also noted are edits to the instructions for use of vaccine information materials.

DATES: Beginning no later than July 1, 2006, each health care provider who administers any hepatitis A vaccine to any child or adult in the United States shall provide copies of the relevant vaccine information materials contained in this notice, dated March 21, 2006, in conformance with the April 7, 2006 CDC Instructions for the Use of Vaccine Information Statements.

FOR FURTHER INFORMATION CONTACT: Anne Schuchat, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–8200.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers in the United States to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

Development and revision of the vaccine information materials, also known as Vaccine Information Statements (VIS), have been delegated by the Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines initially covered under the National Vaccine Injury Compensation Program were diphtheria, tetanus, pertussis, measles, mumps, rubella and poliomyelitis vaccines. Since April 15, 1992, any health care provider in the United States who intends to administer one of these covered vaccines is required to provide copies of the relevant vaccine information materials prior to administration of any of these vaccines. Since June 1, 1999, health care providers are also required to provide copies of vaccine information materials for the following vaccines that were added to the National Vaccine Injury Compensation Program: Hepatitis B, haemophilus influenzae type b (Hib), and varicella (chickenpox) vaccines. In addition, use of vaccine information materials for pneumococcal conjugate vaccine has been required since December 15, 2002 and materials for trivalent influenza vaccines since January 1, 2006.

Instructions for use of the vaccine information materials and copies of the materials can be downloaded in PDF format from the CDC Web site at: *http://www.cdc.gov/nip/publications/VIS*. In addition, single camera-ready copies are available from State health departments. A list of State health department contacts for obtaining copies of these materials is included in a December 17, 1999 **Federal Register** notice (64 FR 70914).

New Vaccine Information Materials

Hepatitis A Vaccine Information Statement

Following the addition of hepatitis A vaccine to the National Vaccine Injury Compensation Program, CDC, as required under 42 U.S.C. 300aa–26, proposed vaccine information materials covering hepatitis A vaccine in a **Federal Register** notice published on July 28, 2005 (70 FR 43694).

The hepatitis A vaccine information materials referenced in this notice were developed in consultation with the Advisory Commission on Childhood Vaccines, the Food and Drug Administration, the American Academy of Family Physicians, American Academy of Pediatrics, American Medical Association, Emory Vaccine Research Center, Every Child By Two, Immunization Action Coalition and the National PTA. Also, CDC sought consultation with other organizations; however, those organizations did not provide comments.

Following consultation and review of comments submitted, the vaccine information materials covering hepatitis A vaccine have been finalized and are contained in this notice. The Vaccine Information Statement (VIS), dated March 21, 2006, is entitled: ''Hepatitis A Vaccine: What You Need to Know.'' CDC has also revised the ''Instructions for the Use of Vaccine Information Statements,'' which are dated April 7, 2006, to add the VIS for hepatitis A and to note the effective date for its mandatory use.

With publication of this notice, as of July 1, 2006, all health care providers will be required to provide copies of hepatitis A vaccine information materials prior to immunization in conformance with CDC's April 7, 2006 ''Instructions for the Use of Vaccine Information Statements.''

Hepatitis A Vaccine Information Statement

Hepatitis A Vaccine: What You Need to Know.

1. What is hepatitis A?

Hepatitis A is a serious liver disease caused by the hepatitis A virus (HAV). HAV is found in the stool of persons with hepatitis A. It is usually spread by close personal contact and sometimes by eating food or drinking water containing HAV.

Hepatitis A can cause:

- Mild ''flu-like'' illness.
- Jaundice (yellow skin or eyes).
- Severe stomach pains and diarrhea.

People with hepatitis A often have to be hospitalized (up to about 1 person in 5).

Sometimes, people die as a result of hepatitis A (about 3–5 deaths per 1,000 cases). A person who has hepatitis A can easily pass the disease to others within the same household. Hepatitis A vaccine can prevent hepatitis A.

2. Who should get hepatitis A vaccine and when?

WHO?

Some people should be routinely vaccinated with hepatitis A vaccine:

- All children 1 year (12 through 23 months) of age.
- Persons 1 year of age and older traveling to or working in countries with high or intermediate prevalence of hepatitis A, such as those located in Central or South America, Mexico, Asia (except Japan), Africa, and eastern Europe. For more information see *www.cdc.gov/travel*
- Children and adolescents through 18 years of age who live in states or communities where routine vaccination has been implemented because of high disease incidence.
- Men who have sex with men.
- Persons who use street drugs.
- Persons with chronic liver disease.
- Persons who are treated with clotting factor concentrates.
- Persons who work with HAV-infected primates or who work with HAV in research laboratories.

Other people might get hepatitis A vaccine in special situations:

- Hepatitis A vaccine might be recommended for children or adolescents in communities where outbreaks of hepatitis A are occurring.

Hepatitis A vaccine is not licensed for children younger than 1 year of age.

WHEN?

For children, the first dose should be given at 12–23 months of age. Children who are not vaccinated by 2 years of age can be vaccinated at later visits.

For travelers, the vaccine series should be started at least one month before traveling to provide the best protection.

Persons who get the vaccine less than one month before traveling can also get a shot called immune globulin (IG). IG gives immediate, temporary protection.

For others, the hepatitis A vaccine series may be started whenever a person is at risk of infection.

Two doses of the vaccine are needed for lasting protection. These doses should be given at least 6 months apart.

Hepatitis A vaccine may be given at the same time as other vaccines.

3. Some people should not get hepatitis A vaccine or should wait.

- Anyone who has ever had a severe (life-threatening) allergic reaction to a

previous dose of hepatitis A vaccine should not get another dose.

• Anyone who has a severe (life threatening) allergy to any vaccine component should not get the vaccine. Tell your doctor if you have any severe allergies. All hepatitis A vaccines contain alum and some hepatitis A vaccines contain 2-phenoxyethanol.

• Anyone who is moderately or severely ill at the time the shot is scheduled should probably wait until they recover. Ask your doctor or nurse. People with a mild illness can usually get the vaccine.

• Tell your doctor if you are pregnant. The safety of hepatitis A vaccine for pregnant women has not been determined. But there is no evidence that it is harmful to either pregnant women or their unborn babies. The risk, if any, is thought to be very low.

4. What are the risks from hepatitis A vaccine?

A vaccine, like any medicine, could possibly cause serious problems, such as severe allergic reactions. The risk of hepatitis A vaccine causing serious harm, or death, is extremely small.

Getting hepatitis A vaccine is much safer than getting the disease.

Mild problems.

• Soreness where the shot was given (about 1 out of 2 adults, and up to 1 out of 6 children).

• Headache (about 1 out of 6 adults and 1 out of 25 children).

• Loss of appetite (about 1 out of 12 children).

• Tiredness (about 1 out of 14 adults).

If these problems occur, they usually last 1 or 2 days.

Severe problems.

• Serious allergic reaction, within a few minutes to a few hours of the shot (very rare).

5. What if there is a moderate or severe reaction?

What should I look for?

• Any unusual condition, such as a high fever or behavior changes. Signs of a serious allergic reaction can include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness.

What should I do?

• Call a doctor, or get the person to a doctor right away.

• Tell your doctor what happened, the date and time it happened, and when the vaccination was given.

• Ask your doctor, nurse, or health department to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form.

Or you can file this report through the VAERS Web site at *http://www.vaers.hhs.gov*, or by calling 1–800–822–7967.

VAERS does not provide medical advice.

6. The National Vaccine Injury Compensation Program

In the event that you or your child has a serious reaction to a vaccine, a federal program has been created to help pay for the care of those who have been harmed.

For details about the National Vaccine Injury Compensation Program, call 1–800–338–2382 or visit their Web site at *http://www.hrsa.gov/vaccinecompensation*.

7. How can I learn more?

• Ask your doctor or nurse. They can give you the vaccine package insert or suggest other sources of information.

• Call your local or state health department.

• Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–4636 (1–800–CDC-INFO)

—Visit CDC Web sites at: *http://www.cdc.gov/hepatitis* or *http://www.cdc.gov/nip*

Department of Health and Human Services, Centers for Disease Control and Prevention, National Immunization Program.

Vaccine Information Statement, Hepatitis A (3/21/06), 42 U.S.C. 300aa–26.

Dated: May 20, 2006.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–8350 Filed 5–30–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0202]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's regulations requiring that the agency receive prior notice before food is imported or offered for import into the United States.

DATES: Submit written or electronic comments on the collection of information by July 31, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002—21 CFR 1.278 to 1.285 (OMB Control Number 0910–0520)—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) added section 801(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(m)), which requires that FDA receive prior notice for food, including food for animals, that is imported or offered for import into the United States. Sections 1.278 to 1.282 of FDA's regulations (21 CFR 1.278 to 1.282) set forth the requirements for submitting prior notice; §§ 1.283(d) and 1.285(j) (21 CFR 1.283(d) and 1.285(j)) set forth the procedure for requesting FDA review after an article of food has been refused admission under section 801(m)(1) of the act or placed under hold under section 801(l) of the act; and § 1.285(i) (21 CFR 1.285(i)) sets forth the procedure for post-hold submissions. Advance notice of imported food allows FDA, with the support of the Bureau of Customs and Border Protection (CBP), to target import inspections more effectively and help protect the nation's food supply against terrorist acts and other public health emergencies.

Any person with knowledge of the required information may submit prior notice for an article of food. Thus, the respondents to this information collection may include importers, owners, ultimate consignees, shippers, and carriers.

FDA's regulations require that prior notice of imported food be submitted electronically using CBP's Automated Broker Interface of the Automated Commercial System (ABI/ACS) (§ 1.280(a)(1)) or the FDA Prior Notice (PN) System Interface (Form FDA 3540) (§ 1.280(a)(2)). The term ''Form FDA 3540'' refers to the electronic system known as the FDA PN System Interface, which is available at *http://www.access.fda.gov*. Prior notice must be submitted electronically using either ABI/ACS or the FDA PN System Interface. Information collected by FDA in the prior notice submission includes: The submitter and transmitter (if different from the submitter); entry type and CBP identifier; the article of food, including complete FDA product code; the manufacturer, for an article of food no longer in its natural state; the grower, if known, for an article of food that is in its natural state; the FDA Country of Production; the shipper, except for food imported by international mail; the country from which the article of food is shipped or, if the food is imported by international mail, the anticipated date of mailing and country from which the food is mailed; the anticipated arrival information or, if the food is imported by international mail, the U.S. recipient; the importer, owner, and ultimate consignee, except for food imported by international mail or transshipped through the United States; the carrier and mode of transportation, except for food imported by international mail; and planned shipment information, except for food imported by international mail (§ 1.281).

Much of the information collected for prior notice is identical to the information collected for FDA's importer's entry notice, which has been approved under OMB control number 0910–0046. The information in FDA's importer's entry notice is collected electronically via CBP's ABI/ACS at the same time the respondent files an entry for import with CBP. To avoid double-counting the burden hours already counted in the importer's entry notice information collection, the burden hour analysis in table 1 of this document reflects the reduced burden for prior notice submitted through ABI/ACS in the column labeled ''Hours per Response.''

In addition to submitting a prior notice, a submitter should cancel a prior notice and must resubmit the information if information changes after FDA has confirmed a prior notice submission for review (e.g., if the identity of the manufacturer changes) (§ 1.282). However, changes in the estimated quantity, anticipated arrival information, or planned shipment information do not require resubmission of prior notice after FDA has confirmed a prior notice submission for review (§ 1.282(a)(1)(i) to 1.282(a)(1)(iii)). In the event that an article of food has been refused admission under section 801(m)(1) or placed under hold under section 801(l) of the act, §§ 1.283(d) and 1.285(j) set forth the procedure for requesting FDA review and the information required to be included in a request for review. In the event that an article of food has been placed under hold under section 801(l) of the act, § 1.285(i) sets forth the procedure for and the information to be included in a post-hold submission.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section No.	FDA Form No.	No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
Prior Notice Submissions						
Prior notice submitted through ABI/ACS						
1.280 to 1.281	None	6,500	949.50	6,171,750	0.167	1,030,682[2]
Prior notice submitted through PNSI						
1.280 to 1.281	FDA 3540[3]	214,400	8.33	1,785,952	0.384	685,806
New prior notice submissions subtotal						1,716,488
Prior Notice Cancellations						
Prior notice cancelled through ABI/ACS						
1.282	FDA 3540	6,500	3.34	21,710	0.25	5,428

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section No.	FDA Form No.	No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
Prior notice cancelled through PNSI						
1.282 and 1.283(a)(5)	FDA 3540	214,400	0.31	66,464	0.25	16,616
Prior notice cancellations subtotal						22,044
Prior Notice Requests for Review and Post-hold Submissions						
1.283(d) and 1.285(j)	None	1	1	1	8	8
1.285(i)	None	1	1	1	1	1
Prior notice requests for review and post-hold submissions subtotal						9
Total hours annually						1,738,541

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]To avoid double-counting, an estimated 396,416 burden hours already accounted for in the importer's entry notice information collection approved under OMB control number 0910–0046 are not included in this total.
[3]The term ''Form FDA 3540'' refers to the electronic system known as the FDA PN System Interface, which is available at *http://www.access.fda.gov*.

This estimate is based on FDA's experience and the average number of prior notice submissions, cancellations, and requests for review received in the past 3 years.

FDA received 282,244 prior notices through ABI/ACS during December 2003; 6,865,722 during 2004; and 6,171,939 during 2005. Based on this experience, FDA estimates that approximately 6,500 users of ABI/ACS will submit an average of 949.5 prior notices annually, for a total of 6,171,750 prior notices received annually through ABI/ACS. FDA estimates the reporting burden for a prior notice submitted through ABI/ACS to be 10 minutes, or 0.167 hours, per notice, for a total burden of 1,030,682 hours. This estimate takes into consideration the burden hours already counted in the information collection approval for FDA's importer's entry notice, as previously discussed in this document.

FDA received 35,308 prior notices through the PN System Interface during December 2003; 1,425,825 during 2004; and 1,786,896 during 2005. Based on this experience, FDA estimates that approximately 214,400 registered users of the PN System Interface will submit an average of 8.33 prior notices annually, for a total of 1,785,952 prior notices received annually through the PN System Interface. FDA estimates the reporting burden for a prior notice submitted through the PN System Interface to be 23 minutes, or 0.384 hours, per notice, for a total burden of 685,806 hours.

FDA received no cancellations of prior notices through ABI/ACS during December 2003; 16,624 during 2004; and 21,720 during 2005. Based on this experience, FDA estimates that approximately 6,500 users of ABI/ACS will submit an average of 3.34 cancellations annually, for a total of 21,710 cancellations received annually through ABI/ACS. FDA estimates the reporting burden for a cancellation submitted through ABI/ACS to be 15 minutes, or 0.25 hours, per cancellation, for a total burden of 5,428 hours.

FDA received 1,539 cancellations of prior notices through the PN System Interface during December 2003; 64,918 during 2004; and 65,491 during 2005. Based on this experience, FDA estimates that approximately 214,400 registered users of the PN System Interface will submit an average of 0.31 cancellations annually, for a total of 66,464 cancellations received annually through the PN System Interface. FDA estimates the reporting burden for a cancellation submitted through the PN System Interface to be 15 minutes, or 0.25 hours, per cancellation, for a total burden of 16,616 hours.

FDA has not received any requests for review under §§ 1.283(d) or 1.285(j) in the last 3 years (December 2003 through 2005); therefore, the agency estimates that one or fewer requests for review will be submitted annually. FDA estimates that it will take a requestor about 8 hours to prepare the factual and legal information necessary to prepare a request for review. Thus, FDA has estimated a total reporting burden of 8 hours.

FDA has not received any post-hold submissions under § 1.285(i) in the last 3 years (December 2003 through 2005); therefore, the agency estimates that one or fewer post-hold submissions will be submitted annually. FDA estimates that it will take about 1 hour to prepare the written notification described in § 1.285(i)(2)(i). Thus, FDA has estimated a total reporting burden of 1 hour.

In cases where a regulation implements a statutory information collection requirement, only the additional burden attributable to the regulation, if any, has been included in FDA's burden estimate.

Dated: May 18, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–8311 Filed 5–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committe Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The cooperative agreement applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the cooperative agreement application review, the disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee H—Clinical Groups.

Date: July 10–12, 2006.

Time: 6 a.m. to 4 p.m.

Agenda: To review and evaluate cooperative agreement application.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Timothy C. Meeker, PhD, M.D., Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8103, Bethesda, MD 20892. 301–594–1279. *meekert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 23, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4978 Filed 5–30–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine Training Grants.

Date: June 19, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Conference Room 1087, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mahadev Murthy, MBA, Scientific Review Administrator, National Institutes of Health, National Center for Research Resources, Ofc of Review, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1070, Bethesda, MD 20892. (301) 435–0813. *mmurthy@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine U42/R01

Date: June 21, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Conference Room 1087, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mahadev Murthy, MBA, Scientific Review Administrator, National Institutes of Health, National Center for Research Resources, Ofc of Review, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1070, Bethesda, MD 20892. (301) 435–0813. *mmurthy@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine R24 SEP

Date: June 29, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Conference Room 1087, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mahadev Murthy, MBA, Scientific Review Administrator, National Institutes of Health, National Center for Research Resources, Ofc of Review, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1070, Bethesda, MD 20892. (301) 435–0813. *mmurthy@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: May 23, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4980 Filed 5–30–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 553b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIMH IBSC P50 Review.

Date: June 21, 2006.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608. 301/443–7216. *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Research Training.

Date: June 21, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Agu Pert, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Bethesda, MD 20892–9608. 301/443–0811. *apert@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Autism Research Career Development Review.

Date: June 27, 2006.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608. 301–443–1959. *csarampo@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIMH K99 Review.

Date: July 6, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 2007.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608. 301–443–7216. *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4972 Filed 5–30–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MARC Review Subcommittee A.

Date: June 15, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Conference Center, 45 Center Drive, Conference Room G1/G2, Bethesda, MD 20892.

Contact Person: Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN12F, Bethesda, MD 20892. 301–594–2881. *sunshinh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4973 Filed 5–30–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Small Grants in Digestive Diseases.

Date: July 14, 2006.

Time: 7:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7637. *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Pregnancy and Obesity.

Date: July 24–25, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 914, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7682. *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 23, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4974 Filed 5–30–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Developmental Centers For Translational Research on the Clinical Neurobiology of Drug Addiction.

Date: June 8–9, 2006.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Carlyle Suites, 1731 New Hampshire Ave., NW., Washington, DC 20009.

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401. (301) 435–1389. *ms80x@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Centers Review Meeting.

Date: June 27, 2006.

Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1388.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Projects Meeting.
Date: June 28, 2006.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1388.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Prescription Opioid Use and Abuse in the Treatment of Pain.
Date: July 17, 2006.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Mark R. Green, PhD, Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1431. *mgreen1@nida.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 23, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4977 Filed 5–30–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Environmental Chemicals and Gynecologic Health.
Date: June 12, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate contract proposals.
Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 435–6902. *khanh@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Global Network for Women's and Children's Health Research.
Date: June 12, 2006.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.
Contact Person: Gopal M. Bhatnagar, Ph.D., Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852. (301) 435–6889. *bhatnagg@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 22, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4979 Filed 5–30–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, June 6, 2006, 1 p.m. to June 6, 2006, 4 p.m. National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 which was published in the **Federal Register** on May 5, 2006, 71 FR 26548–26549.

The meeting will be held on July 19, 2006. The meeting is closed to the public.

Dated: May 23, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4981 Filed 5–30–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Reproduction, Andrology, and Gynecology Subcommittee.
Date: June 12–13, 2006.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100

Executive Boulevard, Room 5B01, Bethesda, MD 20892. (301) 435–6884. *ranhandj@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Pediatrics Subcommittee.

Date: June 14–15, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892. (301) 496–1487. *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 22, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4982 Filed 5–30–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, June 9, 2006, 8 a.m. to June 9, 2006, 6 p.m., Latham Hotel, 3000 M Street, NW., Washington, DC 20007 which was published in the **Federal Register** on May 5, 2006, 71 FR 26550–26552.

The meeting is cancelled due to the reassignment of the applications.

Dated: May 23, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4975 Filed 5–30–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Applications in Aging and Cognition.

Date: June 5, 2006.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, 301–435–4445, *doussarj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biology of Development and Aging Integrated Review Group, Development—1 Study Section.

Date: June 8–9, 2006.

Time: 8:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn Hotel, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892. 301–435–1021. *duperes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fungal Pathogenesis.

Date: June 8, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Scheyla Saadi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892. 301–435–1714. *saadisoh@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Clinical Research and Field Studies of Infectious Diseases Study Section.

Date: June 9, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892. 301–435–1150. *politisa@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Health Services Organization and Delivery Study Section.

Date: June 15–16, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Kathy Salaita, SCD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7770, Bethesda, MD 20892. 301–451–8504. *salaitak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Host-Virus Interaction.

Date: June 15, 2006.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892. 301–435–1221. *laingc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visual System Small Business.

Date: June 19–20, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerome Wujek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892. (301) 435–2507. *wujekjer@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Anterior Eye Disease Member Conflict.

Date: June 19, 2006.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerome Wujek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892. (301) 435–2507. *wujekjer@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Virology.

Date: June 22–23, 2006.
Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton at Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Joseph D. Mosca, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892. (301) 435–2344. *moscajos@scsr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Developmental Brian Disorders Study Section.
Date: June 29–30, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Shery L. Stuesse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200 MSC 7846, Bethesda, MD 20892. 301–435–1785. *stuesses@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Developmental Therapeutics Study Section.
Date: June 29–30, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 1515 Rhode Island Ave, NW., Washington, DC 20005.
Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892. (301) 435–1767. *gubanis@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Bacterial Pathogenesis Study Section.
Date: June 29–30, 2006.
Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Regis Hotel, 923 16th and K Street, NW., Washington, DC 20006.
Contact Person: Richard G. Kostriken, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892. 301–402–4454. *kostrikr@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Instrumentation and Systems Development Study Section.
Date: June 29–30, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Ping Fan, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892. 301–435–1740. *fanp@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Epidemiology of Cancer Study Section.
Date: June 29–30, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Denise Wiesch, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892. (301) 435–0684. *wieschd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Cell Biology.
Date: June 29–30, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jonathan Arias, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892. 301–435–2406. *ariasj@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neural Degenerative Disorders and Glial Biology Study Section.
Date: June 29–30, 2006.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Toby Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892. (301) 435–4433. *behart@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Innate Immunity and Inflammation.
Date: June 29–30, 2006.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892. 301 594–6375. *mcintyrt@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Muscle and Exercise Physiology Study Section.
Date: June 29–30, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.
Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892. 301 435–6809. *bartletr@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Host Interactions with Bacterial Pathogens Study Section.
Date: June 29–30, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892. 301 435–1148. *wachtelm@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Immunopathology and Immunotherapy Study Section.
Date: June 29–30, 2006.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892. (301) 435–1719. *litwackm@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Behavioral Medicine, Interventions and Outcomes Study Section.
Date: June 29–30, 2006.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham Baltimore Inner Harbor, 101 W. Fayette Street, Baltimore, MD 21201.
Contact Person: Lee S. Mann, MA, JD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. 301 435–0677. *mannl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR/STTR Risk Prevention and Health Behaviors.
Date: June 29–30, 2006.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Morrison House, 116 S. Alfred Street, Alexandria, VA 22314.
Contact Person: Claire E. Gutkin,, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892. 301– 594–3139. *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genes, Genomes, and Genetics Specials.
Date: June 29–30, 2006.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Michael A. Marino, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892. (301) 435–0601. *marinomi@csr.nih.gov.*

Name of Committee: Renal and Urological Studies Integrated Review Group, Pathobiology of Kidney Disease Study Section.

Date: June 29–30, 2006.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Brookshire Suites, Baltimore, 120 E. Lombard Street, Baltimore, MD 21202.

Contact Person: Krystyna E. Rys-Sikora, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016J, MSC 7814, Bethesda, MD 20892. 301–451–1325. *ryssokok@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Behavioral Genetics and Epidemiology Study Section.

Date: June 29–30, 2006.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Grand Hyatt Washington, 1000 H Street, NW., Washington, DC 20001.

Contact Person: Elisabeth Koss, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906, *kosse@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, EPIC Member Conflicts.

Date: June 30, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Heidi B. Friedman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892. 301–435–1721. *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP on Research and Ethical Issues in Human Studies.

Date: June 30, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrtor, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892. (301) 435–1017. *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Crystallography Equipment.

Date: June 30, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: David R. Jollie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7806, Bethesda, MD 20892. (301) 435–1722. *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Larnygeal Function and Voice Therapy.

Date: June 30, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848 (for overnight mail use room # and 20817 zip), Bethesda, MD 20892. (301) 435–1507. *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal Muscle SBIR/STTR.

Date: June 30, 2006.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892. 301–435–6809. *bartletr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 23, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4976 Filed 5–30–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Emergency Agency Information Collection Activity Under OMB Review: Registered Traveler (RT) Pilot Program; Satisfaction and Effectiveness Measurement Data Collection Instruments

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of emergency clearance request.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the revised Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for emergency processing and approval under the Paperwork Reduction Act. The ICR describes the nature of information collection and its expected burden.

DATES: Send your comments by June 30, 2006. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be e-mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, DHS–TSA Desk Officer at *nathan.lesser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Attorney-Advisor, Office of the Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1995; facsimile (571) 227–1381.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Registered Traveler (RT) Pilot Program; Satisfaction and Effectiveness Measurement Data Collection Instruments.

Type of Request: Emergency processing request of revised collection.

OMB Control Number: 1652–0019.

Forms(s): Electronic enrollment application; satisfaction survey.

Affected Public: Applicants to the RT Program and lead stakeholders.

Abstract: TSA is continuing the ongoing Registered Traveler (RT) Pilot Program at one airport, which is already approved by OMB, to test and evaluate specific technologies and business processes related to the RT concept. In addition, TSA will expand the current pilot to additional locations and incorporate a public/private partnership. TSA, through its partnership with Sponsoring Entities, who under contract to TSA, will collect and retain, from their private-sector central information management system, personal information on individuals who volunteer to participate in the program. This will allow TSA to complete name-based security threat assessments and issue an RT card to volunteers. In addition, TSA will administer two instruments to measure satisfaction of RT pilot participants and key stakeholders.

For the purpose of continuing metrics analysis, testing interoperability of systems, and testing the private/public model of operations, TSA is seeking emergency processing of this request in order to begin collecting information in June 2006. TSA Assistant Secretary Kip Hawley testified to Congress that TSA would be ready to allow eligible participants to enroll in the RT Program beginning June 20, 2006. In addition, TSA is seeking emergency processing of this request in order to meet the expectations of our stakeholders, partners, and members of the traveling public. Based on these initial programs, TSA may then consider an expansion of the RT Program.

Number of Respondents: 400,100.

Estimated Annual Burden Hours: An estimated 156,040 hours annually.

Issued in Arlington, Virginia, on May 24, 2006.

Lisa Dean,

Privacy Officer.

[FR Doc. E6–8392 Filed 5–30–06; 8:45 am]

BILLING CODE 9110–05–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: 30-day notice of information collection under review: Application to Preserve Residence for Naturalization. Form N–470; OMB Control No. 1615–0056.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 10, 2006 at 71 FR 12391. The notice allowed for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 30, 2006. This process is conducted in accordance with 5 CFR 1320.10.

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 No. 1615–0056. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Application to Preserve Residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–470. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 375 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 375 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: May 24, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E6–8310 Filed 5–30–06; 8:45 am]

BILLING CODE 4410–10–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: 30-day notice of information collection under review: Application for Transfer of Petition for Naturalization; Form N–455. OMB Control No. 1615–0055.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 10, 2006 at 71 FR 12392, allowing for a 60-day public comment period. USCIS did not receive any comments on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 30, 2006. This process is conducted in accordance with 5 CFR 1320.10.

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 1615–0055 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information 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 agency's 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 a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Transfer of Petition for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–455. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The form will be used by the applicant to request transfer of his or her petition to another court in accordance with section 405 of the Immigration and Nationality Act. The USCIS will also use this information to make recommendations to the court.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17 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: May 24, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6–8312 Filed 5–30–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Extension of Existing Information Collection Submitted to OMB for Review Under the Paperwork Reduction Act

The U.S. Geological Survey (USGS) received emergency approval from the Office of Management and Budget (OMB) for an information collection in use without an OMB control number. The request extending the information collection described below was submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Address your comments and suggestions on the proposal by fax (202) 395–6566 or e-mail (*oira_docket@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Interior Department. Please also send a copy of your comments to Nancy Faries, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192–0002, or e-mail (*nfaries@usgs.gov*).

As required by OMB regulations at 5 CFR 1320.8(d)(1), the USGS solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected and;

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Bird Banding.

OMB Control No.: 1028–0082.

Summary: In accordance with the Migratory Bird Treaty Act, 16 U.S.C. 703–712, the trapping and marking of wild migratory birds by persons holding Federal permits must be monitored. Formerly managed by the U.S. Fish and Wildlife Service, the bird banding program is now the responsibility of the USGS Bird Banding Laboratory (BBL). This bird banding monitoring program involves information collections on three forms: (1) The Application for Federal Bird Marking and Salvage Permit; (2) The Bird Banding Recovery Report; and (3) The Bird Banding Schedule. The information on the Recovery Report may also be submitted electronically at the BBL Web site or via a toll-free telephone number. This program also assists the Fish and Wildlife Service in fulfillment of its

responsibilities designated by International Migratory Bird Treaties with Canada, Mexico, Japan, and the Soviet Union.

Estimated Completion Time: 30 minutes for Permit Application; 3 minutes for Recovery Report; 2 minutes for Banding Schedule for waterfowl and 200 minutes for Banding Schedule for birds other than waterfowl.

Estimated Annual Number of Responses: 97,550.

Estimated Annual Burden Hours: 32,959 hours.

For Further Information Contact: To obtain a copy of the full information collection request or copies of the forms, contact the Bureau Information Collection Clearance Office, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192–0002, or e-mail (*nfaries@usgs.gov*), or phone (703–648–6879); or contact the USGS Bird Banding Laboratory, Patuxent Wildlife Research Center, 12100 Beech Forest Road, Laurel, MD 20708–4037.

Dated: May 24, 2006.

Byron K. Williams,

Acting Associate Director for Biology.

[FR Doc. 06–4943 Filed 5–30–06; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Indian Affairs is submitting an information collection request to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs for clearance and extension. The information collection, Tribal Reassumption of Jurisdiction over Child Custody Proceedings, is cleared under OMB Control Number 1076–0112 through May 31, 2006.

DATES: Submit comments on or before June 30, 2006.

ADDRESSES: Written comments may be sent to the Desk Officer for the Department of the Interior, Office of Management and Budget, Office of Regulatory Affairs via facsimile to 202–395–6566, or by e-mail to *OIRA_DOCKET@omb.eop.gov*.

Send a copy of your comments to Chester Eagleman, Bureau of Indian Affairs, Division of Human Services, 1951 Constitution Avenue, NW., Mail Stop 320–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Mr. Chester Eagleman, (202) 513–7622, Facsimile number (202) 208–2648.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department has issued regulations prescribing procedures by which an Indian tribe may reassume jurisdiction over Indian child proceedings when a state asserts any jurisdiction. Tribes have the right to pursue this alternative because this action is authorized by the Indian Child Welfare Act, Public Law 95–608, 92 Stat. 3069, 25 U.S.C. 1918. A 60-day notice for public comments was published in the **Federal Register** on December 30, 2005 (70 FR 77423). No comments were received regarding this collection.

II. Request for Comments

The Department invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

(2) The accuracy of the Bureau's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other collection techniques or forms of information technology.

Please submit your comments to the persons listed in the **ADDRESSES** section. Please note that comments, names and addresses of commentators, will be available for public review during regular business hours. If you wish your name and address withheld from the public, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowable by law.

OMB is required to make a decision concerning this information collection request between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment will receive the best consideration by OMB if it is submitted early during this comment period.

III. Data

OMB Control Number: 1076–0112.

Type of Review: Renewal.

Title of the Information Collection: Tribal Reassumption of Jurisdiction Over Child Custody Proceedings, 25 CFR 13.11.

Summary of Collection of Information: The collection of information will ensure that the provisions of Public Law 95–608 are met.

Affected Entities: Federally-recognized tribes who submit tribal reassumption petitions for review and approval by the Secretary of the Interior.

Frequency of Response: Annually.

Estimated Number of Annual Responses: 2.

Estimated Time Per Application: 8 hours.

Estimated Total Annual Burden Hours: 16 hours.

BIA Information Collection Clearance Officer: Ruth Bajema, 703–735–4414.

Dated: April 14, 2006.

Debbie L. Clark,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–8359 Filed 5–30–06; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–06–1220–PA]

Notice of Availability of the Sheep Complex, Big Springs and Owyhee Grazing Allotments Sensitive Bird Species Final Environmental Impact Statement and Proposed Grazing Decision, Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Sheep Complex, Big Springs and Owyhee Grazing Allotments Sensitive Bird Species Final Environmental Impact Statement (EIS).

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969 and regulations at 40 CFR parts 1500–1508, the Bureau of Land Management (BLM), Elko Field Office, has prepared a Final EIS on the effects of three multiple use decisions on sensitive avian species in Elko County, Nevada.

DATES: In accordance with 43 CFR 4160.2, any applicant, permittee, lessee or other interested public may protest

the proposed grazing decision (s), attached to the Final EIS, in person or in writing to the BLM Elko Field Office, Helen Hankins, Field Manager, within 15 days after receipt of the document. Instructions for filing of protests will be mailed with the proposed decision. In accordance with 40 CFR 1506.10, a final decision will be issued via a Record of Decision following consideration of any protests received. The Record of Decision will be issued no earlier than 30 days after the Environmental Protection Agency has published their notice of filing of the Final EIS in the **Federal Register**.

ADDRESSES: Protests must be addressed to the BLM Elko Field Office, Helen Hankins, Field Manager, 3900 East Idaho Street, Elko, Nevada 89801.

FOR FURTHER INFORMATION CONTACT: Lorrie West or Bryan Fuell EIS Team Co-Leads, at the Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801. Telephone: (775) 753–0200. E-mail: *lwest@nv.blm.gov* or *bfuell@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM prepared this EIS to comply with a minute order issued by the Honorable Howard D. McKibben, U.S. District Judge, District of Nevada, on August 18, 2004 (CV–N–03–197–HDM(VPC). The order followed a hearing on a complaint against three final multiple use decisions (*Western Watersheds Project and Committee for the High Desert* vs. *Clinton R. Oke, Assistant Field Manager, Elko Field Office, et al.*). The final decisions, which were left intact by the judge, are for the Sheep Allotment Complex, Big Springs Allotment and Owyhee Allotment. The Sheep Allotment Complex and Big Springs grazing allotments are located in the southeastern portion of Elko County, NV, and the Owyhee Allotment is in the northwest portion of Elko County.

The order was to prepare the EIS with respect to burrowing owls, other BLM sensitive raptor species, and sage-grouse on the Sheep Complex and the Owyhee Allotment, and sage-grouse on the Big Springs Allotment. To the extent applicable, the EIS was to analyze the impacts of livestock grazing proposed by the multiple use decisions and alternatives to these sensitive bird species and considering springs, seeps, riparian areas and upland habitat. A range of alternatives (including the no-action alternative) was developed to address the issues outlined in the court order.

A Notice of Intent to prepare the EIS was published in the **Federal Register** on December 17, 2004, and it initiated a 30-day public scoping period. A Memorandum of Understanding (MOU) between the Nevada Department of Wildlife (NDOW) and the BLM Elko Field Office was signed establishing Cooperating Agency status for NDOW. A public scoping meeting was held January 6, 2005. A project briefing was given to the Elko County Public Land Use Advisory Commission on February 4, 2005 and to the Nevada Society of Range Management on January 25, 2005. The Draft EIS was filed with EPA and their **Federal Register** Notice was published on December 9, 2005. A public open house to discuss the Draft EIS was held on January 11, 2006, and the public comment period closed on January 24, 2006.

Comments on the Draft EIS are included in the Final EIS, and resulted in the addition of mitigation measures and additional analyses to address concerns expressed with the Proposed Action alternative, which is to implement the Final Multiple Use Decisions.

Copies of the Final EIS have been sent to affected Federal, State and local Government agencies, Tribal governments, and to interested parties. Copies of the Final EIS are available for public inspection at the BLM Elko Field Office, 3900 East Idaho Street, Elko, NV. Interested persons may also review the Final EIS on the Internet at *http://www.blm.gov/nhp/spotlight/state_info/planning.htm.*

Helen M. Hankins,

Field Manager, Elko Field Office, Bureau of Land Management.

[FR Doc. 06–5006 Filed 5–30–06; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–920–1320–EL, UTU–84285]

Notice of Availability of the Environmental Assessment, Determination of NEPA Adequacy, and Public Hearing for Coal Lease Application UTU–84285, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Mill Fork West Tract Coal Lease by Application UTU–84285 and Federal Coal Notice of Public Hearing, and Request for Environmental Assessment, Determination of NEPA Adequacy, Maximum Economic Recovery and Fair Market Value Comments.

SUMMARY: Pursuant to 43 Code of Federal Regulation (CFR) 3425.4, the Bureau of Land Management (BLM) Utah State Office, hereby gives notice that Environmental Assessments (EA) and Documentation of NEPA Adequacy (DNA) are available and a public hearing will be held to lease Federal coal. The EA/DNA analyzes and discloses direct, indirect, and cumulative environmental impacts of issuing a Federal coal lease competitively for 213.57 acres in Emery County, Utah. The purpose of the public hearing is to solicit comments from the public on (1) the proposal to issue a Federal coal lease; (2) the proposed competitive lease sale; (3) the Fair Market Value (FMV) of the Federal coal; and (4) Maximum Economic Recovery (MER) of the Federal coal included in the tract.

DATES: Written comment will be accepted until June 15, 2006. The public hearing will be held at 7 p.m on Thursday June 1, 2006.

ADDRESSES: Written comments should be addressed to Stan Perkes, 801–539–4036, Bureau of Land Management, Utah State Office, Division of Lands and Minerals, P.O. Box 45155, Salt Lake City, Utah 84145. The public hearing will be held in the Price Field Office, 125 South 600 West, Price, Utah 84501 where copies of the EA/DNA are available for inspection or copies provided upon request.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Rigby, Mining Engineer at the Price Field Office address above or by telephone at 435–636–3604.

SUPPLEMENTARY INFORMATION: On January 25, 2006 PacifiCorp applied for a Federal coal lease. The Federal tract was assigned case number UTU–84285. The lands included in the delineated Federal coal lease tract (''Mill Fork West'') are located approximately fourteen miles northwest of Huntington, Utah on Forest Service surface lands with federally administered minerals and are described as follows:

T. 16 S., R. 6 E., SLM, Emery County, Utah
Sec. 10, S½NE¼NE¼, SE¼NE¼, W½E½SE¼;
Sec. 15, E½W½E½;
Sec. 22, lot 3.

Containing approximately 213.57 acres in Emery County, Utah.

The Mill Fork West coal tract has two minable coal beds. The minable portions of the Hiawatha coal bed and the Blind Canyon coal bed in this area are around eleven feet in thickness. The Hiawatha and Blind Canyon beds contains around 400 thousand tons of recoverable high-volatile A to B bituminous coal. The coal quality in the Hiawatha coal bed on an ''as received basis'' is as follows: 12,892 Btu/lb., 4.54

percent moisture, 7.69 percent ash, 42.46 percent volatile matter, 45.48 percent fixed carbon and 0.57 percent sulfur. The coal quality in the Blind Canyon coal bed on an ''as received basis'' is as follows: 13,314 Btu/lb., 5.26 percent moisture, 4.68 percent ash, 44.18 percent volatile matter, 45.88 percent fixed carbon and 0.61 percent sulfur.

BLM requests public comment on the fair market value and environmental effects of this tract. The BLM signed a Decision Notice/ Finding of No Significant Impact dated May 15, 2006 that discusses the environmental effects of mining this tract. The Notice of Decision was posted in the Price Field Office and the Utah State Office on May 15, 2006. Comments should address, but not necessarily be limited to the following information.

1. The quality of the coal resource;

2. The mining methods or methods which would achieve maximum economic recovery of the coal, including specifications of seams to be mined and the most desirable timing and rate of production;

3. Whether this tract is likely to be mined as part of an existing mine and therefore should be evaluated on a realistic incremental basis, in relation to the existing mine to which it has the greatest value;

4. Whether the tract should be evaluated as part of a potential larger mining unit and revaluated as a portion of a new potential mine (*i.e.*, a tract which does not in itself form a logical mining unit);

5. Restrictions to mining that may affect coal recovery;

6. The price that the mined coal would bring when sold;

7. Costs, including mining and reclamation, of producing the coal and the time of production;

8. The percentage rate at which anticipated income streams should be discounted, either with inflation or in the absence of inflation, in which case the anticipated rate of inflation should be given;

9. Depreciation, depletion, amortization and other tax accounting factors;

10. The value of any surface estate where held privately;

11. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area;

12. Any comparable sales data of similar coal lands; and coal quantities and the FMV of the coal developed by BLM may or may not change as a result of comments received from the public and changes in the market conditions between now and when final economic evaluations are completed.

In accordance with Federal coal management regulations 43 CFR parts 3422 and 3425, the public meeting is being held on the proposed sale to allow public comment on and discussion of the potential effects of mining and proposed lease. The meeting is being advertised in the Emery County Progress located in Castledale, Utah. 43 CFR part 3422 states that, no less than 30 days prior to the publication of the notice of the sale, the Secretary shall submit public comments on the FMV appraisal and the MER, and on factors that may affect these two determinations. As provided in 43 CFR 3422.1(a), proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing confidentiality of such information. A copy of the comments submitted by the public on FMV and MER, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act (FOIA), will be available for public inspection at the BLM, Utah State Office during the regular business hours (7:45 a.m.–4:30 p.m.) Monday through Friday. If you wish to withhold your name or address from public review or from disclosure under the FOIA you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by the FOIA. All submissions from organizations, businesses and individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in its entirety. Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering. A copy of the EA/DNA, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the FOIA, will be available for public inspection after at the Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84145.

Kent Hoffman,

Deputy State Director, Lands and Minerals.

[FR Doc. 06–5005 Filed 5–30–06; 8:45 am]

BILLING CODE 4310–DK–P

DEPARTMENT OF THE INTERIOR

National Park Service

Minor Boundary Revision at Cape Cod National Seashore

AGENCY: National Park Service, Interior.

ACTION: Announcement of park boundary revision.

SUMMARY: Notice is given that the boundary of the Cape Cod National Seashore has been revised pursuant to the Act specified below, to encompass lands depicted on the map prepared by the National Park Service entitled ''Cape Cod National Seashore Boundary Revision Map'', dated May 1997, and numbered 609/80,801. The revision to the boundary includes tract 04–1081 as depicted on the map.

FOR FURTHER INFORMATION CONTACT: Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

SUPPLEMENTARY INFORMATION: The Act of October 26, 1998 (Pub. L. 105–280, 112 Stat. 2694), authorized the Secretary to convey to the town of Provincetown approximately 7.62 acres within Cape Cod National Seashore in exchange for 11.16 acres located outside the national seashore. The purpose of the exchange is to allow for the establishment of a municipal solid waste treatment facility. The Act provides that, upon completion of the exchange, the national seashore boundary shall be revised to include the additional 11.16 acres. The exchange was completed on August 2, 1999.

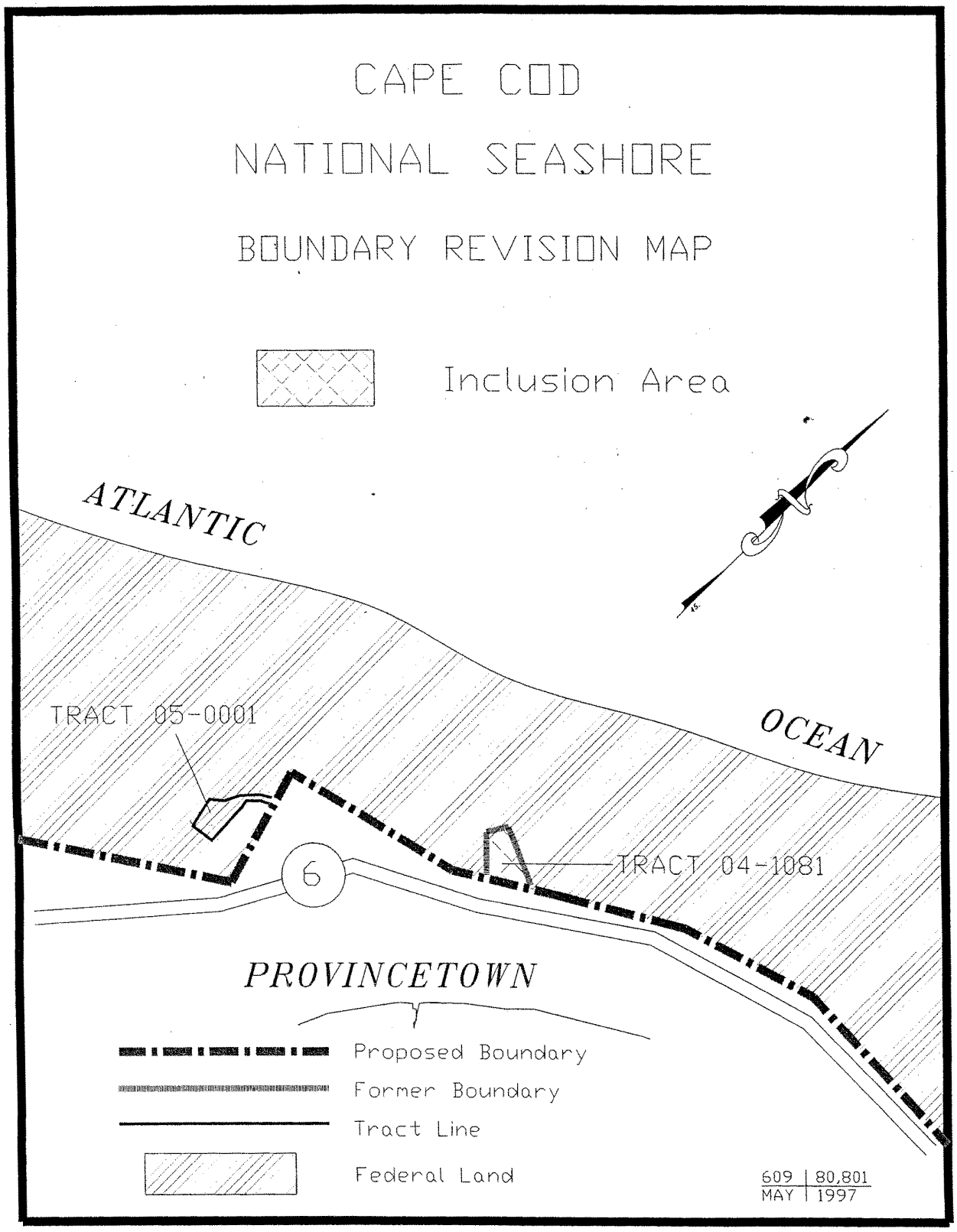
The map is on file and available for inspection in the Land Resources Program Center, Northeast Regional Office, U.S. Customs House, 200 Chestnut Street, 3rd Floor, Philadelphia, Pennsylvania 19106–2988, and in the Offices of the National Park Service, Department of the Interior, Washington, DC 20240.

Dated: March 13, 2006.

Chrysandra L. Walter,

Deputy Regional Director, Northeast Region.

BILLING CODE 4310–WV–M


CAPE COD
NATIONAL SEASHORE
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PROVINCETOWN
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[FR Doc. 06–4953 Filed 5–30–06; 8:45 am]
BILLING CODE 4310–WV–C

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice; Notice of Request for Continuation of Visitor Services

AGENCY: National Park Service, Interior.
ACTION: Public notice; notice of request for continuation of visitor services.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service has requested a continuation of visitor services for the following expiring concession contract for a period of 1 year until December 31, 2008.

DATES: *Effective Date:* May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

SUPPLEMENTARY INFORMATION: The listed concession authorization expires on December 31, 2007. Under the provisions of the current concession contract and pending the Record of Decision for the National Mall and Memorial Parks Visitor Transportation Study, the National Park Service authorizes the continuation of visitor services for a period not-to-exceed 1 year, or until such time as the Record of Decision is implemented, whichever occurs first, under the terms and conditions of the current concession contract, as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Conc ID Number	Concessioner name	Park
CC–NACC004–89	Landmark Services Tourmobile, Inc	National Mall and Memorial Parks.

Dated: April 21, 2006.
Alfred J. Poole III,
Acting Assistant Director, Business Services.
[FR Doc. 06–4948 Filed 5–30–06; 8:45 am]
BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.
ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of up to 1 year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession contract will expire by its terms on December 31, 2005. The National Park Service has determined that the proposed short-term extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering this operation.

Conc ID Number	Concessioner name	Park
LARO001–92	Roosevelt Recreational Enterprises	Lake Roosevelt National Recreation Area.

DATES: *Effective Date:* January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: April 21, 2006.
Alfred J. Poole, III
Acting Assistant Director, Business Services.
[FR Doc. 06–4950 Filed 5–30–06; 8:45 am]
BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for an Oil and Gas Management Plan (O&GMP) Big South Fork National River and Recreation Area (BISO), and Obed Wild and Science River (OBRI)

AGENCY: National Park Service.

SUMMARY: Notice is hereby given in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332 and Council on Environmental Quality regulation 40 CFR 1506.6, that the U.S. Department of the Interior, National Park Service (NPS), is preparing an EIS for an O&GMP for BISO and OBRI.

The BISO/OBRI O&GMP/EIS will:

- Identify resources impacted by oil and gas operations, and provide a comprehensive framework to remedy the resulting environmental problems.
- Allow for exploration and development of the private mineral estate.
- Facilitate operator planning by setting park-specific operating standards.
- Provide educational outreach to operators, including guidance on the regulatory process for bringing operations into compliance with applicable legal requirements.
- Enhance coordination with State natural resource agencies to better manage and enforce oil and gas operations according to State standards.
- Evaluate the potential for NEPA streamlining for plugging and reclaiming orphaned or exhausted oil and gas operations.
- Evaluate public use of oil and gas access roads.
- Address visitor safety issues related to oil and gas operations.
- Provide for a range of reasonable alternatives for managing oil and gas operations, and assess potential impacts on park resoures such as threatened and endangered species, soils, wetlands, wildlife, cultural resources, and public safety, while allowing for the exercise of oil and gas rights.
- Provide the framework to achieve sound decision-making and resource protection at BISO and OBRI for the next 15 to 20 years.

A scoping brochure will be available summarizing the purpose, need and objectives of the O&GMP/EIS. Copies of that information may be obtained by visiting the NPS public comment and planning Web site at *http://parkplanning.nps.gov/biso,* or from the Office of the Superintendent, Big South

Fork NRRA, 4564 Leatherwood Road, Oneida, Tennessee 37841, telephone number 423–569–9778.

DATES: To determine the scope of issues to be addressed in the O&GMP and EIS and to identify significant issues related to the management of oil and gas operations at BISO and OBRI, the NPS will conduct public scoping meetings in mid-summer/early fall in both Tennessee and Kentucky. Representatives of the NPS will be available to discuss issues, resource concerns, and the planning process at each of the public meetings. When public scoping meetings have been scheduled, their locations, dates, and times will be published in local newspapers and posted on the NPS Planning, Environment and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/biso.* To be most helpful to the scoping process, comments should be received within 30 days of the beginning of the public comment period.

ADDRESSES: If you wish to comment on the scoping brochure or on any other issues associated with the BISO/OBRI O&GMP/EIS, you may submit your comments by any one of several methods. Comments may be entered on-line in the NPS Planning, Environment and Public Comment System (PEPC) Web site at *http://parkplanning.nps.gov/biso.* To comment using PEPC, select the Big South Fork O&GMP/EIS project, select documents, select this Notice of Intent, and then select Comment and enter your comments (enter comments related to the OBRI here as well). You may also mail comments to Superintendent, Big South Fork NRRA, 4564 Leatherwood Road, Oneida, Tennessee 37841, (BISO O&GMP Public Scoping) and your name and return address. Finally, you may hand-deliver comments to Big South Fork NRRA, 4564 Leatherwood Road, Oneida, Tennessee 37841.

It is the practice of the NPS to make all comments, including names and addresses of respondents who provide that information, available for public review following the conclusion of the NEPA process. Individuals may request that the NPS withhold their name and/or address from public disclosure. If you wish to do this, you must state this prominently at the beginning of your comment. Commentators using the Web site can make such a request by checking the box ''keep my contact information private.'' NPS will honor such requests to the extent allowable by law, but you should be aware that NPS may still be required to disclose your name and address pursuant to the Freedom of Information Act.

Information will also be available for public review and comment in the Office of the Superintendent, Big South Fork NRRA, 4564 Leatherwood Road, Oneida, Tennessee 37841, telephone: 423–569–9778; and in the Office of the Unit Manager, Obed Wild and Scenic River, 208 North Maiden St., Wartburg, Tennessee 37887, telephone: 423–346–6294.

SUPPLEMENTARY INFORMATION: The following purpose and need statements related to the management of non-Federal oil and gas operations at BISO and OBRI were developed at an internal scoping meeting of NPS staff.

The purpose of the Draft O&GMP/EIS for BISO and OBRI is to analyze alternative approaches, clearly define a strategy, and provide guidance for the next 15 to 20 years to ensure that activities undertaken by owners and operators of private oil and gas rights are conducted in a manner that protects park resources and values, visitor use and experience, and human health and safety. The plan is strategic in nature and will not establish any rights or obligations; NPS authorizes actual operations on a site-specific basis.

There are over 300 private oil and gas operations within the BISO and OBRI. Many of the past and existing oil and gas operations in these NPS units are adversely impacting resources and values, human health and safety, and visitor use and experience; most are not in compliance with Federal and State regulations, most notably, the NPS regulations governing non-Federal oil and gas rights, 36 CFR part 9, subpart B. In addition, future oil and gas operations have the potential to damage park resources and values. The plan is needed to provide an efficient and effective strategy for park managers to ensure the units are protected for the enjoyment of future generations. There is also a need for park-specific guidance to help oil and gas operators in their planning efforts.

The following objectives are proposed for the management of non-Federal oil and gas operations at BISO and OBRI:

General

- Provide owners and operators of private oil and gas rights reasonable access for exploration, production, maintenance, and surface reclamation.
- Bring existing operations into compliance with Federal and State requirements.
- Identify and protect resources that could be adversely affected by impacts from oil and gas operations.

Water Resources

- Protect and enhance water resources.

Threatened and Endangered Species

- Protect species of management concern from unacceptable adverse impacts resulting from oil and gas operations.
- Protect critical habitat from adverse modification resulting from oil and gas operations.

Visitor Experience, Conflicts, and Safety

- Prevent, minimize, or mitigate conflicts between oil and gas operations and visitor use.
- Protect human health and safety from oil and gas operations.

Cultural Resources

- Protect cultural resources, including those on or eligible for listing on the National Register of Historic Places.

Park Management and Operations

- Provide pertinent guidance to operators to facilitate planning and compliance with NPS regulations.
- Establish an efficient process under NEPA for plugging and reclaiming orphaned or exhausted oil and gas operations.

FOR FURTHER INFORMATION CONTACT: Reed E. Detring, Superintendent, Big South Fork NRRA, 4564 Leatherwood Road, Oneida, Tennessee 37841, telephone: 423–569–9778.

Authority: The authority for publishing this notice is 40 CFR 1506.6.

The responsible official for this O&GMP/EIS is Patricia A. Hooks, Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: March 28, 2006.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 06–4951 Filed 5–30–06; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Chesapeake and Ohio Canal National Historical Park.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a special meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission (the Commission) will be held on Friday, May 19, 2006, at 10 a.m., at the Glen Echo Town Hall, 6106 Harvard Avenue, Glen Echo, Maryland.

The Commission will meet to consider the National Park Service Environmental Assessment evaluating the impacts of a proposal by Georgetown University to construct a boathouse for competitive rowing on the Georgetown Waterfront in Washington, DC (Environmental Assessment).

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Superintendent Kevin Brandt at (301) 714–2201.

DATES: May 19, 2006.

ADDRESSES: Glen Echo Town Hall, 6106 Harvard Avenue, Glen Echo, Maryland 20812.

FOR FURTHER INFORMATION CONTACT: Superintendent Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740, telephone: (301) 714–2201.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historic Park. Normally, notice of advisory committee meetings is published at least 15 calendars prior to the meeting date. However, due to: (1) The compelling need for the Commission to prepare and provide comments on the Environmental Assessment during the 45-day comment period; (2) the difficulty of finding a date suitable to all Commission members; and (3) the difficulty of finding a suitable meeting location, it was not possible to give 15 calendar days advance notice. A notice of this meeting was signed on April 25 and appeared in the **Federal Register** on May 10. This notice supplements that initial notice.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairperson.
Mr. Charles J. Weir.
Mr. Barry A. Passett.
Mr. Terry W. Hepburn.
Ms. JoAnn M. Spevacek.
Mrs. Mary E. Woodward.
Mrs. Donna Printz.
Mrs. Ferial S. Bishop.
Ms. Nancy C. Long.
Mrs. Jo Reynolds.
Dr. James H. Gilford.
Brother James Kirkpatrick.
Mr. George E. Lewis, Jr.
Mr. Charles D. McElrath.
Ms. Patricia Schooley.
Mr. Jack Reeder.

Minutes of the meeting will be available for public inspection six weeks after the meeting at Chesapeake and Ohio Canel National Historical Park Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Dated: May 9, 2006.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. 06–4952 Filed 5–30–06; 8:45 am]

BILLING CODE 4310–6V–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the National Park System Advisory Board will meet June 8–9, 2006, in Springdale, Utah. On June 8, the Board will tour Zion National Park and will be briefed regarding environmental, education and partnership programs. The Board will convene its business meeting on June 9 at 8:30 a.m., EST, in the auditorium of Zion Lodge, Zion National Park, Springdale, Utah, telephone 435–772–3213. The Board will be addressed by National Park Service Director Fran Mainella and will receive the reports of its Education Committee, National Landmarks Committee, Committee on Philanthropy, National Parks Science Committee, Committee on Federal Rehabilitation Tax Credit, Partnerships Committee, and Committee on Health and Recreation. Nominations for National Historic Landmark designation will be considered during the morning session; nominations for National Natural Landmark designation will be considered during the afternoon session. The business meeting will be adjourned at 4:30 p.m.

Other officials of the National Park Service and the Department of the Interior may address the Board, and other miscellaneous topics and reports may be covered.

The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also may permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser, Chief, Office of Policy, National Park Service; 1849 C Street, NW., Room 7250; Washington, DC 20240; telephone 202–208–7456.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 7252, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: May 12, 2006.

Loran Fraser,

Chief, Office of Policy.

[FR Doc. E6–8317 Filed 5–30–06; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–566]

In the Matter of Certain Chemical Mechanical Planarization Slurries and Precursors to Same; Notice of Correction

AGENCY: U.S. International Trade Commission

ACTION: Correction notice for the subject investigation.

SUMMARY: On April 28, 2006, the Commission published in the **Federal Register** (71 FR 25227–28) a notice of investigation of certain chemical mechanical planarization slurries and precursors to same under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337). The Commission gives notice of the following needed corrections to the above mentioned notice: (1) In the section labeled **SUMMARY**, U.S. Patent No. ''5,980,773'' should read ''5,980,775;'' and (2) in the section labeled SCOPE OF INVESTIGATION, U.S. Patent No. ''5,980,773'' should read ''5,980,775.''

DATES: *Effective Date:* May 24, 2006.

FOR FURTHER INFORMATION CONTACT: Steven R. Pedersen, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2781. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *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.*

By order of the Commission.

Issued: May 24, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–8367 Filed 5–30–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–571]

In the Matter of Certain L-Lysine Feed Products, Their Methods of Production and Genetic Constructs for Production; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 25, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Ajinomoto Heartland LLC of Chicago, Illinois. An amended complaint was filed on May 12, 2006. Supplements to the Complaint were filed on May 12, 2006, and May 16, 2006. The complaint, as amended and supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain L-lysine feed products and genetic constructs for production thereof by reason of infringement of claims 13, 15–19, and 21–22 of U.S. Patent No. 5,827,698 and claims 1, 2, 15, and 22 of U.S. Patent No. 6,040,160. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 22, 2006, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain L-lysine feed products or genetic constructs for production thereof by reason of infringement of one or more of claims 13, 15–19, and 21–22 of U.S. Patent No. 5,827,698 and claims 1, 2, 15, and 22 of U.S. Patent No. 6,040,160, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Ajinomoto Heartland LLC, 8430 W. Bryn Mawr Avenue, Suite 650, Chicago, IL 60631.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Global Bio-Chem Technology, Group Company Limited, Unit 1104, Admiralty Centre, Tower 1, 18 Harcourt Road, Admiralty, Hong Kong.

Changchun Dacheng Bio-Chem Engineering Development Co., Ltd., No. 886 Xihuangcheng Road, Processing Corn District, Changchun Economic and Technological Development Zone, Jilin Province, China.

Changchun Baocheng Bio-Chem Development Co., Ltd., No. 886 Xihuangcheng Road, Processing Corn District, Changchun Economic and Technological Development Zone, Jilin Province, China.

Changchun Dahe Bio Technology Development Co., Ltd., No. 28 Xihuangcheng Road, Processing Corn District, Changchun Economic and Technological Development Zone, Jilin Province, China.

Bio-Chem Technology (HK) Limited, Unit 1104, Admiralty Centre, Tower, 1, 18 Harcourt Road, Admiralty, Hong Kong.

(c) The Commission Investigative Attorney, party to this investigation, is Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the

administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 24, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–8314 Filed 5–30–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Posting in Final Form of Three Documents Created by Subcommittees of the Interagency ADR Working Group (''IADRWG'') Steering Committee (''Steering Committee''), a Group Of Federal Subject Matter Experts

SUMMARY: The first document, ''Protecting the Confidentiality of Dispute Resolution Proceedings: A Guide for Federal Workplace ADR Program Administrators'' (''Confidentiality Guide''), provides practical guidance to program administrators on the application of the confidentiality provisions of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 574, to Federal workplace dispute resolution programs. The second document is the ''Guide for Federal Employee Mediators'' (a supplementation and annotation of the 2005 Model Standards of Conduct for Mediators issued by the American Arbitration Association, American Bar Association, and the Association for Conflict Resolution), which is for use by federal employee mediators. The third document is the ''Guide for Federal Employee Ombuds'' (a supplementation and annotation of the Standards for the Establishment and Operations of Ombuds Offices issued on February 9, 2004 by the American Bar Association), prepared by the Steering Committee in conjunction with the Coalition for Federal Ombudsmen, for use by federal employee ombuds. Complete copies of each of the three final documents can be found at the IADRWG Web site, *http://www.adr.gov* (click on ''Guidance''), or may be requested in hard copy from Hon. Richard C. Walters, Administrative Judge, U.S. Department of Veterans Affairs Board of Contract Appeals (09), 810 Vermont Avenue, NW., Washington, DC 20420, telephone 202–273–6747.

In a Notice in the 70 FR 67901, Nov. 9, 2005, the Steering Committee invited interested individuals or organizations to submit comments, within 30 days, on the documents for consideration before they were posted in final form. Complete copies of the three draft guides to which the comments were addressed, as well as a summary of the comments received and disposition thereof for each guide, are posted at *http://www.adr.gov* (click on ''Library/Archives'').

SUPPLEMENTARY INFORMATION:

Authority: The Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571–584, requires each Federal agency to promote the use of ADR and calls for the establishment of an interagency committee to assist agencies in the use of ADR. Under this Act, a Presidential Memorandum dated May 1, 1998 created the Interagency ADR Working Group, chaired by the Attorney General, to ''facilitate, encourage, and provide coordination'' for Federal agencies. In the Memorandum, the President charged the Working Group with assisting agencies with training in ''how to use alternative means of dispute resolution''. The three documents are designed to serve this goal.

Executive Overview of the Confidentiality Guide: This document provides practical guidance to Federal administrators on the application of the confidentiality provisions of the Administrative Dispute Resolution Act of 1996 to Federal workplace dispute resolution programs. It extends the guidance issued by the Federal ADR Council, Report on the Reasonable Expectations of Confidentiality Under the Administrative Dispute Resolution Act of 1996, 5 FR 83085, Dec. 29, 2000 (''the 2000 ADR Guidance''), which also may be found at *http://www.adr.gov* (click on ''Guidance''), and is designed to be used in concert with the confidentiality provisions of the ADR Act as well as agency confidentiality policies and guidance. The document describes in practical, non-legal terms the nature and limits of confidentiality in Federal ADR proceedings, and provides suggestions to program administrators on how to ensure appropriate confidentiality is maintained when ADR is used in workplace programs. The topics addressed by the Guide include confidentiality during the various stages of an alternative dispute resolution proceeding, confidentiality agreements, record-keeping, program evaluation, access requests, and non-party participants.

Executive Overview of the Guide for Federal Employee Mediators: This document builds upon the 2005 Model Standards of Conduct for Mediators (''Model Standards'') issued by a joint committee of three major nationwide dispute resolution organizations (American Arbitration Association, American Bar Association, and Association for Conflict Resolution). The Guide sets forth the Model Standards in their entirety and provides further explication through Federal Guidance Notes for Federal employee mediators for mediations they undertake for the Federal government. The Federal Guidance Notes include discussion of impartiality, conflicts of interest, confidentiality, and advertising and solicitation.

Executive Overview of the Guide for Federal Employee Ombuds: This document builds upon the February 9, 2004 Standards for the Establishment and Operations of Ombuds Offices (''Ombuds Standards'') issued by the American Bar Association. The Guide sets forth the Ombuds Standards in their entirety and provides supplementation through Federal Guidance Notes for specific areas unique to federal Ombuds practice. The Federal Guidance Notes include discussion of limitations on ombuds' authority, confidentiality, reporting, and record-keeping.

Aloma A. Shaw,

Staff Assistant, Office of Dispute Resolution, U.S. Department of Justice.

[FR Doc. E6–8382 Filed 5–30–06; 8:45 am]

BILLING CODE 4410–EC–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Employee Possessor Questionnaire.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for

''sixty days'' until July 31, 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 Christopher R. Reeves, Chief, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Employee Possessor Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.28. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit. Each employee possessor in the explosives business or operations required to ship, transport, receive, or possess (actual or constructive), explosive materials must submit this form. The form will be submitted to ATF to determine whether the person who provided the information is qualified to be an employee possessor in an explosive business.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete a 20 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3,334 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 24, 2006.

Lynn Bryant,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. E6–8358 Filed 5–30–06; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Die Products Consortium

Notice is hereby given that, on May 2, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Die Products Consortium (''DPC'') has filed written notifications simultaneously with the Attorney general and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AMI Semiconductor, Oudenaarrde, Belgium; Avago Technologies, Singapore, Singapore; and ST Microelectronics, Amsterdam, The Netherlands have been added as parties to this venture. Also, Analog Devices, Inc., Limerick, Ireland; and Chip Supply, Inc., Orlando, FL have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DPC intends to file additional written notification disclosing all changes in membership.

On November 15, 1999, DPC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the (**Federal Register** pursuant to Section 6(b) of the Act on June 26, 2000 (65 FR 39429).

The last notification was filed with the Department on May 26, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 20, 2005 (70 FR 35454).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–4945 Filed 5–30–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on May 3, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASME Standards Technology, LLC, New York, NY; Digital Wave Corporation Centennial, CO; Dow Chemical Company, Midland, MI; EADS North America Defense Test & Services, Inc., Irving, CA; Lincoln Composites, Inc., Lincoln, NE; NextEnergy Center, Detroit, MI; and TransCanada CNG Technologies Ltd., Calgary, Alberta, Canada have been added as parties to this venture. Also, Adept Technology, San Jose, CA; Alfalight, Inc., Madison, WI; H&R Technologies, Lowell, MA; Len Industries, Inc., Leslie, MI; Liquid Impact, LLC, Greenville, MI; PCC Structurals Inc., Portland, OR; Robotic Vision Systems, Inc., Huntsville, PA; and Technology Answers, Inc., San Jose, CA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department of Justice on January 17, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 8, 2006 (71 FR 6523).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–4944 Filed 5–30–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on February 16, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Telemanagement Forum (''the Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, A.S.T.R.I.D. SA/NV, Brussels, Belgium; Aceway Telecom Technology Co., LTD, Beijing, People's Republic of China; al-ELM information security, Riyadh, Saudi Arabia; B2 Bredband AB, Stockholm, Sweden; BearingPoint, Unterpremstatten, Austria; BoldTech Systems Inc., Denver, CO: Bonus Technology, Inc., Newark, NJ; BroadHop, Inc., Denver, CO; CellC, Johannesburg, Gauteng, South Africa; CIML Inc., Montreal, Quebec, Canada; Clochase Inc., Toronto, Ontario, Canada; DAX Technologies, Matawan, NJ; DiGi Telecommunications Sdn Bhd, Shad Alam, Selangor, Malaysia; dnp services, Frankfurt, Hesse, Germany; ERM, Campinas, Sao Paulo, Brazil; Errigal Telecom Solutions, San Francisco, CA; Fastwire, Singapore, Singapore; Gaia bsm, Herzeliya, Israel; Graftor Media Production Oy, Hameenlinna, Hame, Finland; GuangZhou Sunrise Electronics Development Co., Ltd., Guangzhou, Guangdong, People's Republic of China; issy AG, Rimpar, Bavaria, Germany; Infogix, Inc., Naperville, IL; Information-control LLC, Gaithersburg, MD; InterAcct Solutions, Sydney, New South Wales, Australia; InterSystems, Eton, Windsor, United Kingdom; Intracom S.A., Attica, Greece; Jamcracker, Inc., Santa Clara, CA; Jernbaneverket/ITN, Hamar, Norway; Jordan Mobile Telephone Services-Fastlink, Amman, Jordan; Kvazar-Micro Corporation BV, Amsterdam, Netherlands; Lounet Oy, Turku, Finland; Mangrove Systems, Inc., Wallingford, CT; MaxProcess, Rio de Janeiro, Brazil; MEGA International, Paris, France; Millennium Information Technologies Ltd., Kaduwela, Western, Sri Lanka; Mobile Telecommunications Company, Safat, Kuwait; Mobile Telecommunications Company Group, Safat, Kuwait; Monfox LLC, Alpharetta, GA; MTC Touch, Beirut, Lebanon; MTC-Vodafone (Bahrain), Al Seef District, Manama, Bahrain; MTN Group, Randburg, Gauteng, South Africa; Netsure Telecom Ltd., Dublin 12, Leinster, Ireland; Network Support Services (NSS), Rivonia, Gauteng, South Africa; Nexagent Ltd., Reading, Berkshire, United Kingdom; Open Cloud, Wellington, New Zealand; OperTune Ltd., Oxford, Oxfordshire, United Kingdom; OPtare Solutions, Vigo, Pontevedra, Spain; Penninck & Landtheer, Capelle A/D Ijssel, Zuid Holland, Netherlands; PT Wireless Indonesia, Jakarta, Indonesia; Radom, Tel Aviv, Israel; Redknee Inc., Mississauga, Ontario, Canada; RGAE, Longueuil, Quebec, Canada; RPG Grupo Consultores C.A., Caracas, Miranda, Venezuela; Ryder Systems, Blackburn, Lancashire, United Kingdom; Sigma Systems, Toronto, Ontario, Canada; Sleepycat Software, Inc., Lincoln, MA; Softline, Kiev, Ukraine; Starhub Ltd., Singapore, Singapore; STC Komset, Moscow, Russia; TCB Ventures Ltd., Bristol, United Kingdom; Technology Optimisation Consultants Ltd., Bishopstown, Cork, Ireland; Telefonica Empresas S/A, Sao Paulo, Brazil; Telefonica Moviles Soluciones y Aplicaciones S.A., Santiago, Metropolitana, Chile; Telekom Serbia, Belgrade, Serbia, Serbia and Montenegro; The Westport Group, Alpharetta, GA; Versant Corporation, Fremont, CA; Vodafone D2, Duesselfdorf, Nordrhein-Westerfalen, Germany; Vodafone Sweden AB, Karlskrona, Sweden; Vodafone UK Ltd., Newbury, Berkshire, United Kingdom; Voylence, Richardson, TX; Wanadoo UK, St. Albans, London, United Kingdom; and Zeugma Systems, Richmond, British Columbia, Canada, have been added as parties to this venture.

Also, 7th Catalyst, Toronto, Ontario, Canada; ASPOne, Chicago, IL; Atreus Systems, Ottawa, Ontario, Canada; Axon Solutions Ltd., Edham, Surrey, United Kingdom; Axxessit ASA, Bergen, Norway; Corvis, Columbia, MD; Creawor Beijing Technique Center, Zhuhai, Guangdong, People's Republic of China; Datanomic Limited, Cambridge, United Kingdom; Diatem Networks, Ottawa, Ontario, Canada; DST Innovis, El Dorado Hills, CA; Ernst & Young Audit Sp Z.o.o., Warsaw, Poland; Evans Griffiths & Hart, Inc., Lexington, MA; Evolving Systems, Englewood, CO; ICE systems d.o.o., Slatina, Croatia; InteGreaT B.V., Bergen opZoom, Netherlands; Inteligentis Limited, Maidenhead, Berkshire, United Kingdom; Katz & Company, Imperial, PA; MCI, Colorado Springs, CO; MDAPCE, Colorado Springs, CO; NetHarmonix, Overland Park, KS; OJ & Builders Corp., Miami, FL; Persistent Solutions, Jonkoping, Sweden; Pivetal, Southampton, United Kingdom; Process Dynamics, Altrincham, Cheshire, United Kingdom; Q6 Ltd., Dorkins, Surrey, United Kingdom; QoSmetrics, Massy, France; Raptor Networks Technologies, Santa Ana, CA; Royah Company, Jeddah, Saudi Arabia; S.E.S.A. International, Eschborn, Germany; Service Management Alliance, Bellevue, WA; The Defense Communication Services Agency, Corsham, Wiltshire, United Kingdom; TICO GmbH, Weininger, Switzerland; VoluBill, 38334 St. Ismier, Cedwex, France; West Ridge Networks, Littleton, MA; and Zvolve Systems, Inc., Duluth, GA have withdrawn as parties to this venture.

The following members have changed their names: SBC Communications Inc. has changed its name to AT&T Inc., San Antonio, TX; Computer Associates has changed its name to CA, Islandia, NY; Incatel has changed its name to Comptel, Sandvika, Norway; Ericsson AB has changed its name to Ericsson, Stockholm, Sweden; ADC Software Systems has changed its name to Intec Telecom Systems PLC, Working, Surrey, United Kingdom; Mariza Dungan has changed its name to Jamcracker, Inc., Santa Clara, CA; kvazar-micro has changed its name to Kvazar-Micro Corporation BV, Amsterdam, Netherlands; Matav Hungarian Telecom Company Ltd. has changed its name to Magyar Telekom, Budapest, Hungary; Mega has changed its name to MEGA International, Paris, France; Mobile Telecommunications Company Kuwait has changed its name to Mobile Telecommunications Company Group, Safat, Kuwait; mtctouch has changes its

name to MTC Touch, Beirut, Lebanon; MTN RSA has changed its name to MTN Group, Sandton, Johannesburg, South Africa; MTN South Africa has changed its name to MTN Group, Sandton, Johannesburg, South Africa; NSS has changed its name to Network Support Services (NSS), Rivonia, Gauteng, South Africa; Nortel Networks has changed its name to Nortel, Brampton, Ontario, Canada; Teleca OSS AB has changed its name to Teleca Sweden South, Stockholm, Sweden; Telekom Malaysia Berhad (Co. Registration: 128740-P) has changed its name to Telekom Malaysia Berhad, Kuala Lumpur, Malaysia; Telecom Serbia has changed its name to Telekom Serbia, Belgrade, Serbia; Popkin Software & Systems has changed its name to Telelogic, Oxford, United Kingdom; and 4DH Software Inc. has changed its name to Tigerstripe, Inc., Seattle, WA.

The following members have changed their addresses: BearingPoint has changed its address to Unterpremstatten, Austria; Comarch S.A. has changed its address to Krakow, Poland; DiGi Telecommunications Sdn Bhd has changed its address to Shah Alam, Selangor, Malaysia; Digital Fairway Corporation has changed its address to Toronto, Ontario, Canada; E*Tezeract, Inc., has changed its address to Murrieta, CA; Evolving Systems has changed its address to Englewood, CO; GlobeTom has changed its address to Highveld, Centurion, South Africa; InterAcct Solutions has changed its address to Sydney, New South Wales, Australia; Max Process has changed its address to Rio de Janeiro, Brazil; MEGA International has changed its address to Paris, France; MTC Touch has changed its address to Beirut, Lebanon; NEC Corporation has changed its address to Tokyo, Japan; PSI AG has changed its address to Dusseldorf, Germany; Qwest Communications International Inc. has changed its address to Denver, CO; Smartrek has changed its address to Wabern, Switzerland; SMI Telco Ltd. has changed its address to Fareham, Hampshire, United Kingdom; TDC has changed its address to Tranbjerg J., Denmark; TierOne OSS Technologies Inc. has changed its address to Mississauga, Ontario, Canada; and Visionael Corporation has changed its address to Palo Alto, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 31, 1998, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on Septemer 8, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 17, 2005 (70 FR 60370).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–4946 Filed 5–30–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review—extension of currently approved collection.

Bureau of Justice Assistance Application Form: Southwest Border Prosecution Initiative

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 31, 2006. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact M. Pressley at 202–353–8643 or 1–866–859–2687, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC, 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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

(1) *Type of information collection:* Extension of currently approved collection.

(2) *The title of the form/collection:* Southwest Border Prosecution Initiative.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: United States Border State, Local, and Tribal governments.

Other: None.

Abstract: The Southwest Border Prosecutor Initiative was enacted in FY 2002 to reimburse state, county, parish, or municipal governments for the costs associated with the prosecution of criminal cases declined by local U.S. Attorneys. Each year, hundreds of criminal cases resulting from federal arrests are referred to local prosecutors to handle when the cases fall below certain monetary, quantity, or severity thresholds. This places additional burdens on local government resources that are already stretched by the demands of prosecuting violations of local and state laws. This program provides funds to eligible jurisdictions in the four southwest border states, using a uniform payment-per-case basis for qualifying federally initiated and declined-referred criminal cases that were disposed of after October 1, 2001. Up to 220 eligible jurisdictions may apply. This includes county governments and the four state governments in Arizona, California, New Mexico, and Texas.

(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 no more than 220 respondents will apply. Each application takes approximately 60 minutes to complete and is submitted 4 times per year (quarterly).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the applications is 880 hours (880 applications (220 × 4 times a year) × 60 minutes = 52,800/60 minutes per hour = 880 burden hours).

If additional information is required, contact: Lynn Bryant, Deputy Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Suite 1600, Washington, DC., 20530, or via facsimile at (202) 514–1590.

Dated: May 24, 2006.

Lynn Bryant,

Deputy Clearance Officer, Justice Management Division, PRA, United States Department of Justice.

[FR Doc. E6–8360 Filed 5–30–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Final Finding of No Significant Impact (FONSI) for the Proposed Job Corps Center To Be Located at the Dome Industrial Park on 5th Avenue and 22nd Street in St. Petersburg, FL

AGENCY: Office of the Secretary (OSEC), Department of Labor.

ACTION: Final Finding of No Significant Impact (FONSI) for the proposed Job Corps Center to be located at the Dome Industrial Park on 5th Avenue and 22nd Street in St. Petersburg, Florida.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC), in accordance with 29 CFR 11.11(d), gives final notice of the proposed construction of a new Job Corps Center at Dome Industrial Park on 5th Avenue and 22nd Street in St. Petersburg, Florida, and that this construction will not have a significant adverse impact on the environment. In accordance with 29 CFR 11.11(d) and 40 CFR 1501.4(e)(2), a preliminary FONSI for the new Job Corps Center was published in the April 7, 2006 **Federal Register** (71 FR 17916–17917). No comments were received regarding the preliminary FONSI. ETA has reviewed the conclusion of the environmental assessment (EA), and agrees with the finding of no significant impact. This notice serves as the Final Finding of No Significant Impact for the new Job Corps Center at Dome Industrial Park on 5th Avenue and 22nd Street in St. Petersburg, Florida. The preliminary FONSI and the EA are adopted in final with no change.

DATES: *Effective Date:* These findings are effective as of May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Michael F. O'Malley, Architect, Unit Chief of Facilities, U.S. Department of Labor, Office of the Secretary (OSEC), 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

Dated this 24th day of May, 2006.

Esther R. Johnson,

National Director of Job Corps.

[FR Doc. E6–8369 Filed 5–30–06; 8:45 am]

BILLING CODE 4510–23–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 62—''Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities.''

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* The collection would only be required upon application for an exemption or when access to a non-Federal low-level waste disposal facility is denied, which results in a public health and safety and/or common defense and security concern.

5. *Who will be required or asked to report:* Generators of low-level waste who are denied access to a non-Federal low-level waste facility.

6. *An estimate of the number of responses:* 1.

7. *The estimated number of annual respondents:* 1.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 227.

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 62 sets out the information which must be provided to the NRC by any low-level waste generator seeking emergency access to an operating low-level waste disposal facility. The information is required to allow NRC to determine if denial of disposal constitutes a serious and immediate threat to public health and safety or common defense and security. 10 CFR part 62 also provides that the Commission may grant an exemption from the requirements in this part upon application of an interested person or upon its own initiative.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 30, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

John Asalone, Office of Information and Regulatory Affairs (3150–0143), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 24th day of May, 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–8348 Filed 5–30–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–157/97]

Ward Center for Nuclear Studies at Cornell University; Triga Research Reactor and Zero Power Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of license amendments to Facility Operating License No. R–80 and No. R–89, that would allow decommissioning of the Ward Center for Nuclear Studies (WCNS) TRIGA Research Reactor (TRIGA), Docket No. 50–157, License No. R–80 and Zero Power Reactor (ZPR), Docket No. 50–97, License No. R–89, located in Ithaca, New York.

Environmental Assessment

Identification of the Proposed Action

By letters dated August 22, 2003, as supplemented on May 13, September 27, October 26, December 13, 2005 and February 13, 2006, the licensee submitted a decommissioning plan (DP) in accordance with 10 CFR 50.82(b)(1), in order to dismantle the 500-kilowatt (thermal) WCNS TRIGA Reactor and the 0.1-kilowatt (thermal) WCNS ZPR, to dispose of its component parts and radioactive material, and to decontaminate the facilities in accordance with the proposed DP to meet the Commission's unrestricted release criteria. After the Commission verifies that the release criteria have been met, Facility Operating License No. R–80 and No. R–89 will be terminated. The licensee submitted an Environmental Report on March 31, 2003, dated March 2003, that addresses the estimated environmental impacts resulting from decommissioning the WCNS, which includes the TRIGA Reactor and the ZPR.

Cornell University ceased operations of the WCNS TRIGA reactor on April 21, 2003, and the WCNS ZPR ceased operations on February 12, 1997. All the reactor fuel has been removed from both of the reactors.

A ''Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission the Ward Center for Nuclear Studies at Cornell University Reactor Facility'' was published in the **Federal Register** on August 10, 2005 (70 FR 46549), and in the Ithaca, New York daily newspaper, *The Ithaca Journal,* on September 3, 2005. No comments were received.

Need for the Proposed Action

The proposed action is necessary because of Cornell University's decision to cease operations permanently at the WCNS TRIGA Reactor and ZPR. As specified in 10 CFR 50.82, any licensee may permanently cease operation and apply to the Nuclear Regulatory Commission for license termination and authorization to decommission the affected facility. Further, 10 CFR 51.53(d) provides that each applicant for a license amendment to authorize decommissioning of a production or utilization facility shall submit with its application an environmental report that reflects any new information or significant environmental change associated with the proposed decommissioning activities. Cornell University is planning unrestricted use for the area that would be released.

Environmental Impact of the Proposed Action

The decommissioning plan states that all decontamination will be performed by trained personnel in accordance with the requirements of the radiation protection program, and will be overseen by a radiation safety officer with multiple years of experience in decommissioning health physics practices. All reactor and pool components will be removed from the facility as low level radioactive waste and managed in accordance with NRC requirements. The licensee estimates the total occupational radiation exposure for the decommissioning process to be about 18 person-rem. The licensee proposes controls, as mentioned above and in the DP, to minimize the occupational exposure to individual workers, thereby ensuring that the exposures are within the 10 CFR part 20 limits. In addition, by keeping the public at a safe distance, using access control, and by using the approved DP and Cornell's radiation protection program to control effluent releases, the licensee expects the radiation exposure to the general public to be negligible. The licensees conclusion is consistent with the estimate given for the ''reference research reactor'' in NUREG–0586, ''Final Generic Environmental Impact Statement on Decommissioning of the Nuclear Facilities, August 1988.''

Occupational and public exposure may result from offsite disposal of the low-level residual radioactive material from the WCNS, which includes the TRIGA Reactor and the ZPR. In the DP the licensee stated that the handling, storage, and shipment of this radioactive material will meet the requirements of 10 CFR 20.2006, ''Transfer for Disposal and Manifest,'' and 49 CFR parts 100–177, ''Transportation of Hazardous Materials.'' The licensee anticipates that about 4700 ft^3 (133 m^3) of low level radioactive waste generated during the decommissioning process will be shipped during approximately twenty truck shipments in appropriate shipping containers to a disposal facility. The waste that needs to be processed prior to disposal will be shipped by the licensee to a licensed waste processor. The DP states that waste for disposal will be shipped to either the Barnwell, South Carolina, or the Envirocare of Utah disposal sites. Included in these shipments will be mixed waste of activated and/or contaminated lead.

The NRC Final Rule on License Termination, 10 CFR 20.1402, provides radiological criteria for release of a site for unrestricted use. Release criteria for unrestricted use is a maximum Total Effective Dose Equivalent (TEDE) of 25 mrem per year from residual radioactivity above background. Application of the as low as reasonably achievable (ALARA) principle is also a requirement. The results of the final status survey will be used to demonstrate that the predicted dose to a member of the public from any residual activity does not exceed the 25 mrem per year dose limit. The NRC will perform inspections and a confirmatory survey to verify the decommissioning activities and the final status survey.

The DP states that liquid waste that is generated during the decommissioning activities will be filtered or solidified and disposed of in accordance with the regulations in 10 CFR part 20, subpart K, ''Waste Disposal.'' Containment measures will be taken as necessary to minimize the spread of contamination. Engineered features such as enclosures and temporary barriers with high-efficiency particulate air filters will be used to control the spread of airborne radioactive material. Airborne releases of radioactive materials are not expected.

The licensee analyzed accidents applicable to decommissioning activities. The accident with the greatest potential impact on members of the public is the dropping of a waste shipping liner containing radioactive material. The maximum TEDE to a member of the public at the site boundary for this accident is about 40 mrem, which is within the dose limits for members of the public given in 10 CFR part 20, subpart D, ''Radiation Dose Limits for Individual Members of the Public.''

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the

WCNS, which includes the TRIGA Reactor and the ZPR, the staff has determined that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there will be no significant increase in occupational or public radiation exposure above those during the operation of the facility. Therefore, the staff concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. The predominant hazardous material in the WCNS site is elemental lead. Proper precautions will be taken to reduce the exposure to lead dust. Asbestos is also present in WCNS construction materials (e.g. floor tiles, roofing materials). Asbestos will be removed by a licensed asbestos abatement contractor. Decommissioning activities will not affect non-radiological facility effluents and have no other environmental impact. The licensee states that there are no sensitive or endangered species on the WCNS site and will ensure that all construction activities or any related disturbance will not result in the impairment of local waterways. Therefore, the staff concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The four alternatives for disposition of the WCNS, which includes the TRIGA Reactor and the ZPR are: DECON, SAFSTOR, ENTOMB, and no action. Cornell University has proposed the DECON option.

DECON is the alternative in which the equipment, structures, and portions of the facilities containing radioactive contaminants are removed or decontaminated to a level that permits the property to be released for unrestricted use. SAFSTOR is the alternative in which the nuclear facilities are placed and maintained in a condition that allows the nuclear facilities to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use. ENTOMB is the alternative in which radioactive contaminants are encased in a structurally long-lived material, such as concrete; the entombed structure is appropriately maintained; and continued surveillance is carried out until the radioactivity decays to a level permitting release of the property for unrestricted use. The no-action alternative would leave the facilities in their present configuration, without any decommissioning activities required or implemented.

The SAFSTOR, ENTOMB, and no-action alternatives would entail continued surveillance and physical security measures to be in place and continued monitoring by licensee personnel. The SAFSTOR and no-action alternatives would also require continued maintenance of the facilities. The radiological impacts of SAFSTOR and no-action would be less than the DECON option because of radioactive decay prior to the start of decommissioning activities. However, these options involve the continued use of resources during the SAFSTOR or no-action period. The ENTOMB option would also result in lower radiological exposure than the DECON option but would involve the continued use of resources. Cornell University has determined that the proposed action (DECON) is the most efficient use of WCNS, including the TRIGA Reactor and the ZPR, since it proposes to use the space that will become available for unrestricted uses. These alternatives would have no significant environmental impact. In addition, the regulations in 10 CFR 50.82(b)(4)(i) only allow an alternative which provides for delayed completion of decommissioning only when the delay is necessary to protect the public health and safety. The staff finds that delay is not justified since the environmental impacts of the proposed action and the alternatives are similar and insignificant.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Environmental Report submitted on March 31, 2003, dated March 2003, as supplemented on May 13, September 27, October 26, and December 13, 2005, for the Cornell University WCNS TRIGA Reactor and ZPR.

Agencies and Persons Contacted

On November 4, 2005, the staff consulted with a New York State official, Robert Dansereau of the New York State Health Department Bureau of Environmental Radiation Protection, regarding the environmental impact of the proposed action. The staff also consulted with other New York State officials including the Program Manager of the Radioactive Waste Policy and Nuclear Coordination Office of the New York State Energy Research & Development Authority, Chief of the Radiation Section Division of Hazardous Waste and Radiation Management of the New York State Department of Environmental Conservation, and the Director of the Bureau of Environmental Radiation Protection of the New York State Health Department. The State officials had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 22, 2003, as supplemented on May 13, September 27, October 26, 2005, December 13, 2005, and February 13, 2006, which are available for public inspection, and can be copied for a fee, at the U.S. Nuclear Regulatory Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov.* Persons who do not have access to ADAMS or who have problems in accessing the documents located in ADAMS may contact the PDR reference staff at 1–800–397–4209, 301–415–4737 or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of May, 2006.

For the Nuclear Regulatory Commission.

Brian E. Thomas,

Branch Chief, Research and Test Reactors Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E6–8349 Filed 5–30–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70(C) ''Public notice of receipt of an application,'' please take notice that the Nuclear Regulatory Commission has received the following request for an import license. Copies of the request are available

electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

The information concerning this import license application follows.

NRC IMPORT LICENSE APPLICATION

Name of applicant, date of application, date received, Application No., Docket No.	Description of material		End use	Country of origin
	Material type	Total quantity		
Duratek Services, Inc., April 10, 2006, April 13, 2006, IW017, 11005621.	Class A radioactive waste in the form of radioactively contaminated materials including metals, dry activity material (such as wood, paper, and plastic) and liquids (such as aqueous and organic based fluids).	Up to 6,000 tons of materials contaminated with various radionuclides in varying combinations. Total quantity or activity level of each range from a total of .07 TBq uranium (other than U–233, U–235 or U–238) to a total of 37 TBq Iron-55 (Fe-55), with a combined total activity level for all radionuclides not to exceed 108 TBq.	For recycle and beneficial reuse to the greatest possible extent, which may or may not require decontamination. Some materials to be incinerated and/or used in Duratek operations.	Canada.

Dated this 22nd day of May 2006 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Deputy Director, Office of International Programs.

[FR Doc. E6–8354 Filed 5–30–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Export Radioactive Waste

Pursuant to 10 CFR 110.70(C) ''Public notice of receipt of an application,'' please take notice that the Nuclear Regulatory Commission has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

The information concerning this export license application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, Application No., Docket No.	Description of material		End use	Recipient country
	Material type	Total quantity		
Duratek Services, Inc. April 10, 2006, April 13, 2006, XW010, 11005620.	Class A radioactive waste in various forms either as materials resulting from processing contaminated solids and liquids imported from Canada or as unprocessed, non-conforming contaminated materials imported materials.	Not to exceed the total quantity of radioactively contaminated materials imported under NRC import license IW017.	Return of waste resulting from processing contaminated materials which can be attributed to the Canadian generator for ultimate disposal or return of non-conforming contaminated materials, which cannot be processed.	Canada.

Dated this 22nd day of May 2006 at Rockville, Maryland.

For the Nuclear Regulatory Commission

Margaret M. Doane,

Deputy Director, Office of International Programs.

[FR Doc. E6–8355 Filed 5–30–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of May 29, June 5, 12, 19, 26, July 3, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of May 29, 2006

Wednesday, May 31, 2006—

12:55 p.m. Affirmation Session (Public Meeting) (Tentative)
a. Andrew Siemaszko, Docket No. IA–05–021, unpublished Licensing Board Order (Dec. 22, 2006) (Tentative)
1 p.m. Discussion of Security Issues (Closed-Ex. 1)

Week of June 5, 2006—Tentative

Wednesday, June 7, 2006—

9 a.m. Discussion of Security Issues (Closed-Ex. 1 & 3)

Week of June 12, 2006—Tentative

There are no meetings scheduled for the Week of June 12, 2006.

Week of June 19, 2006—Tentative

There are no meetings scheduled for the Week of June 19, 2006.

Week of June 26, 2006—Tentative

There are no meetings scheduled for the Week of June 26, 2006.

Week of July 3, 2006—Tentative

There are no meetings scheduled for the week of July 3, 2006.

* * * * *

Additional Information

The Affirmation of ''Andrew Siemaszko, Docket No. IA–05–021, unpublished Licensing Board order (Dec. 22, 2005)'' which was tentatively scheduled on Thursday, May 25, 2006, at 9:50 a.m. has been rescheduled tentatively on Wednesday, May 31, 2006 at 12:55 p.m.

* * * * *

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: 301–415–2100; 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: May 25, 2006

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–5002 Filed 5–26–06; 10:09 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. PROJ0734, PROJ0735, PROJ0736, POOM–32]

Notice of Availability of Draft Standard Review Plan for Activities Related to U.S. Department of Energy Waste Determinations, NUREG–1854

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability of draft Standard Review Plan for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a draft Standard Review Plan (SRP) for activities related to U.S. Department of Energy (DOE) waste determinations, for public comment. The draft SRP provides guidance to the NRC staff in evaluating non-high-level waste determinations developed by DOE for the Savannah River Site, Idaho National Laboratory, the Hanford site, and the West Valley Demonstration Project for certain wastes that are a result of the reprocessing of spent nuclear fuel. The draft SRP provides elements the NRC staff should review to determine whether there is reasonable assurance that the appropriate criteria can be met for determining that waste is incidental to reprocessing and can be managed as low-level waste. The draft SRP also provides information about the role of the NRC in the waste determination process and the NRC monitoring activities under the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA). The draft SRP does not set forth regulatory requirements for NRC or for DOE, and compliance with the draft SRP is not required.

DATES: The public comment period on the draft SRP begins with publication of this notice and continues for 60 days. Written comments should be submitted as described in the **ADDRESSES** section of this notice. Comments submitted by mail should be postmarked by that date to ensure consideration. Comments received or postmarked after that date will be considered to the extent practical.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rules and Directives Branch, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket Nos. PROJ0734, PROJ0735, PROJ0736, and POOM–32 when submitting comments. Comments will also be accepted by e-mail at *NRCREP@nrc.gov* or by fax to (301) 415–5397, Attention: Anna Bradford.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Hajduk Bradford, Senior Project Manager, Environmental and Performance Assessment Branch, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–5228; fax number: (301) 415–5397; e-mail: *AHB1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In October 2004, the NDAA was enacted. Section 3116 of the NDAA gave the NRC new responsibilities with respect to DOE waste management activities for certain ''incidental'' waste resulting from the reprocessing of spent nuclear fuel within the States of South Carolina and Idaho. These responsibilities include consultation with DOE on the determination of whether waste is high-level waste (HLW), as well as monitoring of DOE's disposal actions for these wastes. The concept behind incidental waste is that some material, resulting from the reprocessing of spent nuclear fuel, does not need to be disposed of as HLW in a geologic repository because the residual radioactive contamination, if properly isolated from the environment, is sufficiently low that it does not represent a hazard to public health and safety. Consequently, incidental waste is not considered to be HLW, but instead is low-level waste. DOE uses technical analyses that are documented in a waste determination to evaluate whether waste is incidental or HLW. A waste determination provides DOE's analysis

as to whether the waste will meet the applicable incidental waste criteria.

Prior to passage of the NDAA, DOE would periodically request the NRC to provide technical advice for specific waste determinations. The staff reviewed DOE's waste determinations to assess whether they had sound technical assumptions, analyses, and conclusions with regard to meeting the applicable incidental waste criteria. Because the enactment of the NDAA is expected to increase the number of waste determinations submitted to the NRC for review, the NRC has decided to develop the draft SRP. The draft SRP provides guidance to the NRC staff on how to conduct a technical review of a waste determination, as well as how to conduct monitoring activities under the NDAA, and will help ensure consistency across different reviews and different reviewers. Because the technical aspects of the NRC's waste determination reviews are expected to be similar for all four sites, regardless of whether the site is covered by the NDAA, the draft SRP will addresses reviews for the Savannah River Site, Idaho National Laboratory, Hanford, and West Valley.

In November 2005, the NRC held a public scoping meeting in Rockville, MD, to obtain public input on the scope of the SRP. In addition, the NRC published a **Federal Register** notice (FRN) on November 2, 2005, announcing the scoping meeting and stating that written comments on the scope of the SRP would be accepted until November 25, 2005 (70 FR 66472). The transcript of the scoping meeting is publicly available in the NRC's Agencywide Document Access and Management System (ADAMS) under accession number ML053400050. Written comments were received on the proposed scope of the SRP from the Savannah River Site Citizens Advisory Board (ML053620166), the South Carolina Department of Health and Environmental Control (ML053630035), and the Washington State Department of Ecology (ML053630034) and are publicly available in ADAMS.

In December 2005, the NRC published a FRN issuing draft interim guidance for performing concentration averaging for waste determinations (70 FR 74846). The FRN was issued due to high stakeholder interest in obtaining the guidance as soon as practicable due to the ongoing development of waste determinations. The draft interim guidance was open for public comment until January 31, 2006. Comment letters were received from the State of Idaho Department of Environmental Quality (ML060370015), the State of Washington Department of Ecology (ML060370019), the State of Oregon Department of Energy (ML060370016), Washington Closure Hanford (ML060480401), the Natural Resources Defense Council (ML060370017), and members of the public (ML061030268) and are publicly available in ADAMS. These comments will be considered along with comments received on the draft SRP. As discussed in the December FRN, the concentration averaging guidance is included in this draft SRP and is again open for public comment. Only minor editorial changes have been made to the text of the guidance.

The final SRP will be issued after the NRC staff takes into consideration any public comments received, as appropriate.

II. Further Information

The draft SRP may be accessed on the Internet at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/* by selecting ''NUREG–1854.'' It is also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's ADAMS, which provides text and image files of NRC's public documents. Recent documents related to reviews of NRC waste determinations can be found in ADAMS under Docket Numbers PROJ0734, PROJ0735, PROJ0736, and POOM–32. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

The draft SRP is also available for inspection at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland. Upon written request and to the extent supplies are available, a single copy of the draft SRP can be obtained for a fee by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or by e-mail to *DISTRIBUTION@nrc.gov*; or by fax at (310) 415–2289.

Dated at Rockville, Maryland this 23rd day of May, 2006.

For the Nuclear Regulatory Commission.

Larry Camper,

Director, Division of Waste Management and Environmental Protection, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. E6–8347 Filed 5–30–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Executive Office of the President; Acquisition Advisory Panel; Cancellation of an Upcoming Meeting of the Acquisition Advisory Panel

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Cancellation of a Federal Advisory Committee Meeting.

SUMMARY: The Office of Management and Budget is issuing this notice to cancel the May 31, 2006 public meeting of the Acquisition Advisory Panel (AAP or ''Panel'') established in accordance with the Services Acquisition Reform Act of 2003.

DATES: The only meeting being cancelled by this notice is the May 31, 2006 meeting.

ADDRESSES: The meeting was to have been held at the Small Business Administration, 409 Third Street, SW., 2nd Floor Eisenhower Conference Room, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information concerning this cancellation notice or any future meetings or the Acquisition Advisory Panel itself, should contact Ms. Laura Auletta, Designated Federal Officer (DFO), at: *laura.auletta@gsa.gov*, phone/voice mail (202) 208–7279, or mail at: General Services Administration, 1800 F. Street, NW., Room 4006, Washington, DC, 20405.

SUPPLEMENTARY INFORMATION:

(a) *Background:* The cancelled meeting was originally announced in the **Federal Register** at 71 FR 25613 on May 1, 2006. Only the May 31, 2006 meeting is being cancelled.

Laura Auletta,

Designated Federal Officer (Executive Director), Acquisition Advisory Panel.

[FR Doc. 06–5022 Filed 5–26–06; 1:28 pm]

BILLING CODE 3110–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Disclosure to Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') intends to

request that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of the collection of information under its regulation on Disclosure to Participants, 29 CFR part 4011 (OMB control number 1212–0050; expires December 31, 2006). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by July 31, 2006.

ADDRESSES: Comments may be mailed to the Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address during normal business hours. Comments also may be submitted by e-mail to *paperwork.comments@pbgc.gov*, or by fax to 202–326–4224. The PBGC will make all comments available on its Web site at *http://www.pbgc.gov*.

Copies of the collection of information may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The Disclosure to Participants regulation may be accessed on the PBGC's Web site at *http://www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: Section 4011 of the Employee Retirement Income Security Act of 1974 requires plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plan's funding status and the limits on the PBGC's guarantee.

The PBGC's regulation implementing this provision (29 CFR part 4011) prescribes which plans are subject to the notice requirement, who is entitled to receive the notice, and the time, form, and manner of issuance of the notice. The notice provides recipients with meaningful, understandable, and timely information that will help them become better informed about their plans and assist them in their financial planning.

The collection of information under the regulation has been approved by OMB under control number 1212–0050 through December 31, 2006. The PBGC intends to request that OMB extend its approval for another three years. 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 PBGC estimates that an average of 4,702 plans per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 2.51 hours and $690 per plan, with an average total annual burden of 11,800 hours and $3,244,863.

The PBGC is soliciting public comments to—

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 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.

Issued in Washington, DC, this 24th day of May 2006.

Cris Birch,

Acting Chief Technology Officer, Pension Benefit Guaranty Corporation.

[FR Doc. E6–8316 Filed 5–30–06; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53851; International Series Release No. 1296; File No. 600–29]

Clearstream Banking, S.A.; Notice of Filing of Application To Continue an Existing Exemption From Clearing Agency Registration

May 23, 2006.

I. Introduction

On April 12, 2005, Clearstream Banking, S.A. (''Clearstream''), successor in name to Cedel Bank, societe anonyme, Luxembourg (''Cedel''), filed with the Securities and Exchange Commission (''Commission'') pursuant to section 17A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 17Ab2–1 thereunder[2] and on March 15, 2006 amended, an amendment to its Form CA–1 to reflect changes in its ownership structure that resulted from the acquisition of Clearstream's parent company, Cedel International, S.A. (''Cedel International''), by Deutsche Brse AG (''DBAG''). The purpose of the amendment is to seek Commission approval to continue Clearstream's current exemption from clearing agency registration pursuant to which Clearstream provides, subject to certain conditions, clearance and settlement services for U.S. government securities for its U.S. participants. The Commission is publishing this notice to solicit comment from interested persons as to whether Clearstream continues to satisfy the requirements of its exemption from clearing agency registration.

II. Background

A. The 1997 Exemptive Order

On February 24, 1997, the Commission granted Cedel a conditional exemption from registration as a clearing agency to enable Cedel to perform certain functions of a clearing agency with respect to transactions involving U.S. government securities and its U.S. participants (''1997 Exemptive Order'').[3] Specifically, the 1997 Exemptive Order permitted Cedel to provide clearance, settlement, and collateral management services to U.S. and non-U.S. entities for transactions in the following U.S. government securities:[4] (1) Fedwire-eligible U.S. government securities[5] and (2) mortgage-backed pass-through securities that are guaranteed by the Government National Mortgage Association (collectively, ''Eligible U.S. Government Securities'').[6]

The 1997 Exemptive Order also imposed two conditions on Cedel's ability to provide clearance and settlement services for Eligible U.S.

[1] 15 U.S.C. 78q–1.

[2] 17 CFR 240.17Ab2–1.

[3] Securities Exchange Act Release No. 38328 (February 24, 1997), 62 FR 9225 (February 28, 1997).

[4] ''Government securities'' is defined in section 3(a)(42) of the Act, 15 U.S.C. 78c(a)(42).

[5] Fedwire is a large-value transfer system operated by the Board of Governors of the Federal Reserve System that supports the electronic transfer of funds and the electronic transfer of book-entry securities. 1997 Exemptive Order at 62 FR 9231 n.58.

[6] 1997 Exemptive Order at 62 FR 9231.

Government Securities.[7] First, the average daily volume of Eligible U.S. Government Securities processed at Cedel for U.S. participants was limited to five percent of the total average daily dollar value of the aggregate volume in eligible U.S. government securities.[8] Second, the 1997 Exemptive Order required Cedel to provide the Commission access to a variety of information related to Cedel's clearance and settlement operations.[9]

B. Acquisition by DBAG

When the Commission issued the 1997 Exemptive Order, Cedel was a wholly-owned subsidiary of Cedel International, a privately owned entity. Between 1999 and 2002, Clearstream International was created,[10] Cedel was renamed to Clearstream,[11] and DBAG acquired Cedel International.[12] As a result of this acquisition, DBAG indirectly owns Clearstream through its ownership of Clearstream International.[13] Throughout all these mergers, acquisitions, and name changes, Clearstream has remained functionally and legally the same entity as was Cedel.[14]

III. Continued Compliance With the Exemptive Order

The 1997 Exemptive Order provides that the Commission may modify by order the terms, scope, or conditions of the exemption from registration as a clearing agency if the Commission determines that such modification is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15] The Commission may also limit, suspend, or revoke this exemption if the Commission finds that Clearstream has violated or is unable to comply with any of the provisions set forth in the 1997 Exemptive Order if 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 for the protection of investors and the public interest.

The 1997 Exemptive Order was based upon representations and facts contained in Cedel's Form CA–1 and other information known to the Commission regarding the substantive aspects of Cedel's application, including the ownership structure and corporate governance. As a result, changes in the representations and facts as then existed and were presented to the Commission require a modification to the 1997 Exemptive Order. Specifically, where Cedel was user-owned and its participants had direct representation on the board of directors, Clearstream is essentially owned by a single entity (*i.e.*, DBAG) that facilitates user participation through board advisory committees. The Commission believes that it is now appropriate to seek comment on whether continuation of Clearstream's existing exemption from clearing agency registration is appropriate.[16]

Clearstream's operating structure is the same as Cedel's. Clearstream has represented that it uses substantially the same personnel, operating systems, procedures, and risk management as did Cedel.[17] Clearstream has represented that it will continue to substantially satisfy, as Cedel represented, each of the conditions for registration set forth in section 17A(b)(3) of the Act that relate to the ''safe and sound clearance and settlement'' in the U.S., which the Commission identified in the 1997 Exemptive Order as the fundamental goal of Section 17A.[18] Accordingly, Clearstream requests the Commission continue the terms and conditions granted to Cedel in the 1997 Exemptive Order. Clearstream does not seek to have any changes made to the ''Scope of the Exemption,'' as set forth in Section III.C. of the 1997 Exemptive Order with respect to the conditions and limitations of the 1997 Exemptive Order.

Clearstream's governance and management structures have been revised to reflect the acquisition by DBAG.[19] Prior to DBAG's acquisition, Cedel and Cedel International were privately owned by their shareholders and shared the same boards of directors. As structured today, Clearstream's four directors are also directors of Clearstream International, which has twenty-one directors on its board. DBAG nominates and elects all directors.

Clearstream's governance structure includes two advisory groups. The User Advisory Group and Credit Advisory Group are both populated by participants, financial institutions, and service providers and provide Clearstream users with a forum to discuss changes to Clearstream's products, services, credit standards, and controls.[20] These two groups are designed to ensure that a broad range of Clearstream's users are given a voice in the governance of Clearstream.

Section 17A(b)(3)(C) of the Act requires that the rules of a clearing agency provide for fair representation of the clearing agency's shareholders or members and participants in the selection of the clearing agency's directors and administration of the clearing agency's affairs.[21] That section contemplates that users of a clearing agency will have a significant voice in the direction of the affairs of the clearing agency. Clearstream believes that the current governance and management structure, though different

[7] The conditions in the 1997 Exemptive Order reflected the Commission's determination to take a gradual approach toward permitting an international non-registered clearing agency such as Clearsteam to provide securities processing services in U.S. government securities to U.S. market participants. 1997 Exemptive Order at 62 FR 9231.

[8] The scope of the 1997 Exemptive Order is limited to Eligible U.S. Government Securities and does not apply to other debt or equity securities. For a more complete description of the volume limit, refer to Section III.C.2. of the 1997 Exemptive Order at 62 FR 9232.

[9] For a more complete description of the Commission's access to information, refer to Section III.C.3. of the 1997 Exemptive Order at 62 FR 9232.

[10] Clearstream International is the successor to New Cedel International, a company formed in 1999 in connection with DBAG's initial investment in Cedel International.

[11] Clearstream is a wholly owned subsidiary of Clearstream International.

[12] The regulatory bodies in Germany, Luxembourg, and the United Kingdom did not object to the acquisition of Cedel International by DBAG.

[13] Although DBAG exercises voting control over Clearstream International and Clearstream, certain protections have been implemented in order to allow Clearstream's participants to maintain influence over Clearstream's policies and procedures.

[14] For example, Clearstream's clearance and settlement activities are the same as those provided by Cedel, and Clearstream's regulator, the Institut Monetaire Luxembourgeois, is the same as it was for Cedel.

[15] 1997 Exemptive Order at 62 FR 9233.

[16] Prior to DBAG's acquisition of Cedel International, Clearstream notified the Commission as required by the terms of the 1997 Exemptive Order. Because Clearstream was the same legal entity with Cedel with just a change of name, the 1997 Exemptive Order was not amended prior to changes in ownership structure. In contrast, when Euroclear Bank replaced Morgan Guaranty Trust Company as the operator of the Euroclear System a new legal entity was formed. In that situation, Euroclear's order granting it an exemption from clearing agency registration was modified prior to the change in ownership structure. Securities Exchange Act Release No. 39643 (February 11, 1998), 63 FR 8232 (February 18, 1998), *modified in* Securities Exchange Act Release No. 43775 (December 28, 2000), 66 FR 819 (January 4, 2001) (''Modified Euroclear Exemptive Order'').

[17] For example, the collateral management service discussed in the 1997 Exemptive Order was known as Global Credit Support Service (''GCSS''). GCSS was updated in 1998 and was renamed Tripartite Collateral Management Service (''TCMS''). Like GCSS, TCMS is a book-entry, real-time collateral management service for cross-border securities collateralization.

[18] 1997 Exemptive Order at 62 FR 9231.

[19] Clearstream International and Clearstream have delegated management to a single management group known as Group Executive Management (''GEM''). The GEM is composed of four individuals who currently serve as Clearstream's board of directors, as well as one additional person.

[20] The interests represented in these groups include issuers, securities information providers, trading firms, financial institutions, and entities providing clearing, settlement, and custody services.

[21] 15 U.S.C. 78q–1(b)(3)(C).

from Cedel's, satisfies the requirements of section 17A(b)(3)(C) because Clearstream provides for participant participation in management through the two advisory groups.

Section 17A(b)(1) of the Act authorizes the Commission to exempt applicants from some or all of the requirements of section 17A if it finds such exemptions are consistent with the public interest, the protection of investors, and the purposes of section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[22] Therefore, the Commission invites commenters to address whether continuing the 1997 Exemptive Order as requested by Clearstream and as described above, subject to the continuation of the conditions and limitations set forth in that order, would further the goals of and would remain consistent with section 17A. In particular, the Commission seeks comment on whether the revised governance structure, including the addition of advisory committees, such as the User Advisory Group and the Credit Advisory Group, in lieu of directors elected by system participants, continues to meet the requirements of fair representation under section 17A(b)(3)(C) of the Act. Additionally, the Commission invites comments on amending the 1997 Exemptive Order to permit Clearstream to file volume information on a quarterly basis with the Commission rather than on a monthly basis.[23]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the application 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 600–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 600–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the application that are filed with the Commission, and all written communications relating to the application between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. 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 600–29 and should be submitted on or before June 21, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[24]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–8320 Filed 5–30–06; 8:45 am]

BILLING CODE 8010–01–P

[22] 15 U.S.C. 78q–1(b)(1).

[23] The 1997 Exemptive Order directs Clearstream to file monthly volume information with the Commission. The Commission is considering amending the 1997 Exemptive Order to permit Clearstream to file volume reports on a quarterly basis. *See* Modified Euroclear Exemptive Order (directing Euroclear Bank to file quarterly volume reports with the Commission).

[24] 17 CFR 200.30–3(a)(16).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53853; File No. SR–Amex–2006–46]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Elimination of the Prohibition on Computer Generated Orders

May 23, 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 May 9, 2006, 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 and II below, which Items have been prepared by Amex. On May 11, 2006, Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is approving the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate Amex Rules 934(b) and 934–ANTE(b) relating to the prohibition of computer generated orders.

The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the Amex'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 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 III 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 Exchange proposes that the amendment to the Amex Rules pursuant to this proposal be effective on May 8, 2006.

The Exchange proposes to eliminate the prohibition on computer generated orders set forth in Amex Rules 934(b) and 934–ANTE(b). Originally, Amex Rules 934(b) and 934–ANTE(b) were adopted to protect registered options traders (''ROTs'') because, at the time, allowing electronic entry directly into the Exchange's order routing system could give customers and broker-dealers with order-generating systems a significant advantage over Amex ROTs. Since the adoption of Amex Rules 934(b) and 934–ANTE(b), the Exchange

[3] Amendment No. 1 supersedes and replaces the original rule filing in its entirety.

has implemented ANTE as well as other electronic trading enhancements minimizing the concerns raised by the rules. For example, ANTE permits specialists and ROTs to submit proprietary quotes electronically,[4] which reduces the risk of multiple executions of orders delivered in rapid succession before the specialist or ROT is able to revise its quotation. In addition, the Exchange recently received Commission approval for an ANTE enhancement known as the ''Quote Risk Manager.'' The Quote Risk Manager is a risk management tool allowing specialists and ROTs to automatically adjust their quotes if a certain number of trades are executed within a certain period of time.[5] Therefore, specialists and ROTs now have the ability to manage their exposure more quickly and efficiently, thereby obviating the need for both Amex Rules 934(b) and 934–ANTE(b). The Exchange also believes that the removal of the prohibition on computer generated orders should enhance access to the Exchange and therefore provide additional liquidity.

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,[6] in general, and with section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

[4] *See* Securities Exchange Act Release No. 49747 (May 20, 2004), 69 FR 30344 (May 27, 2004) (SR–Amex–2003–89).

[5] *See* Securities Exchange Act Release No. 53148 (January 19, 2006), 71 FR 4386 (January 26, 2006) (SR–Amex–2005–131).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comment were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–46 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–2006–46. 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–2006–46 and should be submitted on or before June 21, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[9] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 are 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 purposes of the Act or the administration of the Exchange. Specifically, the Commission believes that the proposal is designed to permit increased access to the Exchange, and therefore should help provide additional liquidity for orders executed on the Exchange.

Under section 19(b)(2) of the Act,[10] the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publishing notice of filing thereof in the **Federal Register**. The Commission does not believe that the proposal would significantly affect the protection of investors or the public interest, and would not impose any significant burden on competition.

The Commission notes that it has recently approved the deletion of the

[8] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

Chicago Board Options Exchange (''CBOE'') Rule 6.8A[11] and the Philadelphia Stock Exchange (''Phlx'') Rule 1080(i).[12] Both of these rules had prohibited the entry of electronically generated orders. The Commission believes that the proposed rule change, as amended, raises no new regulatory issues and that a full notice and comment period is not necessary.

For the reasons set forth above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended, pursuant to section 19(b)(2) of the Act.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2006–46), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–8321 Filed 5–30–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53855; File No. SR–BSE–2006–19]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend Until June 5, 2007, a Pilot Program for Listing Options on Selected Stocks Trading Below $20 at One-Point Intervals

May 24, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the BSE. The BSE filed the proposal 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

The BSE proposes to amend Supplementary Material .02 to Chapter IV, Section 6, ''Series of Options Contracts Open for Trading,'' of the rules of the Boston Options Exchange (''BOX'') to extend until June 5, 2007, the pilot program for listing options series on selected stocks trading below $20 at one-point intervals (''Pilot Program''). The text of the proposed rule change is available on the BSE's Web site (*http://www.bostonstock.com*), at the BSE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Pilot Program[5] under the BOX Rules for an additional year, until June 5, 2007. The Pilot Program allows the Boston Options Exchange Regulation, LLC (''BOXR''), the wholly owned subsidiary of the BSE with the delegated regulatory authority over BOX, to list options on a pilot basis on up to five selected underlying equities trading below $20 at $1 strike price intervals, as provided under the terms of the Pilot Program. The Pilot Program also allows BOX to list $1 strike prices on any equity option included in the $1 strike price pilot program of any other options exchange until June 5, 2006. The proposed rule change retains the text of Supplementary Material .02 to Section 6 of Chapter IV of the BOX Rules, as currently established on a pilot basis, and seeks to extend the operation of the Pilot Program for another year.

Chapter IV, Section 6 of the Box Rules establishes guidelines regarding the addition of options series for trading on BOX. Under the Pilot Program, to be eligible for selection into the Pilot Program, the underlying stock must close below $20 on its primary market on the previous trading day. If selected for the Pilot Program, BOX may list strike prices at $1 intervals from $3 to $20, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price on its primary market on the previous day. BOX also may list $1 strikes on any other options class designated by another options exchange that employs a similar pilot program under its rules. BOX may not list long-term option series (''LEAPS''®) at $1 strike price intervals for any class selected for the Pilot Program. BOX also is restricted from listing any series that would result in strike prices being $0.50 apart.

The Pilot Program initially was proposed in reaction to the general decrease in stock prices and the proliferation of stocks trading below $20, including some of the most widely held and actively traded equity securities listed on the New York Stock Exchange, the American Stock Exchange, and Nasdaq. The BSE notes that many of these stocks are still trading below $20, including, for example, Oracle, Micron Technology, EMC Corp, and Motorola.

When a stock underlying an option trades at a lower price, it requires a larger percentage gain in the price of the stock for an option to become in-the-money. For example, if a stock trades at $10, an investor that wants to purchase a slightly out-of-the-money call option would have to buy the $12.50 call. At these levels, the stock price would need to increase by 25% to reach in-the-money status. The BSE notes that a 25% or higher gain in the price of the underlying stock is especially large given the lessened degree of volatility that recently has accompanied many stocks and options. According to the

[11] *See* Securities Exchange Act Release No. 51030 (January 12, 2005), 70 FR 3404 (January 24, 2005) (SR–CBOE–2004–91).

[12] *See* Securities Exchange Act Release No. 48648 (October 16, 2003), 68 FR 60762 (October 23, 2003) (SR–Phlx–2003–37).

[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 240.19b–4(f)(6).

[5] The BSE implemented the Pilot Program in February 2004 and extended it twice through June 5, 2006. *See* Securities Exchange Act Release Nos. 49292 (February 20, 2004), 69 FR 8993 (February 26, 2004) (notice of filing and immediate effectiveness of File No. SR–BSE–2004–01) (establishing the Pilot Program); 49806 (June 4, 2004), 69 FR 32640 (June 10, 2004) (notice of filing and immediate effectiveness of File No. SR–BSE–2004–22) (extending the Pilot Program through June 5, 2005); and 51778 (June 2, 2005), 70 FR 33562 (June 8, 2005) (notice of filing and immediate effectiveness of File No. SR–BSE–2005–18) (extending the Pilot Program through June 5, 2006).

BSE, listing additional strike prices on these classes has allowed BOX Participants to provide their customers with greater trading flexibility in achieving their investment strategies. In further support of this proposed rule change, the Exchange submitted to the Commission a Pilot Program Report, attached as Exhibit 3, offering detailed data from and analysis of the Pilot Program.

2. Statutory Basis

The Exchange believes that the data demonstrates that there is sufficient investor interest and demand to extend the Pilot Program for another year, without adversely effecting systems capacity. The proposed rule change is designed to provide investors with greater trading opportunities, and the flexibility and ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Accordingly, the Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,[6] in general, and of section 6(b)(5) of the Act,[7] in particular, in that it is designed 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the 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 BSE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The BSE has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act [8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. As required under Rule 19b–4(f)(6)(iii), the BSE provided the Commission with written notice of its intention to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The BSE has asked the Commission to waive the 30-day operative delay to allow the Pilot Program to continue to operate without interruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Pilot Program to continue without interruption through June 5, 2007.[10] For this reason, the Commission designates that the proposal become operative on June 5, 2006.[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.

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–BSE–2006–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BSE–2006–19. 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 BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] In the event that the BSE proposes to: (1) Extend the Pilot Program beyond June 5, 2007; (2) expand the number of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, the BSE will submit a Pilot Program report to the Commission along with the filing of its proposal to extend, expand, or seek permanent approval of the Pilot Program. The BSE will file any such proposal and the Pilot Program report with the Commission at least 60 days prior to the expiration of the Pilot Program. The Pilot Program report will cover the entire time the Pilot Program was in effect and will include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the BSE selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the BSE's, the Options Price Reporting Authority's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the BSE addressed them; (6) any complaints that the BSE received during the operation of the Pilot Program and how the BSE addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program.

should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BSE–2006–19 and should be submitted on or before June 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–8322 Filed 5–30–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53854; File No. SR–BSE–2006–23]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Decreasing the Exposure Period for Crossing Orders Under Chapter V, Section 17, Supplementary Material .02 and .03

May 24, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 11, 2006, the Boston Stock Exchange, Inc. (''BSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the BSE. The BSE filed the proposed rule change as 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

The BSE proposes to decrease the exposure period for crossing orders under Chapter V, Section 17, Supplementary Material .02 and .03 of the Boston Options Exchange (''BOX'') rules from 30 seconds to 3 seconds. The text of the proposed rule amendment is provided below.

* * * * *

(Additions are *italicized;* deletions are [bracketed], unless otherwise indicated)

Rules of the Boston Options Exchange Facility

CHAPTER V. DOING BUSINESS ON BOX

Sec. 17 Customer Orders and Order Flow Providers

(a) through (c) No Change.

Supplementary Material to Section 17

.01 No Change.

.02 If an Options Participant fails to expose its Customer Order[s][5] on BOX, it will be a violation of this Section 17 for an Options Participant to cause the execution of an order it represents as agent on BOX through the use of orders it solicited from Options Participants and/or non-Participant broker-dealers to transact with such orders, whether such solicited orders are entered into the BOX market directly by the Options Participant or by the solicited party (either directly or through another Participant), unless the agency order is first exposed to the BOX Book for at least [thirty (30)]*three (3)* seconds.

.03 An OFP may not execute as principal an order it represents as agent unless, (i) the agency order is first exposed to the BOX Book for at least [thirty (30)]*three (3)* seconds, or (ii) the OFP has been bidding or offering on BOX for a least [thirty (30)]*three (3)* seconds prior to receiving an agency order that is executable against such bid or offer; or (iii) the OFP sends the agency order to the Price Improvement Period process pursuant to Section 18 of this Chapter V.

.04 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 BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE 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

An Options Participant (''Participant'') may not execute an order it represents as agent with a facilitation or a solicited order (referred to herein as ''crossing orders'') unless it complies with the order exposure requirements contained in Chapter V, Section 17, Supplementary Material .03 and .02 respectively. Specifically, when a Participant is not submitting an order to the Price Improvement Period process, it may not execute a facilitation cross unless (i) the agency order is first exposed to the BOX Book for at least 30 seconds; or (ii) the Participant has been bidding or offering on BOX for at least 30 seconds prior to receiving the agency order that is executable against such bid or offer. Similarly, a Participant may not execute a solicitation cross unless the agency order is first exposed to the BOX Book for 30 seconds.

The BSE proposes to shorten the duration of the exposure period contained in the rules governing such transactions from 30 seconds to 3 seconds. This shortened exposure period is fully consistent with the electronic nature of the BOX's market. Market participants on the BOX market have implemented systems that monitor any updates to the BOX market, including any changes resulting from orders being entered into the market, and can automatically respond based on pre-set parameters. Thus, an exposure period of 3 seconds will permit exposure of orders on BOX in a manner consistent with its electronic market.

By reducing the exposure time to 3 seconds, the BSE believes that Participants will be able to provide liquidity to their customers' orders on a timelier basis, thus providing investors with more speedy executions. Timely and accurate executions are consistent with the principles under which the BOX's electronic market was developed.

2. Statutory Basis

The BSE believes that the proposal is consistent with the requirements of section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling,

[12] 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 240.19b–4(f)(6).

[5] The ''s'' and surrounding brackets appear in the current rule text, and are not intended to be deletions under the proposed rule change.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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. In particular, the proposal will permit members to provide liquidity to customer orders on a timelier basis, thus providing investors with more speedy executions. At the same time, it will preserve a reasonable period for orders to interact in the auction market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The BSE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

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.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The BSE provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing of the proposed rule change. In addition, the BSE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is based on rules recently approved by the Commission for two other exchanges.[12] For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

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–BSE–2006–23 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–BSE–2006–23. 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 BSE. 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–BSE–2006–23 and should be submitted on or before June 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–8357 Filed 5–30–06; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] *See* Securities Exchange Act Release Nos. 53567 (March 29, 2006), 71 FR 17529 (April 6, 2006) (SR–CBOE–2006–09) and 53609 (April 6, 2006), 71 FR 19224 (April 13, 2006) (SR–NYSEArca–2006–01).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10322 and #10323]

Texas Disaster Number TX–00097

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 10.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA—1624—DR), dated 1/11/2006.

Incident: Extreme Wildfire Threat.

Incident Period: 11/27/2005 through 5/14/2006.

Effective Date: 5/17/2006.

Physical Loan Application Deadline Date: 5/30/2006.

EIDL Loan Application Deadline Date: 10/11/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Texas, dated 1/11/2006 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Johnson

Contiguous Counties: Texas

Hill

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–8344 Filed 5–30–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10476]

Washington Disaster # WA–00004

AGENCY: U.S. Small Business Administration

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Washington (FEMA—1641—DR), dated 5/17/2006.

Incident: Severe storms, flooding, tidal surge, landslides, and mudslides

Incident Period: 1/27/2006 through 2/4/2006.

Effective Date: 5/17/2006.

Physical Loan Application Deadline Date: 7/17/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/17/2006, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Clallam
Grays Harbor
Island
Jefferson Kitsap
Mason
Pacific
Pend Oreille
San Juan
Snohomish
Wahkiakum

The Interest Rates are:

Other (Including Non-Profit Organizations) With Credit Available Elsewhere: 5.000.

Businesses And Non-Profit Organizations Without Credit Available Elsewhere: 4.000.

The number assigned to this disaster for physical damage is 10476.

(Catalog of Federal Domestic Assistance Number 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–8345 Filed 5–30–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5423]

Notice Convening an Accountability Review Board To Examine the Circumstances of the Death of Mr. David E. Foy and Mr. Iftikhar Ahmed in March 2006

Pursuant to section 301 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended (22 U.S.C. 4831 *et seq.*), the Secretary of State has determined that a recent attack on an official motorcade in Karachi, Pakistan involved loss of life that was at or related to a U.S. mission abroad. Therefore, the Secretary has convened an Accountability Review Board to examine the facts and the circumstances of the attacks and to report to me such findings and recommendations as it deems appropriate, in keeping with the attached mandate.

The Secretary has appointed David C. Fields, a retired U.S. Ambassador, as Chair of the Board. He will be assisted by Carolee Heileman, William Pope, Melvin Harrison, John Weber and the Executive Secretary to the Board, Hugo Carl Gettinger. They bring to their deliberations distinguished backgrounds in government service and/or in the private sector.

The Board will submit its conclusions and recommendations to Secretary Rice within 60 days of its first meeting, unless the Chair determines a need for additional time. Appropriate action will be taken and reports submitted to Congress on any recommendations made by the Board.

Anyone with information relevant to the Board's examination of these incidents should contact the Board promptly at (202) 647–5204 or send a fax to (202) 647–3282.

This notice shall be published in the **Federal Register**.

Dated: May 23, 2006.

Henrietta H. Fore,

Under Secretary for Management, Department of State.

[FR Doc. E6–8366 Filed 5–30–06; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Burlington Northern Sante Fe Corporation

[Docket Number FRA–2006–24812]

The Burlington Northern Sante Fe Corporation (BNSF), seeks a temporary waiver of compliance from certain provisions of 49 CFR part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment.* Specifically, the mileage and inspection requirements contained in § 232.213, *Extended Haul Trains.*

BNSF would like to perform the 1500 mile extended haul inspection for thirteen select trains at points which slightly exceed the 1500 mile point for inbound and outbound inspections for a period of six months. BNSF does not believe that this increase will in any way compromise the safety of BNSF's operations. BNSF claims this request is critical given the increased rate of demand for coal by the utility industry. BNSF believes that granting this waiver for a period of six months will significantly improve their ability to transport coal without any degradation to the safe operation of the following train sets: E–PAMATM, E–PAMBAM, E–PAMBTM, E–PAMNAM, E–PAMSBM, E–PAMEBM, E–MHSATM, E–MHSBKM, E–MHSCAM, E–MHSEBM, E–MHSJRM, E–MHSNAM, E–MHSRWM.

BNSF states that mechanical and operating forces would be provided the list of trains allowed to operate past the 1500 mile threshold. Additionally, BNSF would keep records of any defects discovered during the inspections, as required, to include any defective cars set out enroute.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2006–24812) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001.

Note: Any request for a public hearing must be made within 15 days of the date of this notice. Written communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room Pl-401 (Plaza Level), 400 Seventh Street, SW., Washington. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19377–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on May 24, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. E6–8315 Filed 5–30–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34875]

V&S Railway, LLC—Acquisition and Operation Exemption—The Hutchinson and Northern Railway Company

V&S Railway, LLC (VSR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from The Hutchinson and Northern Railway Company (HN), also a Class III rail carrier,[1] and to operate approximately 5.14 miles of rail line from milepost 0.0 to milepost 5.14 in Hutchinson, Reno County, KS.

VSR certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction was scheduled to be consummated on May 11, 2006.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34875, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Fritz R. Kahn, Fritz R. Kahn P.C., 1920 N Street, NW., 8th floor, Washington, DC 20036–1601.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 23, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–8259 Filed 5–30–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 222X)]

Union Pacific Railroad Company—Abandonment Exemption—in Ouachita County, AR

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 3.6-mile line of railroad on the El Dorado Subdivision, extending from milepost 457.0 near Gilcrest to milepost 460.6 near El Dorado Junction, in Quachita County, AR. The line traverses United States Postal Service Zip Codes 71701 and 71711.

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; (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 June 30, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 12, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 20, 2006, with the Surface Transportation Board,

[1] Pacific Western Railroad, a noncarrier holding company, owns all of the issued and outstanding shares of capital stock of HN.

[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 was increased to $1,300 effective on April 19, 2006. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2006 Update,* STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006).

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, 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 a combined environmental report and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 5, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), 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 May 31, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 23, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–8258 Filed 5–30–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 16, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: *Dates:* Written comments should be received on or before June 30, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0233.

Type of Review: Extension.

Title: Application for Automatic Extension of Time to File Corporation Income Tax Return.

Form: IRS 7004.

Description: Form 7004 is used by corporations and certain non-profit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 704 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

Respondents: Business or other for-profit; Not-for-profit institution.

Estimated Total Burden Hours: 18,508,162 hours.

OMB Number: 1545–0865.

Type of Review: Extension.

Title: Application for Registration of a Tax Shelter.

Form: Form 8264.

Description: Organizers of certain tax shelters are required to register them with the IRS using Form 8264. Other persons may have to register the tax shelter if the organizer doesn't. We use the information to give the tax shelter a registration number. Sellers of interests in the tax shelter furnish the number to investors who report the number on their tax returns.

Respondents: Individuals or households; Business or other for-profit.

Estimated Total Burden Hours: 14,382 hours.

OMB Number: 1545–1800.

Type of Review: Extension.

Title: Reportable Transaction Disclosure Statement.

Form: Form 8886.

Description: Regulation section 1.6011–4 requires certain taxpayers to disclose reportable transactions in which they directly or indirectly participated.

Respondents: Individuals or household; Business or other for-profit.

Estimated Total Burden Hours: 6,180 hours.

OMB Number: 1545–1099.

Type of Review: Extension.

Title: Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

Form: Form 8811.

Description: Form 8811 is used to collect the name, address, and phone number of a representative of a REMIC who can provide brokers with the correct income amounts that the broker's clients must report on their income tax returns. The form allows the IRS to provide the REMIC industry the information necessary to issue correct information returns to investors.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 4,380 hours.

OMB Number: 1545–1251.

Type of Review: Extension.

Title: PS–5–91 (Final) Limitations of Percentage Depletion in the Case of Oil and Gas Wells.

Description: Section 1.613A–3(e)(6)(i) of the regulations requires each partner to separately keep records of the partner's share of the adjusted basis of partnership oil and gas property.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 49,950 hours.

OMB Number: 1545–1997.

Type of Review: Extension.

Title: Relief from Certain Low-Income Housing Requirements Due to Hurricane Rita.

Form: Notice 2006–11.

Description: The Internal Revenue Service is suspending certain income limitations requirements under section 42 of the Internal Revenue Code for certain low-income housing credit properties as a result of the devastation caused by Hurricane Rita. This relief is being granted pursuant to the Service's authority under section 42(n) and section 1.42–13 of the Income tax Regulations.

Respondents: Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Estimated Total Burden Hours: 1,250 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224. (202) 622–3428.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office

Building, Washington, DC 20503. (202) 395–7316.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–8361 Filed 5–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 19, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before June 30, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0022.

Type of Review: Extension.

Title: Life Insurance Statement.

Form: IRS 712.

Description: Form 712 is used to establish the value of all life insurance policies for estate and gift tax purposes. The tax is based on the value of these policies. The form is completed by life insurance companies.

Respondents: Business or other for-profit institutions.

Estimated Total Burden Hours: 1,120,200 hours.

OMB Number: 1545–0190.

Type of Review: Extension.

Title: Election to be Treated as an Interest Charge DISC.

Form: Form 4876–A.

Description: A domestic corporation and its shareholders must elect to be an interest charge domestic international sales corporation (IC–DISC). Form 4876–A is used to make the election. IRS uses the information to determine if the corporation qualifies to be an IC–DISC.

Respondents: Business or other for-profit institutions.

Estimated Total Burden Hours: 6,360 hours.

OMB Number: 1545–1841.

Type of Review: Extension.

Title: REG–157302–02 (FINAL), TD 9142 Deemed IRAs in Qualified Retirement Plans.

Form: REG–157302–02 (FINAL), TD 9142.

Description: Section 408(q), added to the Internal Revenue Code by section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001, provides that separate accounts and annuities may be added to qualified employer plans and deemed to be individual retirement accounts and individual retirement annuities if certain requirements are met. Section 1.408(q)–1(f)(2) provides that these deemed IRAs must be held in a trust or annuity contract separate from the trust or annuity contract of the qualified employer plan. This collection of information is required to ensure that the separate requirements of qualified employer plans and IRAs are met.

Respondents: Business or other for-profit and not-for-profit institutions, state, local, and tribal governments.

Estimated Total Burden Hours: 40,000 hours.

OMB Number: 1545–1344.

Type of Review: Extension.

Title: CO–30–92 (FINAL) Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss, Non-applicability of Section 357(c).

Description: The reporting requirements affect consolidated taxpayers who will be making elections (if made) to treat certain loss carryovers as expiring and an election (if made) allocating items between returns. The information will facilitate enforcement of consolidated return regulations.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 18,600 hours.

OMB Number: 1545–1545.

Type of Review: Extension.

Title: REG–107644–97 (FINAL) Permitted Elimination of Pre-Retirement Optional Forms of Benefit (TD 8769).

Description: The regulation permits an amendment to a qualified plan that eliminates certain forms of benefit.

Respondents: Business or other for-profit and non-profit institutions.

Estimated Total Burden Hours: 48,000 hours.

OMB Number: 1545–1984.

Type of Review: Extension.

Title: Domestic Production and Activities Deduction.

Form: Form 8903.

Description: Taxpayers use Form 8903 and related instructions to calculate the domestic production activities deduction.

Respondents: Business and other for-profit, individuals or households, and farms.

Estimated Total Burden Hours: 359,934,974 hours.

OMB Number: 1545–1988.

Type of Review: Extension.

Title: Credit for New Qualified Motor Vehicles (Advanced Lean Burn Technology Motor Vehicles and Qualified Hybrid Motor Vehicles).

Form: NOT–161190–50 (Notice 2006–9).

Description: This notice sets forth a process that allows taxpayers who purchase passenger automobiles or light trucks to rely on the domestic manufacturer's certification that both a particular make, model, and year of a vehicle qualifies as an advanced lean burn technology motor vehicle under Section 30B(a)(2) and (c) of the Internal Revenue Code or a qualified hybrid motor vehicle under Section 30B(a)(3) and (d), and the amount of the credit allowable with respect to the vehicle.

Respondents: Individuals or households.

Estimated Total Burden Hours: 280 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–8362 Filed 5–30–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
May 31, 2006

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 413, 441, et al.
Medicare and Medicaid Programs; Conditions for Coverage for Organ Procurement Organizations (OPOs); Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 413, 441, 486 and 498

[CMS–3064–F]

RIN: 0938–AK81

Medicare and Medicaid Programs; Conditions for Coverage for Organ Procurement Organizations (OPOs)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This rule finalizes the February 4, 2005 proposed rule entitled ''Medicare and Medicaid Programs; Conditions for Coverage for Organ Procurement Organizations (OPOs).'' It establishes new conditions for coverage for organ procurement organizations (OPOs) that include multiple new outcome and process performance measures based on organ donor potential and other related factors in each service area of qualified OPOs. Our goal is to improve OPO performance and increase organ donation. In addition, this final rule re-certifies these 58 OPOs from August 1, 2006 through July 31, 2010 and provides an opportunity for them to sign agreements with the Secretary that will begin on August 1, 2006 and end on January 31, 2011. New agreements are needed so that the Medicare and Medicaid Programs can continue to pay them for their organ procurement activities after July 31, 2006.

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

FOR FURTHER INFORMATION CONTACT:
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I. Background

A. Organ Procurement Organizations and Their Importance

OPOs play a crucial role in ensuring that an immensely valuable, but scarce resource—transplantable human organs—becomes available to seriously ill patients who are on a waiting list for an organ transplant.

OPOs are responsible for identifying potential organ donors and for obtaining as many organs as possible from those donors. They are also responsible for ensuring that the organs they obtain are properly preserved and quickly delivered to a suitable recipient awaiting transplantation. Therefore, OPO performance is a critical element of the organ transplantation system in the United States. An OPO that is efficient in procuring organs and delivering them to recipients will save more lives than an ineffective OPO.

The nation's 58 OPOs are responsible for all organ recovery from deceased donors in the United States; without OPOs, organs from deceased donors will not be recovered. Without recovery of organs from deceased donors, only organs from living donors will be recovered and transplanted, and many patients waiting for organs will die.

B. Key Statutory Provisions

The Organ Procurement Organization Certification Act of 2000 (section 701 of Pub. L. 106–505) and section 219 of the Conference Report accompanying the Consolidated Appropriations Act, 2001 (Pub. L. 106–554) contain identical provisions that amended section 371(b)(1) of the Public Health Service (PHS) Act (42 U.S.C. 273(b)(1)). The legislation directs the Secretary to establish regulations that include four major requirements. These are to:

1. Increase the re-certification cycle for OPOs from 2 to at least 4 years.

2. Establish outcome and process performance measures based on empirical evidence, obtained through reasonable efforts, of organ donor potential and other related factors in each service area of qualified OPOs.

3. Establish multiple outcome measures.

4. Establish a process for OPOs to appeal a de-certification on substantive and procedural grounds.

The re-certification cycle was increased from 2 years to 4 years through an interim final rule with comment period, ''Emergency Re-certification for Coverage for Organ Procurement Organizations (OPOs),'' that re-certified all 59 (now 58) OPOs until December 31, 2005 and extended their agreements with us until July 31, 2006. (December 28, 2001, 66 FR 67109)

Section 1138 of the Social Security Act (the Act) (42 U.S.C. 1320b–8) provides the statutory qualifications and requirements that an OPO must meet in order for organ procurement costs to be reimbursed under the Medicare or Medicaid programs. Section 1138(b) of the Act also specifies that an OPO must operate under a grant made under section 371(a) of the PHS Act or must be certified or re-certified by the Secretary as meeting the standards to be a qualified OPO. Under these authorities, we previously established conditions for coverage for OPOs at 42 CFR 486.301, *et seq.* (May 2, 1996, 61 FR 19722).

Section 1102 of the Act gives the Secretary of Health and Human Services the authority to make and publish such rules and regulations as may be necessary to the efficient administration of the functions with which he is charged under the Act. Moreover, section 1871 of the Act gives the Secretary broad authority to establish regulations that are necessary to carry out the administration of the Medicare program.

C. HHS Initiatives Related to OPOs' Services

As discussed in the preamble of the February 4, 2005 proposed rule (70 FR 6086), in April 2003, the Secretary of the Department of Health and Human Services (HHS) initiated the Organ Donation Breakthrough Collaborative (the Collaborative). HHS's Health Resources and Services Administration (HRSA) was charged with overseeing the Collaborative because HRSA's Division of Transplantation administers the Federal contracts for the Organ Procurement and Transplantation Network (OPTN) and Scientific Registry of Transplant Recipients (SRTR) and has considerable experience and expertise in organ donation and transplantation. According to the Collaborative's Web site, ''The purpose of the Collaborative is to generate significant, measurable organ donation by helping the national community of organ procurement organizations and hospitals to identify, learn, adapt, replicate, and celebrate ''breakthrough'' practices associated with higher donation rates. Furthermore, it is designed to enhance the understanding of existing knowledge as well as contribute vital information about increasing organ donation rates.'' (*http://organdonation.iqsolutions.com/*).

Although the Collaborative has not yet met all of its goals, organ donation has increased significantly since the Collaborative began in April 2003. After years of single-digit annual improvements, organ donation increased by nearly 11 percent from 2003 to 2004.

All 58 OPOs are now participating in the Collaborative to varying degrees. Based upon the percentage of potential donors that become actual donors (that is, the donation rate), every OPO improved its performance after joining the Collaborative.

We believe that OPOs will sustain the gains they have made to improve their performance due to a variety of factors. We have four Regional OPO Coordinators, who work directly with

the OPOs to increase organ donation rates by assisting them in developing and implementing quality improvement programs. In addition, they also make periodic quality visits to identify areas in which an OPO needs to improve. Our Regional OPO Coordinators collaborate with HRSA, the OPOs, and the hospitals to ensure the continuous implementation of best practices identified through the Collaborative. However, it is important to note that the Collaborative is a voluntary initiative and, as such, has no enforcement mechanism.

D. Requirements for OPOs

To be an OPO, an entity must meet the applicable requirements of the Public Health Service Act (42 U.S.C. 273(b)(1)). Among other requirements, the OPO must be certified or re-certified by the Secretary. To receive payment from the Medicare and Medicaid programs for organ procurement costs, the entity must have an agreement with the Secretary. In addition, under section 1138 of the Social Security Act, an OPO must meet performance standards prescribed and designated by the Secretary. CMS is delegated the responsibility to designate each OPO for a specific geographic service area.

We re-certified the 58 OPOs through December 31, 2005 and designated each OPO for a specific geographic service area. Each OPO has an agreement with the Secretary that is valid through July 31, 2006. New agreements must be executed to extend the government's ability to make payment beyond July 31, 2006 and keep the nation's organ donation system in operation. In this final rule, we re-certify all 58 OPOs from August 1, 2006 through July 31, 2010 and re-designate them for the same geographic service areas. We will seek to enter into a new agreement with each OPO by July 31, 2006. These agreements will expire on January 31, 2011. Should an OPO not agree to sign the agreement, we would open the OPO's service area for competition from other OPOs using the procedures established in § 486.316 of this final rule.

II. Summary of the Proposed Provisions and Response to Comments on the February 4, 2005 Proposed Rule

In this final rule, we re-certify the 58 currently certified OPOs from August 1, 2006 through July 31, 2010. Each OPO will retain its currently designated service area. Since the OPOs' current agreements with the Secretary expire July 31, 2006, prior to that date, we will request each OPO to sign a new agreement with an ending date of January 31, 2011.

The February 4, 2005 proposed rule set forth new conditions for coverage for OPOs, including multiple new outcome and process performance measures based on organ donor potential and other related factors in each service area of qualified OPOs. We proposed new standards with the goal of improving OPO performance and increasing organ donation. We published the proposed rule with a 60-day public comment period ending on April 5, 2005. However, because individuals and organizations requested additional time for analysis of our proposals, we extended the comment period for an additional 60 days to June 6, 2005. We received 129 timely comments on the proposed rule. Interested parties that commented included: National organizations that represent OPOs, transplant surgeons and physicians, and organ procurement and transplant coordinators; state hospital associations and health departments; OPOs; tissue banks; medical examiners and coroners; large donor and transplant hospitals; Federally contracted organizations that oversee the nation's organ donation and transplantation systems; researchers; members of the public; and others. Below we provide a brief summary of each proposed provision, a summary of the public comments we received, and our responses to the comments.

Donation After Cardiac Death

We did not include any requirements for donation after cardiac death in our proposed rule. However, commenters expressed concern that the proposed rule did not address donation after cardiac death, pointing out that recovering organs from DCDs has increased in recent years and that recovering organs from DCDs will help address the shortage of organs for transplantation.

We agree that we should not ignore a practice that is becoming increasingly common across the United States and that has the potential to increase the supply of transplantable organs significantly. While commenters did not recommend specific requirements that we should consider including in the final rule, we believe donation after cardiac death is best addressed in three separate sections: § 486.322, Relationships with hospitals, critical access hospitals, and tissue banks; § 486.328, Administration and governing body; and § 486.344, Evaluation and management of potential donors and organ replacement and recovery. First, at § 486.322, we require that an OPO's agreement with its hospital must describe the responsibilities of both the OPO and the hospital or critical access hospital in regard to donation after cardiac death, if the OPO has a protocol for donation after cardiac death. Second, at § 486.328, we require that an OPO's policies must state whether the OPO recovers organs from donors after cardiac death. Finally, at § 486.344, we require any OPO that recovers organs from donors after cardiac death to have a protocol that establishes the following: (1) Criteria for evaluating patients for donation after cardiac death; (2) withdrawal of support, including the relationship between the time of consent to donation and the withdrawal of support; (3) the use of medications and interventions not related to withdrawal of support; (4) the involvement of family members prior to organ recovery; and (5) criteria for declaration of death and the time period that must elapse prior to organ recovery. We have finalized these requirements to facilitate our oversight of donation after cardiac death, not specifically to encourage OPOs to recover organs from cardiac dead donors. In addition, we are requiring an OPO to address recovery and placement of organs from cardiac dead donors in the protocols it establishes in collaboration with the transplant hospitals in its service area. We expect OPOs to establish clear, effective protocols that address the unique nature of donation after cardiac death, include appropriate safeguards to protect the rights of the potential donor and the family of the potential donor, and are based on current technologies and practices in the field. We must emphasize that these requirements do not mean that an OPO must recover organs from donors after cardiac death. We understand that donation after cardiac death is an evolving practice and is not yet accepted in every area of the country. Some donor hospitals are reluctant to permit donation after cardiac death in their facilities and some transplant surgeons are unwilling to transplant organs from such donors into their patients. Thus, some OPOs are hesitant to advocate donation after cardiac death in their service areas.

Basis and Scope (Proposed § 486.301)

In the February 4, 2005 proposed rule, our proposed basis and scope was unchanged from the current regulations, except for adding a reference to section 1102 of the Social Security Act and adding the term, ''non-renewal'' to (b)(3) to clarify that the scope included the non-renewal of the agreements OPOs' have with the Secretary.

We received no comments on this section of the proposed regulation. However, upon review, we determined

that § 486.301(b)(4) needed to be revised. The existing section includes a performance data cycle from January 1, 2002 through December 31, 2005. However, this time period has expired, and this final regulation will be in effect for future re-certification cycles. We have revised § 486.301(b)(4) to clarify that the scope of the subpart sets forth ''The requirements for an OPO to be re-certified.'' Further, we have added a reference to section 1871 of the Social Security Act, which is listed as one of the authorities for part 486.

Definitions (Proposed § 486.302)

To reflect organizational changes in the regulations text, to remove obsolete material, and to provide further clarity to the regulations, we proposed several amendments and additions to the existing definitions in part 486. For a detailed discussion of our proposed definitions, see the February 4, 2005 proposed rule. (70 FR 6089–6090)

Definitions Adopted as Proposed

We are finalizing the following terms and their definitions as proposed: ''adverse event,'' ''death record review,'' ''designation,'' ''donor,'' ''donor document,'' ''entire metropolitan statistical area,'' ''open area,'' ''organ,'' and ''organ procurement organization.'' Further discussion of the definition of ''adverse event'' can be found in this preamble under ''Quality Assessment and Performance Improvement (QAPI) (Proposed § 486.348).''

Summary of Changes to Definitions Based on Public Comments

We have provided the following summary of changes to our proposed definitions in response to public comments:

- We revised the proposed definition of ''certification'' with minor clarifying changes that are discussed in this preamble under ''Certification (proposed § 486.303).''
- We revised the proposed definition of ''de-certification'' by removing language related to specific conditions, measures, and requirements and revising it so that it is consistent with the definition of ''certification.''
- We have amended the proposed definition of ''designated requestor'' by adding language to state that the terms a ''designated requestor'' and ''effective requestor'' are interchangeable. These terms are discussed more completely in the comments and responses in this section.
- We have revised the term ''service area'' to ''donation service area (DSA),'' so that our terminology is consistent with the terminology generally used and accepted in the OPO and transplant communities. We have adopted the definition as proposed.
- We have revised the proposed definition for ''re-certification cycle'' to mean the 4-year cycle during which an OPO is certified, because the OPO re-certification cycle is not based on the calendar year in this final rule.
- We are adding the following definitions to this final rule: ''donor after cardiac death (DCD),'' ''eligible death,'' ''eligible donor,'' ''expected donation rate,'' ''observed donation rate,'' and ''standard criteria donor (SCD).'' These terms were not proposed in our February 4, 2005 rule. Because we will be using data from the OPTN and the SRTR in assessing whether OPOs have satisfied these outcome measures, we are adopting the definitions currently used by the OPTN and SRTR in their statistical evaluation of OPO performance. Adopting these definitions should ensure their consistent interpretation and application and promote the uniform and consistent reporting of data to the OPTN. These definitions are integral to understanding the new outcome measures in this final rule. A discussion of the outcome measures, along with the public comments and our responses can be found in this preamble under ''Section 486.318 Outcome Measures.''

We have added the term ''donor after cardiac death (DCD),'' which means an individual who donates after his or her heart has irreversibly stopped beating. A donor after cardiac death also may be termed a non heartbeating or asystolic donor.

The OPO Certification Act requires the Secretary to base both outcome measures and process performance measures on ''organ donor potential'' in each OPO service area. (See 42 U.S.C. 273.) We have added the term ''eligible death,'' to replace the proposed terms ''organ donor potential'' and ''potential donor denominator.'' Commenters urged us to standardize the use of these terms to conform them to the terms used by the OPTN and the SRTR. Therefore, we are adopting the term ''eligible death.'' Although it is recognized that this definition does not include all potential donors, for reporting purposes for outcome measures performance assessment, an eligible death for organ donation is defined as the death of a patient 70 years old or younger, who ultimately is legally declared brain dead according to hospital policy independent of family decision regarding donation or availability of next-of-kin, independent of medical examiner or coroner involvement in the case, and independent of local acceptance criteria or transplant center practice, who exhibits none of the following:

Active Infections (Specific Diagnoses)

Bacterial

Tuberculosis.
Gangrenous bowel or perforated bowel and/or intra-abdominal sepsis.

Viral

HIV infection by serologic or molecular detection.
Rabies.
Reactive Hepatitis B Surface Antigen.
Retroviral infections including HTLV I/II.
Viral Encephalitis or Meningitis.
Active Herpes simplex, varicella zoster, or cytomegalovirus viremia or pneumonia.
Acute Epstein Barr Virus (mononucleosis).
West Nile Virus infection.
Severe acute respiratory syndrome (SARS).

Fungal

Active infection with Cryptococcus, Aspergillus, Histoplasma, Coccidioides.
Active candidemia or invasive yeast infection.

Parasites

Active infection with Trypanosoma cruzi (Chagas'), Leishmania, Strongyloides, or Malaria (Plasmodium sp.).

Prion

Creutzfeldt-Jacob Disease.

General [Exclusions to the Definition of Eligible]

Aplastic Anemia.
Agranulocytosis.
Extreme Immaturity (<500 grams or gestational age of <32 weeks).
Current malignant neoplasms except non-melanoma skin cancers such as basal cell and squamous cell cancer and primary CNS tumors without evident metastatic disease.
Previous malignant neoplasms with current evident metastatic disease.
A history of melanoma.
Hematologic malignancies: Leukemia, Hodgkin's Disease, Lymphoma, Multiple Myeloma.
Multi-system organ failure (MSOF) due to overwhelming sepsis or MSOF without sepsis defined as 3 or more systems in simultaneous failure for a period of 24 hours or more without response to treatment or resuscitation.
Active Fungal, Parasitic, viral, or Bacterial Meningitis or encephalitis.

We have added the term ''eligible donor,'' which means any donor that

meets the eligible death criteria. The number of eligible donors is the numerator for the donation rate outcome performance measure.

We have added the term ''expected donation rate,'' which the OPTN defines as the rate expected for an OPO based on the national experience for OPOs serving similar hospitals and donation service areas. This rate is adjusted for the following hospital characteristics: Level I or Level II trauma center, Metropolitan Statistical Area size, CMS Case Mix Index, total bed size, number of ICU beds, primary service, presence of a neurosurgery unit, and hospital control/ownership, with an additional adjustment made for the expected notification rate. This definition corresponds to the SRTRs' definition of ''expected donation rate (hospital characteristics, notification rate).'' We have added the term ''observed donation rate,'' which is the number of donors meeting the eligibility criteria per 100 deaths. The SRTR uses the expected donation rate and the observed donation rate to calculate the SRTR-based donation rate, which is one of the three outcome measures in this final rule.

We have added the term, ''standard criteria donor (SCD),'' which means a donor who meets the eligibility criteria for an eligible donor and does not meet the criteria to be a donor after cardiac death or expanded criteria donor. Note that we are not including a definition of ''expanded criteria donor'' in this final rule because it is likely that the OPTN and SRTR will change the criteria for expanded criteria donor in response to changes in transplant technology.

We proposed that CMS can terminate an OPO in cases of ''urgent need'' and we have finalized this proposal at § 486.312(b). In response to comments, we have added a definition for ''urgent need.'' Urgent need occurs when an OPO's noncompliance with one or more conditions for coverage has caused, or is likely to cause, serious injury, harm, impairment, or death to a potential or actual organ donor or an organ recipient. Discussion of the definition can be found in this preamble under ''De-Certification (proposed § 486.312).''

Following is a summary of the public comments we received on our proposed definitions, along with our responses to the comments.

Comment: Several commenters noted that the term ''designated requestor'' is no longer used in the organ donation community. Commenters said that under the Collaborative, OPOs and hospitals refer to the person who fulfills the ''designated requestor'' role as an ''effective requestor,'' and they urged us to adopt this term in the final OPO regulation. Some commenters said that hospitals are concerned that they may be cited by surveyors if their records show an ''effective requestor'' was involved in the consent process rather than a ''designated requestor.''

Response: Under the Collaborative, an ''effective requestor'' is an individual who has demonstrated effectiveness and expertise in requesting donation from families of potential donors. The individual may be an OPO employee or hospital employee or another individual and may have received formal classroom training in requesting organs or less formal education and guidance from OPO staff. The person who will be the most effective requestor varies, depending upon the family and the specific donation situation. We will continue to use the term ''designated requestor'' because the hospital condition of participation (CoP) for organ, tissue, and eye procurement at § 482.45 includes the term ''designated requestor.'' However, we have revised the definition in § 486.302 to clarify that we regard the terms ''designated requestor'' and ''effective requestor'' to be interchangeable.

Comment: Many commenters said that there should be both a standardized definition of ''organ donor potential'' (termed ''eligible deaths'' by the OPTN and SRTR) as well as consistent and uniform application of that definition throughout the OPO community. As some commenters pointed out, we proposed using outcome measures data submitted to the OPTN for re-certifying OPOs. However, the proposed definition for

''organ donor potential'' in the February 4, 2005 rule was not consistent with OPTN's definition of ''eligible deaths'' or ''eligible donors.'' A national organization stated that different definitions, may ''cause confusion in the field and lead to mistakes and inaccuracies.'' However, the national organization submitted a recommended definition of ''organ donor potential'' that is different both from our proposed definition, as well as from the OPTN's definition of ''eligible death.''

Response: We agree that for the data to be accurate and consistently reported, the terms and definitions should be standardized to the greatest extent possible. Based on the public comments that emphasized the importance of uniform and consistent reporting of organ donor potential to the OPTN, we are adopting the OPTN term ''eligible deaths'' and its definition, instead of the proposed term ''organ donor potential'' and its proposed definition. We believe that other provisions in this final rule, specifically, the requirements for death record reviews and reporting data, also will promote the consistent interpretation and application of ''eligible deaths.''

Comment: Most comments we received on the definitions concerned the definition of ''organ donor potential.'' Most of these comments were favorable, with many commenters saying that they were pleased with the shift away from ''donors per million population'' to our emphasis on ''organ donor potential.'' Some indicated that the proposed definition is a far superior method of defining ''donor potential'' than the previous ''donors per million population.''

Response: We appreciate the support expressed by commenters for basing OPO outcome measures on the organ donor potential in an OPO's service area, rather than continuing to use a population-based approach, and we agree that it will be a more accurate measure of the donor potential in a DSA. As stated previously, we are using the term ''eligible deaths'' instead of ''organ donor potential'' because it is consistent with the OPTN and SRTR definition.

Comment: Two commenters were supportive of the exclusion of donors after cardiac death (DCDs) from the definition of ''organ donor potential.'' One commenter said that ''DCD organs are still experimental'' and that there needs to be ''more scientific facts and long-term follow-up before we can honestly assure our patients that utilization of these kidneys is in their best interest long-term.'' Another commenter noted that DCDs only represented 5 percent of the organs recovered in 2004. The commenter also noted that the recovery and transplantation of organs from DCD organs is not a common practice throughout the United States. The commenter said it would be premature to include DCDs in the standardized definition of ''organ donor potential.'' However, one commenter encouraged us to include DCDs in the potential donor pool.

Response: Although the number of DCD organs recovered and transplanted has increased significantly in recent years, we acknowledge that the procurement and transplantation of DCD organs is not a common practice throughout the United States and that some surgeons have concerns about using these organs. The OPTN's current definition of ''eligible deaths'' does not include DCDs, and we are using the OPTN definition in this final rule. DCDs will be discussed further in this preamble under ''Donor Evaluation and

Management and Organ Placement and Recovery (proposed § 486.344).''

Comment: One OPO was concerned about our including specific exclusionary criteria in the definition of ''organ donor potential.'' That commenter noted that changes to the definition ''would require a change through regulatory process.'' This commenter suggested we refer to the United Network for Organ Sharing's (UNOS) definition and ''designate their guidelines as the clinical indications for OPOs to follow.'' (Note that UNOS is the Federal contractor that currently administers the OPTN.)

Response: To be enforced by CMS, rules and requirements of the OPTN (that is OPTN policies and bylaws, which include definitions of terminology used by the OPTN and its members) must be approved formally by the Secretary by being published in the **Federal Register** with an opportunity for the public to comment. However, no policy or bylaw of the OPTN has been approved by the Secretary in this manner. In most instances, we must include the specific language of the OPTN policy or bylaw in order to make it a requirement.

We acknowledge that because we are including some of the definitions used by the OPTN and SRTR, we may need to make changes to our definitions through future rulemaking if the OPTN and SRTR change their definitions. We will be monitoring these changes as they occur and will undertake further rulemaking if necessary.

Comment: Two commenters noted that the ''organ donor potential'' guidelines offered in the February 4, 2005 proposed rule would not cover all of the potential donor situations. One commenter suggested that there be some type of forum in which questionable cases could be presented and ''an opinion rendered'' as to whether or not it is a reportable ''eligible death.''

Response: We agree that the definition of ''eligible death'' may not cover all potential donor situations. We will work with HRSA to determine whether a procedure can be established to assist OPOs that are unsure whether a particular potential donor situation should be characterized as an ''eligible death.''

Comment: Two commenters recommended that we modify the definition of ''donor'' to include pancreata procured for islet cell transplantation or research pursuant to the requirements of the Pancreatic Islet Cell Transplantation Act of 2004 (Pub. L. 108–362).

Response: The Pancreatic Islet Cell Transplantation Act of 2004 states that ''* * * [p]ancreata procured by an organ procurement organization and used for islet cell transplantation or research shall be counted for purposes of certification or re-certification.'' We have chosen not to modify the definition of ''donor'' in § 486.302 because there is nothing in the definition that precludes us from counting pancreata used for islet cell treatment for re-certification of OPOs. However, we are making other changes to the certification process to comply with this statute. We will count pancreata recovered for use in islet cell transplantation and research in the organs transplanted per donor and organs used for research per donor yield measure in this final rule. Outcome measures for pancreata used for islet cell transplantation and research are discussed in more detail in this preamble in the ''Outcome Measures section (proposed § 486.318).''

Requirements for Certification (Proposed § 486.303)

In § 486.303, we proposed requirements that an OPO must meet to be certified. We proposed that an OPO must: Have received a grant under 42 U.S.C. 273(a); be a non-profit entity that is exempt from Federal income taxation under section 501 of the Internal Revenue Code of 1986; have accounting and other fiscal procedures necessary to assure the fiscal stability of the organization, including procedures to obtain payment for kidneys and non-renal organs provided to transplant hospitals; have an agreement with the Secretary to be reimbursed under title XVIII for the procurement of kidneys; have been re-certified as an OPO under the Medicare program from January 1, 2002 through December 31, 2005; have procedures to obtain payment for non-renal organs provided to transplant centers; agree to enter into an agreement with any hospital or critical access hospital in the OPO's service area, including a transplant hospital, that requests an agreement; and, meet or have met the conditions for coverage, including the outcome measures and the process performance measures.

We received few comments that specifically related to these proposed provisions. However, we requirements in § 486.303 as a result of revisions we made to the designation requirements in § 486.304 and to the de-certification requirements in § 486.312, based on comments on the proposed de-certification process. A detailed discussion of the changes to our proposed de-certification requirements are discussed in the preamble section that addresses § 486.312.

Comment: Commenters stated that the proposed requirement that an OPO must ''have a grant under 42 U.S.C. 273(a)'' as a requirement for certification is inaccurate and conflicts with the preamble language (page 6086, column 3, paragraph 3), 42 U.S.C. 1320B–8(b)(1)(A), and proposed § 486.303(a). They said that section 1320B–8(b)(1)(A) of the statute clearly provides that an OPO is qualified if it has received a grant or is otherwise certified by the Secretary. Commenters stated that the preamble correctly reflects the statutory requirement, but the proposed requirement does not. Commenters further stated that the proposed requirement at § 486.303(a) seems to make it a mandatory requirement instead of an alternative requirement.

Response: We agree with the commenters that 42 U.S.C. 1320B–8(b)(1)(A) includes an alternative requirement. Therefore, we are revising § 486.303(a) to state that in order to be certified as a qualified OPO, an OPO must have received a grant under 42 U.S.C. 273(a) or have been certified or re-certified by the Secretary within the previous 4 years as being a qualified OPO.

Requirements for Designation (Proposed § 486.304)

The existing regulations include requirements for designation of OPOs in two separate sections: § 486.304 and § 486.306. We have revised § 486.304 by moving some requirements to other sections of the rule. For a list of the organizational changes, see our crosswalk in section III—''Provisions of the final rule.'' For a detailed discussion of our proposed provisions for § 486.304, see the February 4, 2005 proposed rule (70 FR 6131.)

Only one comment was received on our proposed provisions in § 486.304. However, we received many comments containing major concerns about the de-certification requirements in § 486.312. The revisions that we made to § 486.312 based on the comments resulted in changes to § 486.304. (See the comments and responses in this preamble under ''De-Certification (proposed § 486.312)'' for a discussion of these changes.) Following is a summary of the comment on proposed § 486.304 and our response.

Comment: One commenter stated that to compete for an open area, OPOs should be required to meet all five, instead of only four of the outcome measures. The commenter stated that such a requirement would be helpful in addressing the concern that these outcome measures would create an incentive for OPOs to procure as many

organs as possible, including organs from extended criteria donors (ECDs) and donation after cardiac death (DCD) donors, regardless of whether they can be transplanted, and without considering graft and recipient outcomes.

Response: In this final rule, requirements for choosing an OPO when a donation service area is open have been moved to § 486.316 and revised in the context of the re-certification and competition processes in this final rule. In response to comments, we are changing the outcome measures significantly, as well as the standards for an OPO to compete for an open area. To be re-certified, an OPO is required to meet all three of the outcome measures in this final rule. A complete discussion of these competition standards can be found in ''Re-Certification and Competition Processes (proposed § 486.316)'' in this preamble.

OPO Service Area Size Designation and Documentation Requirements (Proposed § 486.306)

We proposed several changes to the requirements in this section. We proposed that OPOs would no longer be required to provide population data to us since population would no longer be used as a basis for OPO certification. Although, we proposed retaining the requirement that an OPO must procure organs from an average of at least 24 donors per calendar year, we proposed changing the current requirement for an average of 24 donors per calendar year in the 2 years before the year of re-designation to a requirement for an average of 24 donors per calendar year in the 4 years before the year of re-designation because the re-certification cycle has been increased from 2 years to 4 years. We proposed no longer permitting exceptions to the 24-donor per year rule.

Additionally, we proposed removing obsolete service area size standards for periods during 1996 and before. Finally, we proposed increasing the designation period from 2 years to 4 years to conform the designation period to the re-certification cycle.

Following is a summary of the comments we received and our response.

Comment: Some commenters recommended that CMS continue to allow an exception to the 24-donor requirement for Hawaii. One commenter pointed out that Hawaii is an island State that has only one hospital that performs transplants (kidney, liver, pancreas, and heart). In addition, the commenter stated that the next closest transplant center is 2000 miles away on the mainland. Furthermore, there are few transplant surgeons in Hawaii and only one each for heart, liver, and pancreas. The commenter noted that if these surgeons are out of State, certain organs are not recovered because they cannot be transplanted.

Response: After reviewing the comments on this proposed provision, we considered retaining the 24-donor rule with an exception for an OPO whose service area includes Hawaii and does not include any part of the continental United States. However, OPOs on average now recover 130 donors per year. We believe it is unlikely that any OPO other than Hawaii would have difficulty surpassing the 24-donor threshold. Further, because of the unique challenges presented by recovering and placing organs so far from the mainland, we believe we would be likely to grant an exception to Hawaii if it failed to achieve the 24-donor threshold. Therefore, we have concluded that the 24-donor rule is no longer useful or necessary as a measure of the ''sufficient size'' of an OPO service area. We have revised this final rule accordingly by removing the 24-donor-per-year requirement.

Comment: One commenter stated that OPOs should be designated in a manner that optimizes organ recovery and allocation. The commenter pointed out that service areas have developed over the years in a manner that may not yield the best results and urged CMS to develop a long-term vision for a logical and productive way to divide the country among OPOs, using either a statewide system or a system reflecting optimal allocation units, based on research. The commenter predicted that such systems would make comparisons between OPOs more meaningful and urged CMS to use the final rule (CMS–3064–F) to move toward that goal.

Response: We appreciate the comment; however, we are unaware of any definitive research that would guide us in re-drawing the boundaries of the present OPOs in a manner that is both consistent with the statute and more likely to yield better results. Furthermore, based on our experience, we believe any attempt to implement a system that would require us to remove territory from one OPO's service area to give it to another OPO would result in confusion that could negatively impact organ donation.

We received no comments on our other proposals under this section. We proposed removing the language from the existing regulations at § 486.307(d)(2)(iv) that requires an entity to show that it can procure organs from at least 50 potential donors per year if it was not previously designated as an OPO. We also proposed removing references related to designation of requirements for entities or organizations that are not currently OPOs. No commenters opposed this change, and we have adopted it as proposed.

We proposed a number of other relatively minor changes to the existing § 486.307. We proposed removing obsolete service area size standards for periods during 1996 and before. We proposed changing the current requirement that OPOs must submit information about acute care hospitals in their service areas that have an operating room and the equipment and personnel to retrieve organs, to a requirement that OPOs submit information about hospitals that have both a ventilator and an operating room (because in proposed § 486.320, we proposed requiring OPOs to have agreements with 95 percent of such hospitals). Finally, we proposed increasing the designation period from 2 years to 4 years to conform the designation period to the re-certification cycle. Because we received no public comments on these changes, we are adopting them as proposed.

Designation of One OPO for Each Service Area (Proposed § 486.308)

We proposed no substantive changes to the current § 486.316, ''Designation of one OPO for each service area,'' with the exception of replacing the ''tie-breaker'' criteria used to designate an OPO when two or more OPOs apply for the same area. We did, however, propose re-locating these criteria to § 486.316 (''Re-certification and Competition Processes''). In addition, § 486.308(b) through § 486.308(f) has been re-designated as § 486.308(c) through § 486.308(g) and § 486.308(b) has been added. Newly added paragraph (b) was relocated from § 486.304(c) as part of our reorganization and clarification in this final rule of the sections that address certification and designation.

We received public comments about the process for a hospital to seek a waiver to work with an alternate OPO, even though we did not propose changing these regulations. Under section 1138(a)(2)(A) of the Social Security Act and the OPO regulations at 42 CFR 486.316(e) through (g), a hospital may request and CMS may grant a waiver permitting the hospital to have an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located. To qualify for a waiver, the hospital must submit data to CMS

establishing that: (1) The waiver is expected to increase organ donations; and (2) the waiver will ensure equitable treatment of patients referred for transplants within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement.

In making a determination on a request, CMS may consider: (1) Cost effectiveness; (2) improvements in quality; (3) changes in a hospital's designated OPO due to changes in the metropolitan statistical area designations, if applicable; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO.

A hospital may continue to operate under its existing agreement with an out-of-area OPO while CMS is processing the waiver request. If a waiver request is denied, a hospital must enter into an agreement with the designated OPO within 30 days of notification of the final determination.

Comment: A few commenters recommended that we clarify ''appropriate purposes'' for waivers to avoid attempts at ''cherry picking'' or at influencing organ allocation patterns without considering patient access to organs. The commenters' recommended criteria would require a hospital to have certain organ donation policies and procedures in place before being eligible to apply for a waiver and would require CMS to take factors into consideration that are not included in the statute or in current regulations. One commenter said that there should be a presumption against creation of new waivers. The commenter recommended that the burden of proof for a hospital to show that it should receive a waiver to work with a different OPO should be high, and a waiver should be granted only if CMS finds a ''material deficiency.'' Another commenter said that the waiver program should emphasize improved outcomes.

Commenters recommended that to seek a waiver to work with an alternate OPO, a hospital should be required to: (1) Have written policies and procedures to address its organ procurement responsibilities; (2) document that the hospital's governing body has approved the hospital's organ procurement policies; (3) integrate the organ, tissue, and eye donation program into the hospital's quality assessment and performance improvement (QAPI) program; and (4) have policies to ensure that potential donors are identified and declared deceased within an acceptable time frame by an appropriate practitioner.

Commenters also recommended that we incorporate a variety of additional considerations in our review process to determine whether to grant a waiver, such as the outcome of the most recent Joint Commission on Accreditation of Healthcare Organization's (JCAHO) review of the hospital's accreditation status and whether the hospital has policies and procedures in place so that any failure to identify a potential organ donor and/or refer such a potential donor to the OPO in a timely fashion would be investigated and reviewed by the hospital in a manner similar to that for other major adverse healthcare events.

Response: The waiver request process is open and transparent. By statute, we publish all pertinent information in a **Federal Register** Notice, giving the OPOs involved in the request and the public an opportunity to comment. Generally, we approve the request if the hospital requesting the waiver can demonstrate that the waiver is expected to increase organ donation and that the waiver will ensure equitable treatment of patients referred for transplants within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement.

Some of the commenters' recommendations for factors we should consider when making a decision on a waiver request currently are requirements hospitals must meet to participate in Medicare. Thus, adding these requirements to the waiver process would be duplicative. Other recommendations made by the commenters currently are not requirements hospitals must meet to participate in Medicare. We do not believe it would be fair to expect a hospital to meet requirements that fall outside the Medicare hospital conditions of participation in order to receive a waiver to work with an alternate OPO.

While we appreciate the comments, the commenters' recommendations would slow the waiver process and make it more difficult for hospitals to obtain a waiver. We believe making these changes in the process could harm organ donation by forcing a hospital to continue to participate in a difficult and unproductive relationship with an OPO and would weaken an incentive OPOs now have to provide superior services to the hospitals in their service areas. We are not adopting any of the suggested changes, which would appear to add additional burdens on hospitals and seem to be intended to discourage a hospital from exercising the rights that the Congress provided in section 1138 of the Social Security Act.

Re-Certification From August 1, 2006 Through July 31, 2010 (§ 486.309)

We included language in our February 4, 2005 proposed rule for a time period that has now expired. Under this final rule, the first re-certification cycle for the 58 OPOs is August 1, 2006 through July 31, 2010. We are revising the language in § 486.309 accordingly.

Comment: Many commenters stated that they understood that the proposed outcome measures would not be applied retrospectively for the period of time from January 1, 2002 to December 31, 2005. Many other commenters wrote to us urging that the proposed performance measures not be applied retrospectively, and they urged us to establish a transition period before implementing any performance measures that would be contained in a final rule. Prior to publication of the February 4, 2005 proposed rule, many individual OPOs and their national association contacted us to express their concerns about the impending expiration of their certifications and to urge us to take action to ensure that OPOs would continue to be certified so there would be no disruption in service. A commenter noted, ''The timing of these proposed regulations (given the passage of the legislation in 2000) creates the need for an interim course of action.'' Another commenter stated, ''we are now in the 41st month of a 48 month review process.''

Response: We agree with these commenters that the proposed performance measures should not be applied to evaluate an OPO's performance for the period of January 1, 2002 to December 31, 2005. As discussed earlier in this preamble, after careful deliberation concerning how to re-certify the existing 58 OPOs for the next re-certification cycle, we have decided that the most prudent course of action is to re-certify all existing OPOs from August 1, 2006 through July 31, 2010 and offer to extend their agreements with the Secretary through January 31, 2011, so that OPOs can maintain their present organ procurement functions. Therefore, we have revised § 486.309 accordingly.

Changes in Ownership or Service Area (Proposed § 486.310)

In § 486.310, we proposed that a designated OPO considering a change in ownership or in its service area must notify CMS before putting it into effect. In addition, we proposed that if CMS finds that the OPO has changed to such an extent that it no longer satisfies the

requirements for OPO designation, CMS may de-certify the OPO and declare the OPO's service area to be an open area. The proposed provisions in this section were based on existing regulations.

We received only a few comments on this section, which are summarized below.

Comment: One commenter said that control, not ownership, is relevant to nonprofit corporations. The commenter recommended that we add the word ''control'' and a definition to paragraph (a).

Response: We appreciate the commenter's recommendation. Since all OPOs must be non-profit, we have added the word ''control'' to § 486.310(a) to clarify that this section applies to changes in the control over an OPO, as well as changes in ownership or in an OPO's service area. The term ''control'' is defined in § 413.17(b)(3), and we have added a cross reference in the regulations text for this final rule.

Comment: A commenter noted that this section does not contain a time frame within which we must make our decision to approve a change of ownership. The commenter suggested that we should require the OPO to provide 15 or 30 days notice of the impending change to us and that we should make our determination within 30 days of receipt of the information we request. The commenter said that this time frame would eliminate the uncertainty of a possible CMS challenge under paragraph (b) and would not hold up the consummation of a change of ownership or control transaction.

Response: We appreciate the comment. We will make a decision as soon as practical after receiving all the information we request from the OPO. However, every case is different, and it is not possible for us to specify a time frame within which we are able to make a decision.

Comment: A commenter stated that the information that we require under paragraph § 486.310(a)(2) should be only that information which is required for designation.

Response: The circumstances surrounding each change of ownership or merger are different, which may create the need for additional information. Thus, we have retained the language in (a)(2), which specifies that we may require ''other written documentation CMS determines to be necessary for designation.''

De-Certification (Proposed § 486.312)

We proposed de-certification requirements based on voluntary or involuntary termination of an agreement or non-renewal of an agreement. For a detailed discussion of our proposed provisions, see the February 4, 2005 proposed rule (70 FR 6086).

We did not receive any comments on our proposed requirements for § 486.312(a) De-certification due to voluntary termination of agreement. Therefore, we made only a few minor conforming changes in the final rule.

In contrast, commenters expressed concerns regarding the two proposed involuntary de-certification process provisions at § 486.312(b), De-certification due to involuntary termination of agreement (that is, during the term of the agreement), and at § 486.312(c), Non-renewal of agreement (that is, at the end of the term of the agreement). Therefore, we have made revisions to § 486.312(b) and (c). We did not receive comments regarding § 486.312(e) Public notice. Therefore, we made only one minor clarifying edit in that subsection of the final rule.

Comment: Commenters stated that the statute requires that re-certification (and by inference de-certification) decisions be based on multiple outcome and process performance measures. Commenters stated that based on the proposed involuntary de-certification processes, an OPO could be de-certified based on non-compliance with a single certification requirement or, if it complies with all of the certification requirements, a single designation requirement. Commenters expressed concerns that the proposed § 486.312(b), De-certification during the term of the agreement, and § 486.312(c), De-certification due to non-renewal of agreement, permit de-certification based upon considerations not authorized by the OPO Certification Act.

Response: We disagree with the commenter's premise. The OPO Certification Act requires the Secretary to establish ''multiple outcome measures as part of the certification process,'' and we are doing so. However, the Organ Procurement Organization Act did not define the terms ''certification,'' ''re-certification,'' or ''de-certification.'' Moreover, the Congress did not suggest that an OPO could not be de-certified if the OPO violated other regulatory conditions of coverage, such as failure to ensure that donors are tested for human immunodeficiency viral markers. Nothing in the legislative history suggests that the Congress intended to continue to pay an OPO that violated such a condition for coverage. Rather, the legislative history suggests that the Congress was concerned with end-of-cycle de-certifications caused by an OPO's failure to meet the performance standards established at § 486.310, and that were expressly authorized under section 1138(b)(1)(C) of the Social Security Act.

The congressional findings indicated a concern that the certification process had ''created a level of uncertainty'' that was interfering with the OPOs' effectiveness in raising the level of organ donation. We have addressed those concerns in this final rule by establishing, among other things: (1) A re-certification process that relies on outcome and process performance measures based on empirical evidence of organ donor potential in an OPO's service area, (2) multiple outcome measures, (3) rules that clearly delineate the steps in the appeals process for de-certifications, and (4) rules that delay the competition phase until the administrative appeals process has been completed. Therefore, this final rule is fully consistent with the statutory requirements.

Comment: Commenters expressed concern that the proposed de-certification requirements at § 486.312(b) and § 486.312(c) are inconsistent with the proposed definition of ''de-certification;'' and with the certification requirements. In addition, commenters expressed concern about inconsistency with the substantive grounds for de-certification proposed at § 486.312(b), as well as the fact that CMS provided no explanation for this disparity. Commenters stated that the grounds for de-certification should be consistent, or the administrative record should indicate the legal and policy reasons as to why they differ. Commenters stated that this provision permits non-renewal of an agreement based on only one criterion, that is, failure to meet the outcome measures. Commenters stated that a de-certification is a terminal action that we should make only after review of all relevant criteria, not simply based on simple arithmetic outcome measures that automatically trigger a de-certification decision.

Commenters recommended that § 486.312(b) should be changed to read as follows: ''Decertification due to involuntary termination of agreement. The Secretary may terminate an agreement with an OPO if CMS finds that the OPO no longer meets the requirements for certification in § 486.318. CMS may also terminate an agreement immediately in cases of urgent need, such as the discovery of unsound medical practices. CMS will decertify the OPO as of the effective date of the involuntary termination.'' Commenters recommended that § 486.312(c) be deleted.

Response: We agree with some but not all of the commenters' suggestions. As mentioned earlier, we have redefined ''de-certification'' and the requirements for certification in § 486.303. We also agree that OPOs can be de-certified during the 4-year re-certification cycle for many reasons, including situations where there is an urgent need. However, we do not agree that it is necessary or prudent to combine sections (b) and (c), as one commenter suggested, because the effective dates of a de-certification are not necessarily identical. We are making changes to the final rule to clarify that de-certification due to involuntary termination of an agreement occurs ''during the term of the agreement.'' We have streamlined and clarified the provision by deleting the language that refers to termination if the OPO no longer meets the requirements ''for designation, or certification or the conditions for coverage in this subpart or is not in substantial compliance with any other applicable Federal regulations or provisions of titles XI, SVIII, or XIX of the Act.'' In its place, we have inserted language that refers to termination if the OPO no longer meets the requirements for ''certification at § 486.303.'' We have also made minor edits to the title. We have revised § 486.312(b) as follows:

Involuntary termination of agreement. During the term of the agreement, CMS may terminate an agreement with an OPO if the OPO no longer meets the requirements for certification at § 486.303. CMS may also terminate an agreement immediately in cases of urgent need, such as the discovery of unsound medical practices. CMS will de-certify the OPO as of the effective date of the involuntary termination.

We have not deleted proposed § 486.312(c) as commenters suggested. We do not agree with the commenters that by de-certifying an OPO that fails to meet the outcome measures, we would be basing the OPO's de-certification solely on a single arithmetic computation. At the end of the re-certification cycle, we will determine each OPO's performance on the multiple outcome measures that we believe reflect the entire spectrum of an OPO's performance. Moreover, we expect every OPO to evaluate and improve its practices throughout the re-certification cycle to ensure that by the end of the cycle, it meets all of the measures. If it has not, we believe it is appropriate to de-certify the OPO. Holding all OPOs accountable for meeting all three outcome measures will provide a strong incentive for OPOs to excel. We believe this incentive will increase organ donation in the United States.

Further, we expect OPOs to be in compliance with all the process performance measures and other regulatory conditions at all times. We will survey each OPO at some point during the re-certification to evaluate its compliance with the process performance measures and, if the OPO is out of compliance, to give the OPO an opportunity to come back into compliance through a plan of correction. Therefore, by the end of the re-certification cycle, all OPOs must be in compliance with the process performance measures and other regulatory conditions. If an OPO is not in compliance with the process performance measures and the other requirements at § 486.303 at the end of the re-certification cycle, we may De-certify the OPO at that time. Therefore, we have added language to clarify that non-renewal of an OPO's agreement is based on failure to meet the outcome measures or failure to comply with the other requirements for certification.

For the purpose of clarification, we have removed our proposed language in § 486.312(c), ''or if the OPO's designation status has been terminated'' because we streamlined the requirement by including most of the proposed requirements for designation in § 486.303. Based on public comments, we have revised § 486.312(c)in the final rule as follows:

''Non-renewal of agreement. CMS will not voluntarily renew its agreement with an OPO if the OPO fails to meet the outcome measures at § 486.318, based on findings from the most recent re-certification cycle, or any of the other requirements for certification at § 486.303. CMS will de-certify the OPO as of the ending date of the agreement.''

Comment: One commenter stated that the phrase ''urgent need'' in § 486.312(b) needs a more detailed definition. The commenter said that the proposal identifies only the discovery of ''unsound medical practices,'' but there is no sense of the severity of the unsound medical practices. The commenter recommended that the definition of ''urgent need'' should include an ''imminent and incurable threat to public safety, to donors, or a material failure of governance, management, or recovery practices and procedures which imminently threaten public safety and which cannot be or which are not likely to be cured by or with the cooperation of the OPO.''

Response: We agree that the phrase ''urgent need'' requires a more detailed definition. To help us address this issue, we looked to the definition of ''immediate jeopardy'' contained in the requirements for provider agreements and supplier approval at § 489.3, which states, ''For the purposes of this part—Immediate jeopardy means a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.'' We modified this definition for OPOs and added the definition of ''urgent need'' at § 486.302 as follows, sbull I11''Urgent need occurs when an OPO's noncompliance with one or more conditions for coverage has caused, or is likely to cause, serious injury, harm, impairment, or death to a potential or actual organ donor or organ recipient.'' For example, we would consider an OPO's failure to ensure that appropriate donor screening and testing are completed to be a situation of ''urgent need.''

Comment: One commenter stated that in the proposed § 486.312(d), if the 90-day notice is to be given for de-certification at a time other than at the end of a de-certification cycle, there are no standards set forth to justify why that notification should occur at a time other than at the end of a cycle. The commenter stated that if it were an emergent situation, the other provisions of the proposed section for a termination with no less than 3-days notice would apply. The commenter further stated that the regulations should clarify why a notice of de-certification will be given at a time other than the end of the certification cycle and explain how the giving of notice before the end of the cycle may impact an OPO's right of appeal. Finally, the commenter recommended that the regulation require that any notice of de-certification contain an explanation of the grounds for such de-certification.

Response: We agree with the commenters that additional information should be added to the final rule. Under the final rule at § 486.312(b) we may de-certify an OPO based on termination of the agreement during the term of the agreement for failure to meet the requirements for certification at § 486.303. For example, if an OPO is substantially out of compliance with one or more process performance measures and fails to submit or implement an acceptable plan of correction, we would terminate the OPO's agreement and de-certify the OPO. We may de-certify an OPO at the end of the 4-year agreement based on non-renewal of the agreement for failure to meet the outcome measures at § 486.318 or the other requirements for certification at § 486.303. Except in cases of urgent need, CMS is required to

give written notice of de-certification to an OPO at least 90 days before the effective date. In cases, of urgent need, CMS gives written notice of de-certification at least 3 calendar days before the effective date of the de-certification. This written notice will include all the reasons for de-certification. (See § 486.314(a).)

In summary, our intent is not to de-certify OPOs unnecessarily but to ensure that OPOs maximize the recovery of viable organs for transplantation and provide high quality care to families of potential donors, and provide efficient, effective services to transplant hospitals. However, if an OPO does not comply with the regulations, it will face enforcement actions during the agreement cycle, as well as at the end of the cycle. Revisions have been made in response to public comments that affect multiple requirements at § 486.302, Definitions; § 486.303, Requirements for certification; § 486.304, Requirements for designation; and § 486.312, De-certification. These revisions in the final rule clarify and streamline the regulations and comprehensively address commenters' concerns regarding internal inconsistency of the regulations.

Appeals (Proposed § 486.314)

To address the congressional mandate for an appeals process for OPOs to appeal a de-certification on substantive and procedural grounds, we proposed to streamline the appeals process so that an OPO facing de-certification could appeal and receive a decision on its appeal before we opened its service area for competition from other OPOs. Specifically, we proposed to delay competition until an administrative appeal was completed; expedite appeals by using a CMS hearing officer; and, at our discretion, extend the appellant OPO's agreement for 60 days to complete the appeals and competition processes and, if necessary, select a new OPO to take over the appellant OPO's service area.

In the final rule, we expand the circumstances under which an OPO can appeal a de-certification due to involuntary termination or non-renewal of its agreement with us, and the process will enable OPOs to appeal on both substantive and procedural grounds. We establish an appeals process that includes procedures for OPOs to request reconsideration and to request a hearing. To avoid undue procedural delays, the final rule also establishes certain specific time frames for both the appellant OPO, the reconsideration official, and the CMS hearing officer. Further, in response to public comments, we have expanded the proposed appeals process to grant OPOs certain additional appeal rights.

We received many comments on the appeals process; no comments were positive. Many commenters said that they prefer the part 498 process, which sets forth procedures for providers and suppliers to appeal decisions that affect participation in the Medicare program. Some commenters argued that the Secretary is required to provide the part 498 process to OPOs.

However, the same commenters indicated that if we did not reinstate the part 498 process for OPO appeals, they would be satisfied with a specific alternative process utilizing a CMS hearing officer to hear appeals. The commenters described the process, which would include some part 498 procedures, such as the right to a reconsideration. Commenters said that regardless of what appeals process is included in the final rule, they want more detail about how the process will work. We have added such detail throughout our responses to the comments. Following is a summary of the public comments we received, along with our responses.

Comments on the Part 498 Process

Comment: Commenters said that the Secretary has consistently provided OPOs with the appeal rights outlined in 42 CFR part 498. They said that even before the OPO Certification Act, the statutory and regulatory language demonstrates that for purposes of appeals, OPOs were entitled to the same or an equivalent process to that of ESRD facilities (which were entitled to appeal under part 498). Commenters suggested that the Secretary's inclusion of OPOs in the part 498 hearing procedures was based on statutory obligations and was not discretionary. Commenters said that CMS must provide either the part 498 hearing or a process that is equivalent to the part 498 process. They stated that the OPO Certification Act underscored this obligation by including new language specifically addressing the appeal rights of OPOs and requiring the right to appeal on ''substantive and procedural grounds.'' Commenters also noted that the proposed appeals process is inconsistent with the intent of the Congress, which, in enacting the OPO Certification Act, clearly relied on the Secretary's prior designation of OPOs as suppliers entitled to a part 498 hearing.

Response: We disagree that the Secretary's inclusion of OPOs in the part 498 hearings process was required under the statute. Section 1866(h) of the Social Security Act provides for a hearing and for judicial review of the hearing only for providers; it is silent regarding appeal rights for suppliers and practitioners. See 42 CFR 498.1(g) (2004).

Further, the OPO Certification Act did not mandate that OPO appeals be heard by an administrative law judge or expressly require the use of the part 498 process. The statute mandated only that an OPO must be able to appeal on substantive and procedural grounds. Thus, under this final rule, a CMS hearing officer will hear OPO appeals. We have based the appeals process in this final rule on the appeals processes we use for appeals of contract terminations under the Medicare Advantage Program and for Medicaid State Plan Amendment hearings. The appeals process in this final rule is consistent with the requirements of the OPO Certification Act.

Comment: Commenters said that eliminating part 498 is inconsistent with the MMA, which requires ''suppliers'' to be afforded a hearing identical or comparable to what the Secretary provides under part 498. Section 901 of the MMA defines a ''supplier'' as ''unless the context otherwise requires, a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services under this subchapter.'' Commenters said that in the preamble to the proposed rule, we concluded that the definition does not include OPOs, even though CMS has regarded OPOs as suppliers for the past 17 years.

Commenters said that the MMA definition is an ''expansive'' definition, meant to capture as many types of entities or persons as possible and that the definition basically provides that anyone or any entity that provides services pursuant to or under the Medicare program and that is paid under the program is a supplier (as long as it is not a provider). Commenters stated that they do not believe there is any statutory support to demonstrate that the Congress meant for an OPO to have fewer or different rights than it gives to other types of suppliers.

Commenters said that they do not think the Congress would support CMS's narrow interpretation of the term ''supplier,'' since it granted OPOs an express right to appeal de-certifications on procedural and substantive grounds in the OPO Certification Act. They pointed out that at least three Civil Remedies Division cases specifically recognized the supplier status of OPOs, and two district court decisions did not set aside that status. They stated that the Congress clearly was aware of the

Secretary's conclusion that OPOs were suppliers and clearly relied on that designation when it enacted the 2000 amendments and that there is no evidence that the Congress, in passing the MMA, meant to undo the administrative hearing rights when it enacted the 2000 amendments.

Response: As commenters noted, we proposed removing OPOs from the definition of ''suppliers'' under the part 498 appeals process. In the preamble to the proposed rule, we said that the unique nature of OPOs and their special role in the Medicare program distinguishes them from other suppliers. (70 FR 6093) We noted that suppliers typically furnish medical items and services directly to Medicare beneficiaries and receive a direct payment for those services. We observed that many, if not most, organ donors are not Medicare beneficiaries, and many organs recovered by OPOs are not transplanted into Medicare beneficiaries. The services an OPO furnishes to obtain organs are not designed to diagnose or treat an illness or injury for the patient from whom the organs are recovered. Instead, the services are designed to benefit the recipient of the organs. We also said that OPOs have payment rules and methodologies that differ from the payment rules and methodologies used for other suppliers. The legal relationship between an OPO and the Medicare program is different from that of other suppliers and reflects important statutory differences. Within this specific context, we do not believe section 901 requires OPOs to be considered suppliers. This is particularly the case because the Congress enacted a specific statutory provision governing OPO appeal rights in 2000, before enacting the general provision relating to the definition of ''suppliers'' or gave other suppliers additional appeal rights.

We believe that an alternative appeals process will help to eliminate the uncertainty that the Congress found when it enacted the OPO Certification Act in 2000. In the Congressional findings accompanying the 2000 legislation, the Congress expressly found that the existing recertification process ''created a level of uncertainty'' that was interfering with OPOs ability to raise the level of organ donation. At least part of the uncertainty was due to the simultaneous administrative appeals process and the competition process that existed under the earlier regulations. Under the old process, CMS published a notice in local newspapers to solicit a new OPO to fill the incumbent's service area before the appeals process was completed. In the 2000 recertification cycle, three of the OPOs that were slated for decertification immediately sought and were granted temporary restraining orders by Federal district courts to bar CMS from completing the competition process before the appeals process was completed. *Arkansas Regional Ogan Procurement Agency, Inc.* v. *Shalala*, 104 F. Supp. 2d 1084 (E. D. Ark. 2000); *Nater-Lebron* v. *Shalala*, 120 F. Supp. 2d 175 (D. P.R. 2000) (rejecting challenge). While the enactment of the 2000 legislation ended those controversies, the Congressional findings suggest that a more streamlined, sequential process would help to reduce the uncertainty in the recertification process.

In the proposed rule, CMS explained that it was acting to reduce the level of uncertainty by allowing the OPO to appeal and receive a decision on the appeal before its service area would be opened for competition. (70 FR 6087). We will continue this approach in this final rule. Because of the time constraints between the end of the certification period and the beginning of the next contract cycle, we will use a hearing officer to ensure that a decertified OPO will receive a fair administrative process, and yet one that can be completed before the competition for a successor OPO (if needed) begins. The Supreme Court has previously recognized that the use of unbiased hearing officer can be used in an administrative process in a manner that is consistent with due process. *Schweiker* v. *McClure*, 456 U.S. 188 (1982).

Comment: Commenters said that there is no basis in the record for a conclusion that the current process is problematic. They noted that the preamble to the proposed rule explains that the part 498 process has proven inadequate because the appeals could not be completed before the OPO contract terminated, thus creating a situation in which competition by other OPOs would begin before the final decision on de-certification is complete. Commenters also stated that the preamble to the proposed rule indicated that the 2-year re-certification cycle was a factor that complicated the part 498 appeals process. They said that it would be incorrect, therefore, to conclude that the delays in the appeals process are attributable solely, or even in major part, to part 498.

Response: We disagree with the commenter who suggested that the change from a 2-year agreement cycle to a 4-year cycle will automatically ensure that the appeals process is resolved in a timely manner. The Congress has specified that multiple outcome measures must be used in the re-certification process. The data to support the outcome measures must be collected and analyzed before OPOs can be given a notice of de-certification that begins an appeals process. The limited time period between the end of the certification period and the beginning of the next agreement cycle exists whether the re-certification cycle is 2 years or 4 years.

Our experience demonstrates that appeals under the part 498 process take more than 7 months to resolve. For example, we notified an OPO located in Los Angeles, California, on July 23, 1998 that it would not be re-designated for its service area. On August 7, 1998, the OPO requested reconsideration and a hearing before an administrative law judge (ALJ). Upon reconsideration, we reaffirmed our decision. The OPO appealed to an ALJ, and we requested that the hearing be expedited, but the hearing was held on October 6 and 7, 1998. The ALJ's decision to uphold the de-certification was issued more than 7 months later on May 12, 1999. Thus, even with the expedited time frame for the hearing, more than 9 months elapsed between the OPO's request for reconsideration and a hearing and the final decision.

The Congress enacted legislation in 2000, in the aftermath of the OPO certification cycle that ended on December 31, 1999. At this time, numerous administrative and judicial proceedings were initiated or in process as a result of the application of the previous OPO performance measures. Early in 2000, CMS found that several OPOs had not satisfied the previous OPO performance measures and were more than 25 percent below the mean in comparison to other OPOs. After the notice of the administrative appeal rights were given to each OPO, CMS immediately initiated the actions required by the regulations then in effect to compete the OPO's service area and to choose a successor. Several of the OPOs initiated lawsuits at that time to challenge the basis of the performance standards and to stop CMS from choosing a successor while the administrative appeal process was still pending. There were several injunctions issued. Ultimately, one district court found that the performance standards were not valid and the government appealed this decision to the United States Court of Appeals for the Eighth Circuit. *Arkansas Regional Organ Procurement Agency, Inc.* v. *Shalala*, 104 F. Supp. 2d 1084 (E. D. Ark. 2000). On the other hand, a second district

court rejected a challenge that asserted that the performance regulations were arbitrary and capricious. *Nater-Lebron* v. *Shalala*, 120 F. Supp. 2d 175 (D.P.R. 2000). The enactment of the 2000 legislation ended those controversies.

It is within this setting that the Congress found that the process for the certification and re-certification of OPOs conducted by the Department in 2000 created a level of uncertainty that interferes with the effectiveness of organ procurement organizations in raising the level of organ donation. We proposed numerous changes to reduce the level of uncertainty by streamlining the process and altering the timing of the appeals process to facilitate appeals on substantive and procedural grounds. One of those changes, designed to expedite the resolution of any administrative appeals in a full, fair, and timely manner was to move the appeals process from part 498 and assign these cases to a CMS hearing officer for resolution before we initiate any competition for an open area.

We are gaining an additional 6 months for the appeals and competition processes under this final rule by beginning the process earlier, allowing a total of 13 months from 7 months prior to the end of the re-certification cycle until the expiration of agreements between CMS and the OPOs 6 months later. However, even this more generous time frame would not be sufficient for analysis of data on the front end, a 9-month appeal process, a competition process, and transition of an OPO's service area to another OPO.

Opposition to the Proposed Appeals Process

Comment: Commenters said that the proposed appeals process is constitutionally defective. They said that the proposed appeals process raises two constitutional concerns both grounded in the due process protections of the Fifth Amendment to the United States Constitution. The first is a concern over whether the proposed process is constitutionally adequate. Commenters stated that prior decisions indicate that due process generally requires consideration of three distinct factors: the private interest that will be affected by the official action; the risk of an erroneous deprivation of such interest through the procedures used; and the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Commenters noted that a de-certified OPO must go out of business, and they pointed out that few property interests under any HHS-administered programs reach this level of significance and those that do, have part 498 protections.

Response: We believe that the commenter has an inflated view of the private interests at issue when a party has signed a time-limited agreement to perform services on the government's behalf. These interests clearly do not rise to the same level as the welfare recipient presented to the Supreme *Court in Goldberg* v. *Kelly*, 397 U.S. 254 (1969). (''For qualified recipients, welfare provides the means to obtain essential food, clothing, housing, and medical care.'') These regulations are fully consistent with the statute and with any due process rights that an OPO has with respect to its time-limited agreement with CMS.

Comment: Commenters also said that the proposed process is likely to cause an unconstitutional commingling of prosecutorial and adjudication functions. They noted that under proposed § 486.312(c), CMS may issue a notice based solely on failure to meet the outcome measures set forth in proposed § 486.318. However, the preamble to the proposed regulations states that the CMS hearing officer would consider additional evidence not considered by the primary CMS decision maker, including substantive and procedural evidence. Commenters stated that the CMS hearing officer would be considering this information on behalf of the agency for the first time. Therefore, the CMS hearing officer would not be reviewing the agency's initial determination; he/she would be making it.

Response: At the conclusion of the re-certification cycle, we will evaluate an OPO's performance based on its performance on the outcome and process performance measures and other regulatory requirements. If we make a decision to de-certify the OPO, the hearing officer will hear arguments on both substantive and procedural grounds under the OPO Certification Act legislation. The hearing officer is an impartial adjudicator, who will assess the reasonableness of the OPO's argument and make a decision based on the evidence in the record. In our view, this process is fully consistent with due process, and there is no commingling of a prosecutorial function.

Recommendations for Revising Proposed Appeals Process

Comment: Many commenters said that they do not oppose modifications to the part 498 process as long as: (1) The replacement process provides the same caliber of hearing process and the same protections as part 498, and (2) permits sufficient time for a complete and meaningful hearing. However, commenters said that the proposed process would not meet these criteria.

Commenters said that the proposed rule would eliminate rights that OPOs now have under part 498, such as the right to reconsideration before pursuing a formal appeal. Commenters also criticized the proposed process because the burden of meeting the shortened time frame would fall entirely on the OPOs. That is, they noted that while we would require OPOs to meet specific time frames, the appeals process would not include a time frame for the hearing officer to render a decision on the appeal.

Commenters further criticized the proposed process because it does not define the hearing officer's powers. For example, commenters said that an ALJ has the power to compel discovery of documents and individuals but there are no written legally enforceable mechanisms available to the hearing officer.

Commenters also said that we provided insufficient detail for them to understand how the proposed appeals process would work.

These commenters recommended that we use a CMS hearing officer and retain the procedures used under part 498 with some modifications to expedite appeals. They said that their proposal would satisfy the twin objectives of avoiding an unnecessarily prolonged administrative process but preserving the important protections in existing part 498. The commenters provided specific regulatory text language for our consideration.

Response: After carefully considering the comments, we have made changes to the proposed appeals process to address some of the commenters' concerns. While we do not believe it would be appropriate to retain the part 498 process because of the potential for undue delay in resolving OPO appeals, we are finalizing an appeals process that incorporates many recommendations made by commenters. We have based the appeals process in this final rule on appeals procedures we use in other settings, including appeals by managed care organizations of contract terminations under the Medicare Advantage Program. These appeals procedures have expedited time frames because of the limited time before competition begins and new agreements must be signed. We have included additional rights and procedures that provide an opportunity for an OPO to obtain a fair and expeditious hearing and a decision on its appeal before the competition process begins. Although

we did not incorporate every procedure from part 498 or every recommendation suggested by the commenters for the appeals process, the new process will ensure that OPOs will have the opportunity to have their appeals heard in a timely and meaningful manner. An OPO will be able to appeal a de-certification on substantive and procedural grounds as the statute requires.

The appeals process in this final rule at § 486.314(g) contains specific rights for both an OPO appealing a de-certification and CMS.

The parties may: (1) Appear by counsel or other authorized representative in all hearing proceedings; (2) participate in any pre-hearing conference held by the hearing officer; (3) agree to stipulations as to facts which will be made a part of the record; (4) make opening statements at the hearing; (5) present relevant evidence on the issues at the hearing: (6) present witnesses who then must be available for cross-examination; and

(7) present oral arguments at the hearing. Additionally, CMS or its representative and the OPO or its representative may cross-examine the witnesses.

In addition, the final rule specifies that the notice of de-certification must contain the reasons for the de-certification. If a request for reconsideration is made, we will provide the administrative record that includes the evidence used in making the de-certification decision. The administrative record, may include, for example. The record does not include material that is privileged. While several commenters have requested that the final rule include provisions related to discovery, we have determined that discovery is inappropriate in this context. Instead, we will produce the administrative record on which we based our de-certification decision.

The hearing officer's authority in conducting the hearing is specified in this final rule. The hearing officer inquires fully into all the matters at issue and receives in evidence the testimony of witnesses and any documents that are relevant and material; provides the parties with an opportunity to enter any objection to the inclusion of any document, considers the objection and rules on the document's admissibility; decides the order in which the evidence and the arguments of the parties are presented and the conduct of the hearing; rules on the admissibility of evidence and may admit evidence that would be inadmissible under rules applicable to court procedures; rules on motions and other procedural items; regulates the course of the hearing and conduct of counsel; examines witnesses; receives, rules on, or excludes or admits evidence; sets the time for filing motions, petitions, briefs, or other items; and takes any action authorized by the rules in this subpart. Additionally, the final rule specifies that the hearing officer must render a decision on the notice of decertification within 10 business days of the hearing.

At the commenters' request, we have included an opportunity for an OPO to request a reconsideration as a mandatory step in the appeals process before the OPO may seek a hearing before the hearing officer. Under this final rule, an OPO has 15 business days from the date it receives the notice of de-certification to file a request for re-consideration. The notice of de-certification will contain instructions on how to file the request for reconsideration, including where to send the request. If an OPO does not request reconsideration or its request is not received timely, the OPO has no further administrative review rights. We agree with commenters who said that reconsideration can benefit both CMS and the appellant OPO. Under the reconsideration process established under this final rule, an OPO may submit additional information and arguments as to why it should not be de-certified.

The CMS Regional Administrator in the Region in which the OPO's main office is located will make the reconsideration decision. Regional Offices are knowledgeable about the OPOs in their regions, as well as the conditions and factors in a particular service area. The reconsideration process will allow the Regional Administrator to consider any procedural or substantive arguments that the OPO would like to raise to demonstrate that it should not have been de-certified. If the Regional Administrator determines that the OPO should not be de-certified, the OPO will be re-certified. If the Regional Administrator determines that the OPO should be de-certified, he or she will update the administrative record (which contains a copy of the de-certification notice, any documents concerning the OPO's performance during the relevant re-certification cycle, all documents submitted by both sides to the Regional Administrator during the reconsideration process, and the Regional Administrator's reconsidered decision) and forward the record to the CMS hearing officer.

The OPO may file a request for a hearing. The OPO has 40 business days to file its request. If the OPO does not file a request for a hearing or its request is not received timely, the OPO has no further administrative review rights.

We believe the appeals process in this final rule will protect a de-certified OPO's rights, provide it with sufficient time to pursue its appeal, and ensure that it receives a fair hearing. Our responses to the following comments provide additional details about the appeals process in this final rule.

Details of the Appeals Process

Comment: Some commenters suggested that CMS should start the de-certification analysis prior to the ending date of the re-certification cycle. They said that CMS could base the certification data on 48 months of data, but the first 6 months of data could be derived from the prior re-certification cycle. Commenters pointed out that their recommended time frames would provide an additional 6 months to complete the process, which they said would be preferable to a truncated appeals process.

Response: We agree with the commenters that beginning our analysis of OPO performance sooner makes sense in view of the time needed for the appeals and competition processes. Providing additional time for these processes also helps to avoid the uncertainty identified by the Congress in 2000. However, we disagree that we should accomplish this by using data from a prior re-certification cycle. Using 6 months of data from a prior re-certification cycle would create a comparison problem when we evaluate the performance of an OPO that takes over another OPO's service area at the beginning of a re-certification cycle because we could not use the de-certified OPO's data from the previous re-certification cycle to evaluate the incoming OPO. Because the outcome measures evaluate OPOs in comparison to one another, we believe it is better to use the same amount of data from the same time period for evaluation of all OPOs. Thus, we will not use data from the previous re-certification cycle to re-certify OPOs. Instead, we will use a lesser amount (36 months) of data so that we will ensure that there is enough time to complete the appeals and certification processes. Further discussion of the time frames for the data and the outcome measures is found in this preamble in ''Section 486.318, Outcome Measures.''

The first re-certification cycle under this final rule will be August 1, 2006 through July 31, 2010. Thus, we will request data from the beginning of the 6th month of the re-certification cycle,

January 1, 2007 through the end of the 41st month, December 31, 2009. We expect that it will take about 2 months (until February 28, 2010) for OPOs and transplant hospitals to update their data and for the SRTR to compile the data to provide an OPO-to-OPO comparison. We expect to receive the data from the SRTR in early March and notify OPOs by March 15 if an OPO will be de-certified. We have retained a 6-month lag between the end of the re-certification cycle and the end of the agreement between OPOs, which means we will have a total of 13 months from the beginning of the process until agreements between CMS and the OPOs expire. Note that under this final rule, agreements will expire on January 31, 2011.

OPOs that have met all 3 outcome measures will be notified about their re-certification on a flow basis after they have been shown by survey to be in compliance with all other conditions for coverage. At this time, we will also notify OPOs that did not meet the outcome measures or other requirements that the OPO will be de-certified. Once we notify OPOs of their status, we will have more than 10 months (until agreements expire on January 31, 2011) for the appeals and competition processes. This will provide 5 to 6 months for the appeals process, about 2 months for the competition process, and the remaining months for transition of service areas to new OPOs, if necessary.

Comment: Commenters suggested that CMS provide some type of pre-termination notice and suggested that the need for an appeal might be avoided if CMS provided some type of preliminary or provisional notice of an imminent or likely non-renewal and permitted the OPO the opportunity to provide additional, responsive material prior to a de-certification notice.

Response: As stated earlier in this preamble under ''De-Certification (proposed § 486.312),'' an OPO will be provided with a 90-day notice prior to termination, except in cases of urgent need. When a termination notice is given during the re-certification cycle because the OPO is substantially out of compliance with a process performance measure, the OPO is given an opportunity to come back into compliance prior to termination.

If an OPO has not met all 3 of the outcome measures at the end of the re-certification cycle, the OPO will receive a de-certification notice that includes the reasons for the de-certification. A reconsideration process is included within the appeals process we are finalizing, which will give an OPO that receives a de-certification notice the opportunity to provide additional material for consideration.

Comment: Commenters recommended that one outcome of the appeals process should be re-certification subject to successfully achieving a corrective action plan or restoration of status subject to successfully achieving a corrective action plan.

Response: In general, we do not agree that re-certifying an OPO based on its achievement of a corrective action plan or restoring its status based on its achievement of a corrective action plan is an appropriate outcome of the appeals process. If the OPO has been de-certified based on non-compliance with the requirements for certification at § 486.303 but that decision is reversed on reconsideration or on appeal, the OPO is able to continue to perform under the terms of the agreement without a corrective action plan. If the OPO has been de-certified based on failure to meet the outcome measures or requirements for certification at § 486.303 at the end of the re-certification cycle, but that decision is reversed on reconsideration or on appeal, the OPO will be re-certified without a corrective action plan.

If we find during the term of the re-certification cycle that an OPO is substantially out of compliance with one or more of the process performance requirements, we will not necessarily immediately take steps to de-certify the OPO. Instead, we may exercise our enforcement discretion to provide the OPO with the opportunity to develop and implement a plan of correction to come back into compliance. If the OPO does not come back into compliance, we will issue a notice of de-certification to the OPO.

We are not willing to exercise our enforcement discretion at the end of a 4-year cycle. If an OPO has not been able to improve its performance over the course of the 4-year re-certification cycle, we believe it is unlikely that an additional attempt at improvement through a corrective action plan would prove successful. The 4-year re-certification cycle provides OPOs with more than enough opportunity to improve their performance on the outcome measures prior to the end of the re-certification cycle. OPOs should use data derived from their QAPI programs to monitor and improve their performance continuously. OPOs can track their performance in comparison to other OPOs by accessing data on the SRTR Web site at *http://www.ustransplant.org.*

Comment: Commenters said that according to the preamble of the proposed rule, the timing of de-certification is an issue only if de-certification occurs at the end of the term of the OPO's agreement with CMS. Therefore, commenters said that a de-certification proceeding that began during the term of the agreement with the intention of making the de-certification effective prior to the end of the term, would not have the same timing issues. Commenters concluded that there would not be any reason for eliminating the part 498 process for involuntary de-certifications taking place during the term of the agreement.

Response: We do not agree that OPOs should use the part 498 process to appeal a de-certification that takes place during the re-certification cycle. We believe it would be more efficient if both types of OPO appeals used the same administrative appeals process. If an OPO is not performing well, a decision on the OPO's de-certification should be made expeditiously so that, if necessary, we can replace the OPO with an OPO that will increase organ donation in the service area.

Comment: Commenters said they were pleased that CMS recognized both the need to preserve an OPO's business by delaying the competition process until after a final de-certification decision is made by a CMS hearing officer, as well as the need to ensure that the area served is not left without an OPO, so that organ donation and transplantation continues without interruption. However, commenters suggested that there are other means to address these concerns and yet provide a fair appeals process for OPOs that is consistent with the statute.

Response: We agree with the commenters that CMS must ensure that an OPO facing de-certification is given adequate appeal rights to resolve disputes and that those appeals will permit challenges based on substantive and procedural grounds. Nevertheless, the public has an interest in increasing organ donation, and the appeals and competition processes are designed to replace an OPO that is not performing well with an OPO that is likely to produce better results. If an OPO is de-certified, the appeals process in this final rule protects the OPO's rights under the statute and ensures that it does not face competition from a potential successor until after the administrative appeal has concluded. We believe that the process established in this final rule is fair and consistent with the statute and the public's interest.

Comment: Commenters said that the final rule should explicitly provide that the CMS agreement and payment for

services will continue during an appeal of a termination or non-renewal. They said that under the proposed regulations, the possibility exists that an OPO may not be paid while an appeal is pending because there are no time limits provided for the length of time that a CMS hearing officer may take to decide an appeal and because the entire notification process might ''slip'' or run behind schedule. Commenters also said that by terminating the agreement on July 31, and allowing only a discretionary extension, the proposal fails to protect an OPO's constitutionally protected property interest adequately.

Response: Using 36 months of data will start the process sooner. Thus, we believe it is unlikely that we will need to extend the agreements. With respect to an OPO that was de-certified for failure to meet the outcome measures and where the de-certification was upheld in the appeals process, the OPO can be paid until the end of the agreement with CMS. The appeals process we are establishing under this final rule places no time limitation on the extension of the agreement between CMS and the appellant OPO if needed in some cases to complete the appeals and competition processes. If the OPO appeals and loses the appeal, we would pay the OPO during and after the competition process until a successor OPO has taken over the service area to ensure that there is no disruption in organ procurement activities.

Comment: Commenters questioned proposed § 486.314(b) which states that if the OPO wins on appeal, CMS will not de-certify the OPO ''at that time.'' Commenters asked whether ''at that time'' means the time the hearing officer's decision is announced or whether it is retroactive to the date CMS imposed the involuntary termination.

Response: The language in question, ''CMS will not terminate the OPO's agreement and will not de-certify the OPO at that time'' meant that by not de-certifying the OPO following its successful appeal, CMS was not waiving the right to de-certify the OPO at some time in the future if it were found to be out of compliance with one or more of the outcome and process performance measures. If the reconsideration official or hearing officer overturns the OPO's de-certification, CMS will re-certify the OPO.

Re-Certification and Competition Processes (Proposed § 486.316)

In our February 4, 2005 proposed rule, we proposed opening every OPO's service area for competition at the end of every re-certification cycle, as in the existing regulations. However, we proposed certain limitations that we said would address the uncertainty in the re-certification process that the Congress noted. We said that the proposed limitations would ensure that: (1) The process can be completed expeditiously; (2) disruptions to service areas will be minimized; and (3) an OPO may compete for an open area only if it is likely to be able to improve organ donation in the service area.

We proposed that once we determined that an OPO met the outcome measures at proposed § 486.318 for the previous re-certification cycle and was found to be in compliance with the process performance measures at §§ 486.320 through 486.348, we would open the OPO's service area for competition from other OPOs. Under the proposed rule, to compete for open areas, OPOs would be required to meet certain criteria based on data from the preceding re-certification cycle. An OPO would be required to meet the following: (1) 4 out of 5 outcome performance measures at or above the mean; and (2) a conversion rate of potential donors to actual donors at least 15 percentage points higher than the conversion rate of the OPO currently designated for the service area. OPOs would be required to compete for an entire service area. The incumbent OPO would be permitted to compete for its own service area.

We proposed that in selecting an OPO for the service area, we would consider each OPO's success in meeting the process performance measures during the prior re-certification cycle, as well as submission of an acceptable plan to increase organ donation in the open service area.

We proposed that an acceptable plan would, at a minimum: (1) Be based on the competing OPO's experience in its own service area; (2) include an analysis of existing barriers to increasing organ donation in the open area, both internal (for example, high staff turnover) and external (for example, language barriers due to a high number of recent immigrants in the OPO's service area); and (3) provide a detailed description of specific activities and interventions for increasing organ donation in the open area. An OPO's plan to increase organ donation in the open service area would be used by us to assist in identifying the most effective organization to maximize organ donation in the open area.

We received more comments on our proposed requirements for the re-certification and competition processes than on any other section in the proposed rule. All comments on the proposal were negative, and all commenters who expressed a preference for one of the alternatives we described in the preamble to the proposed rule chose the highly restricted competition process in which only service areas of de-certified OPOs would be opened for competition. In this final rule, we are making changes to the competition process consistent with the public comments, which we discuss in detail below.

Comment: Commenters, including state hospital associations and many large hospitals that have participated in the Department's Organ Donation Breakthrough Collaborative, strongly objected to our proposed competition process, stating that it would have a negative affect on the Collaborative. Commenters noted that the foundation for the success of the Collaborative—cooperation, collaboration, and the sharing of best practices and change strategies—would be threatened by the proposed competition process.

Many commenters said that the nearly 11 percent increase in organ donation from 2003 to 2004 can be directly attributed to the Collaborative. Numerous commenters, including hospitals that participated in the Collaborative, said that the Collaborative has had a significant impact on their own donation rates. A 600-bed hospital said that its donation rate increased from 47 percent prior to the Collaborative to 75 percent. A transplant hospital said that it was able to start a liver transplant program because the number of livers recovered locally increased so much under the Collaborative.

Commenters voiced concern that open competition would promote a return to proprietary information and limited data transfers between OPOs rather than advancing the sharing of ''best practices'' and change strategies. All who commented on our competition proposal said the competition process we proposed would seriously undermine the prospects for sustaining the recent outcomes attributable to the Collaborative.

Response: We acknowledge that the Collaborative has been, and continues to be, an extraordinary success, and we are pleased that OPOs and hospitals continue to participate. Clearly, much of the Collaborative's success has resulted from the willingness of OPOs to share data and information on what works best to increase organ donation. We understand the commenters' concern regarding the potential impact of competition on the collaboration and partnerships that are the hallmark of the Collaborative, and we do not wish to finalize a competition process that will

unnecessarily interfere with the free flow of data and other information among OPOs.

We have reassessed our proposed competition model in view of the comments, and we agree that open competition has the potential to threaten the widespread collaboration and sharing of best practices that has led to such large gains in organ donation and transplantation. We have concluded that it would be inadvisable to finalize a process that opens every OPO's service area to competition at the end of every re-certification cycle. Therefore, we are finalizing this rule with a competition process that applies only to the service areas of OPOs that have been de-certified. Thus, most OPOs, as they monitor their performance throughout the re-certification cycle, can be confident that we will not open their service areas for competition from other OPOs.

Instead of all OPO service areas being opened for competition at the end of every re-certification cycle, an OPO that meets the following criteria at § 486.316(a) will be re-certified for an additional 4 years, and its service area will not be opened for competition: (1) Meets all 3 of the outcome measure requirements at 486.318; and (2) has been shown by survey to be in compliance with the requirements for certification at § 486.303. We have revised § 486.316 accordingly.

Comment: Some commenters referred to the congressional findings associated with the OPO Certification Act, stating that the Congress found that the process for OPO re-certification created a level of uncertainty among OPOs that interfered with their effectiveness in increasing organ donation. These commenters said that the proposed competitive framework is antithetical to the findings of the Congress that the prior process was disruptive and that the Secretary needed to undertake regulatory reform.

Response: We believe that replacing the open competition model in the existing regulations with a competition process that applies only to the service areas of de-certified OPOs, as well as permitting OPOs to compete only for entire service areas, will reduce or eliminate any uncertainty associated with the re-certification of OPOs.

Comment: Many commenters noted that under the proposed framework, an OPO would risk losing its service area, regardless of its success in meeting the outcome and process performance measures. Commenters said that the proposed process would degrade the point of having performance measures.

Response: We agree with the commenters that an OPO's relative success in meeting the outcome and process performance measures should be the deciding factor when we open an OPO's service area to competition. As stated in our previous responses, under this final rule we will open only the service areas of de-certified OPOs to competition.

Comment: Commenters agreed with us that the criteria OPOs must meet to compete for an open area should recognize higher performance. One commenter provided recommendations for defining a high performing OPO, specifying that the competing OPO should be required to have an adjusted 4-year conversion rate of 110 percent of the mean or an SRTR-based donation rate (hospital characteristics, notification rate) statistically higher than expected for 3 of the 4 years of the performance cycle.

Response: We appreciate the commenter's specific recommendations. We agree that we must ensure that an OPO permitted to compete for another OPO's service area both performs well in its own service area and demonstrates a performance that is significantly better than the performance of the de-certified OPO. To compete for an open service area, an OPO's performance on the donation rate outcome measure and yield outcome measure must be at or above 100 percent of the mean national rate averaged over the 3 years during the re-certification cycle. In addition, the OPO's donation rate must be at least 15 percentage points higher than the donation rate of the OPO currently designated for the service area. The criteria we have included in this final rule fulfill both of those objectives, and we do not believe it is necessary to add complexity to the process by including another criterion.

Comment: Commenters said they agreed that when an OPO is de-certified, we should not permit the OPO to compete for its own service area. Commenters also endorsed our proposal to permit OPOs to compete for entire service areas.

Response: We appreciate the commenters' support. We believe one of the most important changes we are making to improve the current competition process is to preclude OPOs from competing for partial service areas. As we stated in the proposed rule, we found that permitting competition for partial service areas provided an incentive for OPOs to attempt to take over portions of neighboring service areas for purely business reasons, with no regard to whether they could increase organ donation in those areas. We believe that limiting OPOs to competition for whole service areas will cause them to think carefully about the advantages and disadvantages of operating throughout the service area and will discourage OPOs from competing merely to gain access to a portion of the area that has a high donor potential.

Comment: Several commenters said that we should not implement an OPO competition decision until the competing OPO(s) are able to verify independently the outcome measures on which the competition is based. This analytic audit should include, but not be limited to, empirically obtained information, such as, death record reviews and analysis of data associated with hospital donor potential in each service area. Commenters added that an independent entity should conduct an onsite audit.

Response: We understand the concern that prompted these comments. OPOs want to be certain that the data used as the basis for competition decisions (as well as re-certification and de-certification decisions) are completely accurate. We share the commenters' desire for accuracy, and we believe the checks and balances used throughout the performance cycle to verify the OPO's self-reported data will guarantee to the extent possible, the accuracy of the data. For example, as discussed in this preamble under ''486.318, Outcome Measures,'' the SRTR-based donation rate, because it is based on data from the National Center for Health Statistics, will act as an independent validation of the OPO self-reported donation rate data. If the SRTR-based donation rate data cast doubt on the accuracy of an OPO's self-reported data at any point during the re-certification cycle, CMS may conduct a complaint investigation to determine whether the OPO is out of compliance with the requirements at § 486.328.

Additionally, we expect that OPOs will monitor their data reporting throughout the performance cycle to confirm that they are reporting data accurately to the OPTN and the SRTR and that the data published by the OPTN and the SRTR are accurate. The average OPO recovers about 120 donors per year; it should not be difficult or burdensome for each OPO to verify independently whether its data are reflected accurately on the OPTN and SRTR Web sites.

We believe that efforts by CMS and the OPOs to validate the accuracy of data throughout the re-certification cycle, along with the ongoing data monitoring of the OPTN and SRTR, will ensure that the data used for the

competition process are as accurate as possible, without the need for audits that must be conducted after the close of the re-certification cycle, delaying decision making and adding to the uncertainty of the process. Once we choose an OPO for a donation service area, the OPO must be able to move into the area quickly, so that disruption of organ donation is minimized.

Comment: Commenters said that the proposed regulations do not provide for an appeal by any of the unsuccessful prospective bidders for the open service area, whereas the existing regulations permit an unsuccessful bidder to appeal using the procedures set forth in part 498. Commenters suggested that we should finalize regulations that permit part 498 appeals between or among potential bidders for an open area.

Commenters further said that the proposed rule did not include an opportunity for an OPO to inspect or challenge the assertions made by a competing OPO in its application (for example, through some type of review and rebuttal procedure). They said that this shortcoming removes an important safeguard and requires CMS to make decisions based merely on the assertions of an applicant.

Response: We do not agree that OPOs competing for an open service area should have the right to appeal if they are unsuccessful competitors. The statute requires only that we provide the opportunity to appeal a de-certification. An appeals process following competition would be both expensive and unwieldy. We believe it would increase uncertainty for the OPO that prevailed in the competition and that this may disrupt the new OPO's ability to increase organ donation in the service area.

An OPO that seeks to compete for an additional service area does not have an intrinsic right to be awarded the service area. The competition process is designed to enable CMS to choose the OPO that is most likely to increase organ donation in the service area and thereby serve the best interests of organ donation, potential organ donors and recipients in the service area, and the organ donation and transplantation system in the United States. Thus, if we make a decision that an open service area will be taken over by one of a number of OPOs bidding for the open area, our competition decision is final. We are rejecting the public comments suggesting that we provide an additional appeal following competition.

Comment: Many OPOs that commented recommended that when a service area is open because CMS de-certified the OPO, and no OPO applies for the entire area, CMS should not force another OPO to take over the service area but should first permit OPOs to apply for portions of the open area. Some commenters suggested that if some areas were still open after allowing competition for partial areas, CMS should use the opportunity to permit the introduction of entirely new organizations to qualify as OPOs.

Response: We do not agree with the commenters. If an OPO is de-certified and the CMS hearing officer upholds the appeal, the best interests of organ donation in the open area dictate that we should replace the de-certified OPO as quickly as possible. If no OPO applies for the open area, there would not be time to sort out the competing interests of OPOs that seek to take over only a small portion of the service area. Therefore, we have finalized this provision of the proposed rule as it was proposed. If no OPO applies to compete for a de-certified OPO's open area, we may select a single OPO to take over the entire open area or may adjust the service area boundaries of two or more contiguous OPOs to incorporate the open area.

Note that we currently do not have the authority to permit new entities to take over part or all of an OPO's service area, as one commenter suggested. This would be possible only if the Congress enacts legislation to change the requirement in the PHS Act because currently to be re-certified, an OPO must have been certified as of January 1, 2000. (See 42 U.S.C. 273(b)(1)(D).)

Comment: One commenter suggested that we should permit only OPOs with contiguous service areas to participate in the competition in order to reduce inefficiencies created by operating multiple service areas. The commenter also noted that permitting only OPOs with contiguous service areas to compete would also increase the chance that competing OPOs would have a greater knowledge of the service area, thus supporting smoother transitions and a greater likelihood of increasing the donation rate.

Response: We believe the commenter may have a valid point. An OPO that is contiguous to an open service area may have more knowledge than a non-contiguous OPO of the operations of the incumbent OPO, as well as knowledge of factors in the service area that work both for and against organ donation. Nevertheless, we would not want to eliminate the possibility of a non-contiguous OPO that has performed very well on the outcome measures taking over an open service area. Therefore, rather than prohibiting competition by non-contiguous OPOs, we will take an OPO's contiguity to an open area into consideration when selecting an OPO for the open area. We have added language to the regulatory text at § 486.316(d) to include contiguity of a competing OPO's service area to that of the open area as one of the factors we will consider in selecting the OPO that will be designated for the open area.

Comment: Commenters said that the proposed regulations do not set forth quantitative criteria for CMS's selection of one OPO over another. Commenters said that the proposed rule essentially would eliminate any tangible criteria to compare competing OPOs and grant CMS officials unlimited discretion to apply the three very vague and minimal standards. Commenters recommended that CMS insert objective outcome criteria in place of the less quantifiable performance criteria when comparing OPO applicants, and they recommended that CMS indicate in advance the degree of weight that it intends to place on each decision factor that it uses.

Some commenters suggested that we reinstate the ''tie-breaker'' decision criteria in the existing regulations so that there are more concrete means to measure the success of the bidding OPOs.

Response: We agree with the commenters' recommendations for more objective measures, and we have made changes in the selection criteria based on their comments. However, we do not agree that we should reinstate the tie-breaker criteria in the existing regulations because some of the tie-breaker criteria are subjective. For example, one of the six criteria is an OPO's ''willingness and ability'' to place organs within the service area.

Therefore, under this final rule, we will base our selection of an OPO for an open donation service area on the following criteria: (1) Performance on the outcome measures; (2) relative success in meeting the process performance measures; (3) success in identifying and overcoming barriers to donation within its own service area and the relevance of those barriers to barriers in the open area; and (4) contiguity to the open donation service area. While these criteria are more objective than those we proposed, we will have the flexibility to exercise reasonable judgment in choosing between competing OPOs.

When comparing competing OPOs, we will first consider each OPO's performance on the outcome measures and the degree to which the top-performing OPO's performance on the outcome measures exceeds the performance of other competitors. We

may judge small variations in performance among competitors to be relatively unimportant. However, if one OPO performed significantly better than its competitors on all three outcome measures, we will rank the OPO very highly.

We will also take into account each competitor's relative success in meeting the process performance measures. By ''relative success,'' we mean that we will judge whether the OPO simply satisfied the requirements necessary to meet the process performance measures or whether the OPO exceeded the requirements. For example, we will consider whether an OPO used the data from its QAPI program to track a few functions, such as requesting consent, and instituted minor adjustments to its operations or whether the OPO tracked every aspect of its functioning and, where necessary, made systemic changes throughout the organization to effect improvement.

Further, we will carefully assess each OPO's experience and success in identifying and surmounting barriers to organ donation in its own donation service area. An OPO competing for an open service area must submit information and data that describe the barriers in its service area, how they affected organ donation, what steps the OPO took to overcome the barriers (such as hospital development, training, or public education), and the results.

In addition, we will take into account whether a competitor's experience is relevant to the specific barriers in the open service area. Although all OPOs may face obstacles to organ donation in their donation service areas, the nature of the barriers and the degree to which they interfere with organ donation vary widely throughout the country. Thus, for example, an OPO's experience in overcoming geographic barriers to organ donation in remote areas of the southwestern United States is not a guarantee that the OPO can successfully overcome other types of barriers, such as demographic barriers, that may exist in a large urban area.

Finally, we will take into consideration a competitor's contiguity to the open area. When we select among competing OPOs, we will weigh each of the first three criteria equally. We will use contiguity to the open area as a deciding factor if we determine that two competing OPOs are equally competent to take over an open area. However, if no OPO applies for an open service area, and we must select one or more OPOs to take over a service area, contiguity to the open area will be a significant consideration.

Comment: We received a comment from a large university hospital criticizing our proposed competition model because it is ''based on a premise that does not consider regional variation in donation service area cultures.'' The hospital said that because an OPO performs well in its own service area and better than an OPO serving in a different service area, it does not necessarily follow that the more successful OPO will be able to improve donation rates in a new service area with a different culture. The hospital stated, ''* * * there is a risk in allowing OPOs to assume new service areas under this assumption because we have learned in the collaborative that relationships with donor hospitals are key to the successful functioning of OPOs. If an OPO assumes a new DSA, begins new relationships with every donor hospital, and is implementing new ways of approaching organ donation, given the amount of change and lack of established relationships, it is more likely donation rates could decrease rather than increase.''

Response: We agree with the comments. As stated in our previous response, we have made changes to the proposed criteria for selecting an OPO to take over an open area. One of the criteria is the degree of an OPO's success in identifying and overcoming donation in its own service area, as well as whether the competitor's experience is relevant to the barriers that are specific to the open area. We will encourage competing OPOs to submit information and data to us that demonstrate their own experience in conquering barriers to organ donation, as well as a description of the strategies they would use to overcome barriers in the open area. We will carefully consider the extent to which an OPO's familiarity with obstacles to organ donation and its experience in overcoming them would transfer successfully to the open service area.

Condition: Outcome Measures (§ 486.318).

The February 4, 2005 proposed rule set forth five outcome measures for OPOs not operating exclusively in non-contiguous U.S. States, territories, possessions, or commonwealths. We proposed that an OPO would be required to achieve at least 75 percent of the national mean for 4 of the 5 following outcome measures, averaged over the 4 calendar years before the year of re-certification: (1) Donors, as a percentage of the potential donor denominator; (2) number of kidneys procured, as a percentage of the potential donor denominator; (3) number of kidneys transplanted, as a percentage of the potential donor denominator; (4) number of extra-renal organs procured, as a percentage of the potential donor denominator; and (5) number of extra-renal organs transplanted, as a percentage of the potential donor denominator. We proposed that an OPO operating exclusively in non-contiguous U.S. States, territories, possessions, or commonwealths would be required to meet the following outcome measures at 50 percent or more of the national mean averaged over the 4 calendar years before the year of re-certification: (1) number of kidneys procured, as a percentage of the potential donor denominator and (2) number of kidneys transplanted, as a percentage of the potential donor denominator. We have made changes to this proposed section, which we discuss in detail below.

Comment: Many commenters said that because the five proposed outcome measures are highly correlated, the proposed outcome measures do not satisfy the mandate of the Organ Procurement Organization Certification Act (section 701 of Pub. L. 106–505) (OPO Certification Act) to ''establish multiple outcome measures.'' A national association that represents all OPOs stated that its analysis indicates that if an OPO does not meet the threshold for the overall conversion rate (that is, the number of organ donors as a percentage of potential donors, the first of the five measures in the proposed rule), it is highly unlikely that the OPO will be able to meet the threshold for the four remaining measures. The association said that ''the correlation between kidneys recovered per eligible death, kidneys transplanted per eligible death, extra-renal organs recovered per eligible death, and extra-renal organs transplanted per eligible death with organ donors per eligible death is very high and ranges from .81 to .97.'' According to the association, ''Given the high inter-correlation between the five proposed conversion ratios, little additional information regarding performance is provided by the inclusion of the proposed four organ-related conversion ratios.'' Many commenters, including individual OPOs, specifically endorsed the association's comments.

Response: We agree with the commenters' suggestions that the proposed outcome measures were highly correlated. The OPO Certification Act required that the Secretary establish regulations to require, among other things, the use of ''multiple outcome measures as part of the certification process.'' Because the proposed

measures were highly correlated, we agree with the commenters that a broader set of measures would better satisfy the statutory requirement for multiple outcome measures. Thus, we are not adopting the proposed outcome measures contained in § 486.318(a). Instead, in this final rule, we establish 3 outcome measures for OPOs: (1) Donation rate; (2) observed donation rate compared to the expected donation rate, as calculated by the SRTR; and (3) a yield measure for both organs transplanted per donor and organs used for research per donor.

The first outcome measure will allow us to assess an OPO's conversion rate of potential donors to actual donors so that we can determine how an OPO has performed in regard to the donor potential (that is, the number of eligible deaths) in its own DSA, as well as how it has performed when compared to other OPOs. This outcome measure—the donation rate—is nearly identical to the first of our proposed outcome measures. Our proposed measure assessed the number of actual donors as a percentage of organ donor potential. DCDs were counted in the numerator but not the denominator of this proposed measure. However, commenters believed that including DCDs only in the numerator of the donation rate outcome measure weighted DCDs too heavily; therefore, in the donation rate outcome measure in this final rule, we will account for DCDs and donors over the age of 70 by adding a 1 to both the numerator and the denominator for each DCD and each donor over the age of 70. We agree with the commenters that this methodology weights these donors appropriately in the donation rate ratio.

The second outcome measure uses the statistical methodology developed by the SRTR for determining an expected donation rate for each OPO, which will allow us to assess with a reliable degree of accuracy how an OPO has performed in view of its expected performance. In the proposed rule we said that the existing methodologies for estimating donor potential, which are based on regression analysis, were unreliable and could not be used for OPO certification. However, the SRTR statistical methodology for determining an OPO's expected donation rate is more reliable and more precise than these earlier methodologies. This second outcome measure, which assesses an OPO's observed donation rate as a percentage of its expected donation rate, that is, the Standardized Ratio, is an integral piece of our three-part OPO outcome measures framework. The Standardized Ratio is calculated as the ratio of the observed donation rate to the expected donation rate where 1.0 is equal to the reference. A ratio above 1.0 indicates that the observed donation rate for an OPO is greater than the expected, while ratios below 1.0 indicate that the observed donation rate is less than what would be expected given the national experience.

The third outcome measure is comprised of three individual measures for organs transplanted per donor and organs used for research per donor. This third measure allows us to assess how well an OPO fulfills its ultimate mission—recovering viable organs and placing them with transplant centers for transplantation, as well as its commitment to placing organs for research.

The OPTN, SRTR, HRSA, and the CMS OPO Coordinators use these outcome measures in the Collaborative and their other quality improvement projects with OPOs. We have found that the three measures, when used together, form a better picture of overall OPO performance than any of the other measures available today or anticipated in the near future.

We also believe that the new measures satisfy the OPO Certification Act's requirement that we use multiple outcome measures as part of the certification process, and that the outcome measures are based on empirical evidence, that has been obtained through reasonable efforts of organ donor potential and other related factors in each OPO's service area. Each measure is empirical, that is, based upon observation or statistically derived from data. Most of the data are already self-reported to the OPTN, so they are obtained through reasonable efforts. In addition, all three measures are based on organ donor potential or other related factors in each DSA. These individual outcome measures will be discussed in detail in our responses to the public comments recommending the measures.

Comment: We received comments on proposed § 486.314, Appeals Process, that relate to the time period we proposed using to calculate the outcome measures. That is, we proposed using 4 years of data from the most recent 4-year re-certification cycle. However, many commenters suggested that to extend the time period available for the appeals and competition processes, we should consider using fewer months of data from what would be the most current re-certification cycle, along with 6 months of data from the previous re-certification cycle.

Response: We agree with the commenters that it would be sensible to extend the amount of time available for the appeals and competition processes by beginning the appeals process prior to the end of the re-certification cycle, and we have incorporated their recommendation into this final rule. However, we disagree that it is necessary to utilize data from a previous re-certification cycle. We believe that using data from a previous re-certification cycle would be problematic when we compare the performance of an OPO that takes over another OPO's service area at the beginning of a re-certification cycle to the performance of all other OPOs, because data from the previous re-certification cycle would reflect the performance of the de-certified OPO, not the incoming OPO. We believe that to be fair, we should use the same amount of data from the same period of time for evaluation of OPOs. Therefore, although we will begin the appeals process sooner, we will not include data from a past re-certification cycle when applying the outcome measures to evaluate OPO performance.

In addition, we will not use data from the first 5 months of a re-certification cycle to re-certify OPOs, which means that we will base the outcome measures on only 36 months of data. For example, when re-certifying OPOs in 2010, we will use data from January 1, 2007 through December 31, 2009. This will ensure that all OPOs are evaluated using the same amount of data from the same period of time. We made this decision for three reasons. First, in the future, if we use data from the very beginning of the re-certification cycle and an incoming OPO is unable to take over its new service area at the beginning of the re-certification cycle (because the appeals or competition processes take longer than expected), we would not have the same amount of data for the incoming OPO that we have for other OPOs. Second, in most cases, this method of handling data will provide an OPO that takes over a service area with some time to orient new staff and develop relationships with the hospitals in its new service area before we evaluate its performance. Finally, since the SRTR already compares OPOs based on data from each discrete calendar year, re-certifying OPOs based on 3 calendar years of data is the most efficient method for re-certification.

In the rare instance that an OPO takes over another OPO's service area during the term of the re-certification cycle (on a date later than January 1 of the first full year of the re-certification cycle), so that we do not have 36 months of data available to evaluate the OPO's performance in its new service area, we will not include the OPO's performance on the outcome measures in the new

service area until the end of the following re-certification cycle when a full 36 months of data are available.

Comment: Many commenters said they were pleased that the proposed outcome measures were based on organ donor potential rather than population.

Response: We agree that ''organ donor potential'' (termed ''eligible deaths'' in this final rule) is a more precise measure than population for evaluating an OPO's performance within its DSA. (See discussion of § 486.302, Definitions, in this preamble.) In 2001, the OPTN began collecting and the SRTR began analyzing ''eligible death'' data from each OPO.

Comment: One commenter said that whereas organ donor potential is a far better denominator than population, there are still significant differences among populations in different areas of the country. The commenter stated, as an example, that certain minority groups have lower rates of consent to organ donation. The commenter recommended that we develop an ''expected consent rate'' that takes into consideration the percentage of minorities, new immigrants, and undocumented immigrants in each OPO's service area and measure the OPO's consent rate against its expected consent rate.

Response: We are not aware of any currently available measure for ''expected consent rate.'' Therefore, we are not including an expected consent rate outcome performance measure in this final rule. Although an OPO cannot change the number of potential organ donors in its DSA, there are many steps, such as public education and using ''like'' requestors (that is, designated requestors with backgrounds similar to those of potential donor families) that an OPO can take to raise its conversion rate.

Comment: A commenter who supports the use of organ donation potential in the CMS outcome measures said that population demographics should be considered along with potential. For example, the commenter pointed out that in some areas, donors are older and that even ''standard criteria'' donors may be sicker than in other parts of the country.

Response: HRSA has advised us that the OPTN and SRTR are considering whether certain conditions and circumstances that may affect the health of standard criteria donors (SCDs) should be factored into the measures used to evaluate OPO performance. If the OPTN and SRTR make this change, we will consider whether we should incorporate it into our outcome measures through future rulemaking. Nevertheless, we believe the outcome measures in this final rule are sufficiently comprehensive in their evaluation of OPO performance to ensure their validity, regardless of whether changes are made in the future to the definition of ''standard criteria donor.''

Comment: Commenters said that differentiating kidneys from extra-renal organs in the outcome measures is irrelevant and that we should include kidneys and extra-renal organs as one measure.

Response: We agree with the commenters that we should no longer differentiate between kidneys and extra-renal organs under most circumstances. As discussed below, under the outcome measures adopted in this final rule, there will no longer be a distinction between kidneys and extra-renal organs, except for OPOs operating exclusively in non-contiguous U.S. states, commonwealths, territories, and possessions. (See § 486.318(b).)

First Outcome Measure: Donation Rate

Comment: Instead of the five proposed conversion ratios, the national association that represents the OPOs, as well as many other commenters, recommended that one single conversion or donation rate—the number of actual donors as a percentage of the potential donor pool—be utilized, along with other outcome measures.

Response: We have accepted the commenter's recommendations. The first of the three outcome measures in this final rule is a donation rate, that is, the number of eligible donors (actual donors who met the eligibility criteria) as a percentage of the number of eligible deaths. ''Eligible deaths'' constitute the pool of potential donors who meet the criteria for medical suitability for donation. (See § 486.302 for the specific criteria for an ''eligible death.'')

Comment: Some commenters drew attention to the fact that a donation rate outcome measure would be based on self-reported hospital referral data. (In both the proposed rule and in this final rule, the first outcome measure is a donation rate, that is, the number of actual organ donors (''eligible donors'' in this final rule) as a percentage of the number of potential organ donors (''eligible deaths'' in this final rule). The number of eligible deaths is a subset of the deaths that hospitals report to their designated OPOs. Hospitals are required to report all deaths and imminent deaths to OPOs under § 486.345.) Commenters said that if an OPO does not develop good working relationships with its hospitals, the hospitals likely will not refer all deaths or imminent deaths to the OPO or they will not refer them in a timely fashion. Commenters said that basing an outcome measure on hospital referrals lets the OPO that has not worked at developing its relationships with hospitals ''off the hook.'' That is, the number of eligible deaths would be under reported by the hospital to the OPO and thus by the OPO to the OPTN, resulting in a ''false high'' donation rate. Commenters pointed out that the proposed rule did not include a provision for independent verification of the self-reported data.

Response: We will monitor OPOs closely to ensure that they develop their relationships with hospitals appropriately, particularly those hospitals with a large number of potential donors, to ensure that the OPO receives hospital referrals timely. Further, although the donation rate outcome measure in this final rule is based on self-reported data, the SRTR statistical methodology is not. (See § 486.318(a)(2).) While the number of ''eligible deaths'' is reported by OPOs to the OPTN, the number of ''notifiable deaths'' (the subset of all in-hospital deaths age 0–70 with no exclusionary medical diagnoses for possible donation) is calculated by the SRTR based on data from the Office of Analysis and Epidemiology, National Center for Health Statistics, Centers for Disease Control and Prevention. By assessing an OPO's reported number of eligible deaths in view of its notifiable deaths, the SRTR can ascertain whether the data reported by an OPO are likely to be correct. If the data indicate that an OPO may not be reporting the number of eligible deaths in its service area correctly, we will treat this information as a complaint and will conduct a complaint investigation of the OPO. Ultimately, it is each OPO's responsibility to ensure that the data they submit to the OPTN are valid.

Comment: Commenters also said that the outcome measures for kidneys and extra-renal organs procured are subject to manipulation by OPOs that recover organs that can not be transplanted, simply to increase their procurement rate.

Response: We consider a ''donor'' to be a deceased individual from whom at least one vascularized organ is removed for the purpose of transplantation. Thus, data on the number of donors, as well as the number of organs recovered, are subject to manipulation by an OPO that recovers an organ that is not suitable for transplantation, solely for the purpose of increasing its performance numbers. However, this final rule includes a measure that can not be manipulated—organs transplanted per donor. (See

§ 486.318(a)(3).) This outcome measure will provide a true picture of an OPO's performance in regards to the number of viable organs it recovers.

Comment: Many commenters recommended that any donation rate outcome measure should include incentives for maximizing the number of donors, including DCDs (donors after cardiac death) and ECDs (expanded criteria donors). Commenters criticized our proposal for including such donors in the numerator of the donation rate ratio without including them in the denominator. They said that incorporating DCDs and ECDs in the numerator alone: (1) Places a disproportionate weight on these donors; (2) raises the national conversion rate to the detriment of OPOs that do not recover many DCDs and ECDs (perhaps because they have fewer potential DCDs and ECDs); and (3) may inadvertently mask opportunities for improvement in recovery of standard criteria donors. Therefore, commenters recommended that we exclude these donors from the national rate but include them in the numerator and denominator of each individual OPO's donation rate ratio as adjustments to individual OPO conversion rates.

Response: We agree with the commenters' recommendation, and we are adopting this change in this final rule. Absent this change, OPOs that have a low number of potential DCDs and ECDs could be disadvantaged, even de-certified, if the SRTR were to include these donors in the numerator of the donation rate ratio when computing the national donation rate. Therefore, under this final rule, when an OPO recovers an ''additional donor,'' that is, a deceased donor over the age of 70 or a DCD, a ''1'' will be added to both the numerator and the denominator of the OPO's donation rate ratio. The SRTR includes data on additional donors in its organ donation tables at *http://www.ustransplant.org.* We believe this method of quantifying additional donors will provide an appropriate incentive for OPOs to recover donors that do not fall under the current definition of ''eligible death,'' while ensuring that OPOs with a low number of potential additional donors are not disadvantaged.

Comment: A national association representing transplant physicians and surgeons commented that requiring OPOs to add DCDs and ECDs to the numerator but not the denominator of the conversion ratio would provide an incentive for OPOs to recover DCD and ECD organs preferentially, resulting in fewer extra-renal organs available for transplantation. (The association pointed out that the number of organs transplanted per donor for DCDs is 2.04 compared to 3.62 for non-DCDs, which suggests that kidneys are often the only organs transplanted from DCDs.) Additionally, the association stated that because kidneys from DCDs are more likely than kidneys from other donors to have delayed graft function, and livers from DCDs have a lower graft survival rate, transplant recipients' health would be affected. The association also contended in its comments that the goal of increasing the supply of organs from DCDs and ECDs is not consistent with the goal of the CMS proposed conditions of participation for transplant centers (published February 4, 2005, 70 FR 6140), which seek to optimize transplant center patient and graft survival. The association suggested that we require OPOs to meet all five (instead of only four) proposed outcome measures to ensure that an OPO would be required to meet the measure for extra-renal organs transplanted. The association stated that DCDs and donors over the age of 70 should not be added to either the numerator or the denominator of the conversion rate ratio. However, the association qualified this statement by adding that if DCDs and ECDs are not excluded from the ratio, they should be added to both the numerator and denominator of the donation rate ratio.

Response: We understand the commenter's concerns and agree that the goals of the OPO and transplant center rules should be closely aligned. Although we want to provide an incentive for OPOs to recover organs from ECDs and DCDs, we certainly do not want such an incentive to lead to fewer extra-renal organs available for transplantation or to poorer outcomes for transplant recipients. As stated in our previous response, under this proposed rule, when an OPO recovers an ''additional donor,'' that is a deceased donor over age 70 or a DCD donor, a ''1'' will be added to both the numerator and the denominator of the donation rate ratio. We believe weighting the data in this manner creates an appropriate incentive for OPOs to recover organs from additional donors, which will make more kidneys and extra-renal organs available for transplantation and create more options for transplant recipients who might otherwise not receive an organ.

Second Outcome Measure: Observed/Expected Donation Rate

Comment: Many commenters praised the innovative analytic work conducted by the SRTR to improve donation rate measurement, including the SRTR's efforts to identify ''eligible deaths'' and expected donation rates for each OPO's DSA. Commenters voiced strong support for adopting the SRTR's statistical methodology for evaluating OPO performance for re-certification purposes. Commenters said that using the SRTR measure would provide an independent statistical assessment of how OPOs perform relative to their own service area capabilities, such as the presence or absence of large hospitals and trauma centers. Commenters also pointed out that including the SRTR methodology would provide an approach grounded in science similar to our proposed use of the SRTR statistical methodology for transplant centers, which we proposed using for approval and re-approval of OPOs. Commenters said that using the SRTR methodology in conjunction with a national conversion rate would mean that OPOs would be evaluated both in comparison to other OPOs, as well as in comparison to each OPO's statistically expected performance.

Response: The SRTR methodology can be used to determine the expected organ donation rate in a DSA based on the following hospital characteristics: Level I or Level II trauma center, metropolitan statistical area size, CMS case mix index, total bed size, number of ICU beds, primary service, presence of a neurosurgery unit, and hospital control/ownership. An adjustment is made for the expected notification rate. (A Ojo, R Wolfe, A Leichtman, *et al; A Practical Approach to Evaluate the Potential Donor Pool and Trends in Cadaveric Kidney Donation,* Transplantation, Vol. 67, No. 4, February 27, 1999 and A Ojo, R Pietroski, K O'Connor, *et al; Quantifying Organ Donation Rates by Donation Service Area,* American Journal of Transplantation 2005; 5 (Part 2).) Several commenters pointed out that OPOs and hospitals now use the SRTR statistical methodology in evaluating their own performance and that the SRTR methodology is used in the Collaborative.

We agree with the commenters that the SRTR statistical methodology for evaluating OPO performance should be used by CMS for re-certification of OPOs. In fact, since the SRTR methodology incorporates specific characteristics of the hospitals in an OPO's service area, utilizing the SRTR methodology will satisfy the requirement in the OPO Certification Act for considering ''other related factors in each service area'' in OPO re-certification. Therefore, under this final rule, one of the three outcome measures for OPOs is as follows: the observed donation rate is not significantly lower

than the expected donation rate (hospital characteristics, notification rate) for 18 months or more of the 36 months of data included from the re-certification cycle, as calculated by the SRTR.

Comment: Commenters who recommended that CMS use the SRTR methodology also suggested that refinements should be made to the methodology and the donation (conversion) rate measures before the methodology is used for re-certification of OPOs. Commenters said that the SRTR should: (1) Review patient-specific data for refining the methodology, (2) incorporate DCDs and ECDs into its methodology; (3) review the statistical analysis for an entire 4-year period (since the data collection did not begin until September of 2001); (4) address the effect of statistical bias created by the use of dated International Classification of Disease codes on the organ-specific donation rates first published by the SRTR in January 2005; and (5) independently validate inter-OPO reporting of data and the impact of an outcomes approach heavily reliant on referral data.

Response: The SRTR methodology is defined and will not change. The data to which the models are applied will be updated to the relevant time period, and the weighting (coefficients) of the parameters (variables) in the model will be adjusted to best fit the data. Each OPO will be adjusted in the same way so that all OPOs are adjusted to national data.

Comment: Some commenters recommended that when we determine an OPO's performance, we also determine whether the OPO's outcomes are statistically significant at p<.01. That is, to determine inadequate performance, an OPO's outcome must fall below the threshold and be statistically significantly lower than the performance of other OPOs.

Response: The SRTR publishes data on its Web site showing the observed and the expected donation rate for each OPO, including a standardized ratio; p-value; whether the observed donation rate is statistically lower, higher or not significantly different; and the lower and upper confidence intervals. A ratio above 1.0 indicates that the observed measure for an OPO is greater than what would be expected based on the national experience, while a ratio below 1.0 indicates that the observed measure for an OPO is less than what would be expected. The 95 percent confidence intervals of the ratios, which are published on the SRTR's Web site, describe the uncertainty of the estimated expected measures and vary by DSA, depending on the amount of data and the variability within the data. The p-value is a test for statistical significance between the observed and expected measures. The p-value is an indication of whether a given result represents a genuine difference or if it could be due to random chance. A p-value of less than or equal to 0.05 indicates that the difference between the observed and expected is probably a genuine difference and is not due to random chance, and a p-value greater than 0.05 indicates that the difference could be due to random chance. A p-value of 0.05 is utilized in the same manner in the SRTR's statistical methodology for evaluating transplant center performance.

Third Outcome Measure: Organs Transplanted Per Donor

Comment: Many commenters said that the adoption of a ''yield'' measure (organs transplanted per donor) more fully meets the legislative expectation of multiple measures; is consistent with the recently launched HHS Organ Transplantation Initiative; provides incentives for greater recovery and transplantation of extra-renal as well as renal organs; and allows for incorporation of legislative expectations regarding pancreas recovery for islet cell transplantation and research. Further, commenters pointed out that unlike the four proposed organ-related conversion rates, the unit of analysis is the donor rather than a self-reported eligible donor population.

Response: We agree that a ''yield'' measure should be added to our outcome measures for evaluation and re-certification of OPOs in the future. The number of organs transplanted per donor is an invaluable measure of OPO performance that has been used successfully by the Collaborative. The measure goes beyond simply quantifying the number of donors or the number of organs recovered from donors, by assessing donor quality based on the number of organs that can be used for transplantation. Clearly, transplantation of viable organs is the ultimate goal of organ procurement, and we believe that OPOs should be able to demonstrate that they have performed well in this regard. Therefore, we have included in this final rule an outcome performance measure for the number of organs transplanted per donor. We have revised proposed § 486.318 accordingly. In this final rule at 486.318(a)(3) we require that at least 2 out of the 3 following measures are no more than 1 standard deviation below the national mean, averaged over 3 years during the re-certification cycle: (1) Number of organs transplanted per standard criteria donor, including pancreata used for islet cell transplantation; (2) Number of organs transplanted per expanded criteria donor, including pancreata used for islet cell transplantation; and (3) Number of organs used for research per donor, including pancreata used for islet cell research. The first two measures are calculated by dividing the number of organs transplanted by the number of donors (either SCDs or ECDs). The third measure is calculated by dividing the number of organs used for research by the total number of donors (all donor types). Although we are establishing the thresholds for the outcome measures as we described earlier in this preamble, we will reconsider the appropriateness and the validity of the thresholds every 4 years when we review and analyze data from the previous re-certification cycle. If overall OPO performance improves and the mean increases, as we expect, we may find that OPOs that do a good job are falling below a threshold established by this final rule. If so, we will consider whether the threshold should be lowered. Conversely, if we find that a threshold established by this final rule is so low that it provides no incentive for OPOs to excel, we will consider whether to raise the threshold.

We will continue to monitor the OPOs performance under the third outcome measure. In the future (after the first agreement cycle), we may seek to make the standard more stringent if that appears warranted. We would only make this change after obtaining public comment through a separate rulemaking.

Comment: Some commenters suggested that each recovered pancreas used for islet cell transplantation or research should be added to the numerator and denominator of the organs transplanted per donor rate ratio for each individual OPO. One commenter pointed out that the pancreas adjustment would provide appropriate incentives for OPOs to recover pancreata for islet cell transplantation or research and would be consistent with the Pancreatic Islet Cell Act of 2004, which requires CMS to count pancreata used for islet cell transplantation and research towards an individual OPO's performance for re-certification purposes.

Response: We agree with the commenters' suggestion to include pancreata used for islet cell transplantation in the organs transplanted per donor outcome measure. In view of the variability in recovery of pancreata across the nation, adjusting an individual OPO's organs transplanted per donor rate for

pancreata recovered for islet cell transplantation, rather than adding these pancreata to the national mean, weights these data appropriately. Thus, in this final rule, we specify that for the organs transplanted per donor outcome measure, ''organs'' include pancreata used for islet cell transplantation. However, we do not agree that it is appropriate to include pancreata used for islet cell research in the organs transplanted per donor measure. We believe the measure should reflect only organs that were used for transplantation.

In this final rule, we are adding an additional yield measure for organs used for research, which is discussed below. By including pancreata that are used for islet cell research in this measure, the pancreata will be counted for re-certification purposes, pursuant to the Pancreata Islet Cell Transplantation Act, and it will also provide an incentive to OPOs to procure pancreata for islet cell research. We believe that this is the most appropriate measure we can use to account for pancreata used in islet cell research.

Comment: Many commenters recommended that a case-mix expected rate be incorporated into the outcome performance measure for organs transplanted per donor. One commenter stated that case-mix adjusting would account for important variations reflecting types of donors, as well as the age and race of donors, and would allow for appropriate incentives to OPOs to recover organs from all donors without worrying about the negative impact on their performance. A commenter stated that the use of such an approach for outcome performance purposes would provide a sounder analytic basis than using unadjusted measures to make inter-OPO assessments. The commenter pointed out that under the Collaborative, HHS has identified individual, organs-transplanted-per-donor goals for the three different types of donors: donors after cardiac deaths (DCDs), expanded criteria donors (ECDs), and standard criteria donors (SCDs).

Response: We agree that there are variations in the number of organs transplanted per donor, depending upon the donor type, that is, DCD, ECD, or SCD. Since currently there is no methodology for case-mix adjusting the number of organs transplanted per donor, in this final rule, we have included within the outcome measure for organs transplanted per donor two subgroups of donors: the number of organs transplanted per ECD and the number of organs transplanted per SCD. We have not included the number of organs transplanted per DCD because we do not want to disadvantage OPOs that do not recover organs from such donors. The current definition for an ''expanded criteria donor'' or ''ECD'' used by the OPTN is a donor who is over 60 years of age, or who is between 50 and 59 years of age and meets two of the following three conditions: died of a stroke, had a history of hypertension, or had a serum creatinine of greater than 1.5. Note that we are not finalizing a definition for ECD in this final rule because we believe the definition for ECD will change over time in response to changes in transplant technology.

It is important to note that OPOs will be required to meet only 2 out of the 3 yield measures at the 1 standard deviation below the mean threshold for each subgroup.

Third Outcome Measure: Organs Used for Research Per Donor

Comment: Some commenters urged CMS to count all organs recovered for research in the outcome measures for OPOs. One commenter noted that organs that are not suitable for transplantation may aid researchers in developing experimental techniques that could assist in reducing the transplant waiting list. A researcher wrote to say that his research on a cellular-based treatment for liver disease is nearing the clinical trial phase but that a limiting factor for the speed of entry into human clinical trials is access to tissue from organs. The researcher commented that tissue from organs for research would not be limited if every OPO made the same effort as the highest performing OPOs to recover organs for research. He pointed out that in 2003, there were 6455 deceased donors and 5348 liver transplants. Of the 1107 livers that were not transplanted, only 168 were sent for research. The researcher also said that OPOs have told him that there is no incentive for OPOs to recover and place organs for research because their standard acquisition charge is reduced by the amount the OPO receives for the organ. This commenter suggested that we establish within the outcome measures, a measure for consent rate for organs recovered for research.

Response: We agree overall with the commenters' recommendations. Like organs for transplantation, organs for research are a precious national resource. We believe OPOs should recover organs for research whenever possible to aid researchers looking for new therapies for debilitating and fatal diseases, many of them the same diseases that cause end-stage organ failure in patients waiting for transplants. Although recovering organs for research is not an OPO's primary mission, the organs it places with researchers may help lead to treatments or cures that will reduce the transplant waiting list as surely as organs that are used for transplantation.

We believe that providing an incentive for OPOs to recover organs for research will increase the number of organs available to researchers throughout the country. However, we believe measuring how many organs an OPO actually places for research is a more useful measure than the rate of consent to donating organs for research. Thus, the third OPO outcome performance measure (the ''yield'' measure) for OPOs that do not operate exclusively in non-contiguous U.S. states, commonwealths, territories, and possessions will include a measure of the number of organs used for research (including organs used for islet cell research) per deceased organ donor. The policy is consistent with the Pancreatic Islet Cell Transplantation Act, which requires that pancreata used for islet cell research be counted for OPO certification. When determining the number of organs ''used'' for research, we will consider any organ that an OPO sends to an individual or organization for research purposes as having been used for research. Nevertheless, while recovering organs for research is vitally important, we do not want OPOs to recover organs for research at the expense of organs for transplantation. An OPO's primary mission is to maximize the number of viable organs it recovers and places for the purpose of transplantation. To ensure that OPOs focus on this mission, we have weighted the overall yield measure toward recovering organs for transplantation. That is, there are two sub-measures for organs for transplantation (number of organs transplanted per SCDs, ECDs) and only one sub-measure for research organs (number of organs recovered for research per deceased donor).

OPOs That Serve Non-Contiguous Areas

Comment: Some commenters recommended different performance standards for Puerto Rico and Hawaii. A national association that represents all of the OPOs suggested the following outcome measures for Puerto Rico and Hawaii: (1) Thresholds of 50 percent of the national mean, instead of 75 percent, for both conversion rate and organs transplanted per donor; (2) an organs transplanted per donor measure based only on kidneys recovered per donor; and (3) that a national mean be calculated for kidneys recovered per

donor solely for the purpose of determining if Puerto Rico and Hawaii exceed 50 percent of the national mean. That association also suggested that these be the only outcome measures for Puerto Rico and Hawaii.

Response: We have historically used different performance standards for OPOs that operate exclusively in non-contiguous States, territories, and commonwealths. The performance standards in the existing regulations require such OPOs to meet only two performance standards (kidneys recovered and kidneys transplanted) and to meet them at only 50 percent of the national mean. These differences recognized that OPOs operating exclusively in non-contiguous locales have fewer options for placing organs because they have fewer transplant centers (particularly extra-renal transplant centers) and may be located too far from the continental United States for the viability of extra-renal organs (including pancreata used for islet cell transplantation or research) to be maintained until transplantation can take place.

Therefore, under this final rule, we set forth the following outcome measures for OPOs operating exclusively in non-contiguous U.S. States, commonwealths, territories, or possessions: (1) The OPO's donation rate of eligible donors as a percentage of eligible deaths is no more than 1.5 standard deviations below the mean national donation rate of eligible donors as a percentage of eligible deaths, averaged over 3 years during the re-certification cycle. Both the numerator and denominator of an individual OPO's donation rate ratio are adjusted by adding a 1 for each donation after cardiac death donor and each donor over the age of 70; (2) the observed donation rate is not significantly lower than the expected donation rate for 2 or more years of the 4 year re-certification cycle, as calculated by the SRTR; and (3) at least 2 out of the 3 following measures are no more than 1 standard deviation below the national mean, averaged over the 3 years during the re-certification cycle:

- The number of kidneys transplanted per standard criteria donor;
- The number of kidneys transplanted per expanded criteria donor; and
- The number of organs used for research per donor, including pancreata used for islet cell research.

Performance Thresholds

Comment: Many commenters recommended the following specific thresholds for inadequate performance by an OPO that does not serve only non-contiguous areas:

- Not achieving 75 percent of the mean overall donation rate, and
- Having a SRTR-based donation rate for at least 3 years of the 4-year cycle statistically lower than expected, and
- Not achieving 75 percent of a case-mix expected organs per donors transplanted measure.

Response: We agree in theory with the commenters' recommendation for the second measure (a ratio of the observed donation rate/expected donation rate that is not significantly lower than expected for at least 2 years out of the 4-year re-certification cycle) is reasonable. (We have finalized this as a ratio of the observed donation rate/expected donation rate that is not significantly lower than expected for at least 18 months out of 36 months, because we are using a lesser amount of data.) However, we disagree with the commenters that an OPO's performance is not adequate if it has not achieved 75 percent of the mean national donation rate and 75 percent of the organs transplanted per donor measure.

Historically, we have used a threshold of 75 percent of the national mean for the OPO performance standards. (See 42 CFR 486.310(b).) However, we believe that using standard deviations provides more statistical validity and ensures that OPOs screened out for de-certification are outliers. We believe this threshold screens out OPOs that are not effective yet takes into consideration the likelihood that the national mean will continue to rise, as well as the fact that each OPO's performance on the outcome measures is based on a relatively small number of donors and organs. Therefore, rather than using a percentage threshold, we are adopting a statistically-based threshold. In this final rule, to meet the donation rate outcome measure and the ''yield'' measure of organs transplanted per donor/organs used for research per donor, an OPO's performance must be at or above 1.5 standard deviations below the mean national rate for the 3 years during the re-certification cycle for the donation rate measure and at or above 1 standard deviation below the mean national rate for the 3 years during the re-certification cycle for the yield measure.

Under this final rule, an OPO's donation rate of eligible donors as a percentage of eligible deaths must be no more than 1.5 standard deviations below the mean national donation rate of eligible donors as a percentage of eligible deaths, averaged over the 3 years during the re-certification cycle. Both the numerator and denominator of an individual OPO's donation rate ratio are adjusted by adding a 1 for each donation after cardiac death donor and each donor over the age of 70. (See § 486.318(a)(1).)

As discussed above, we are not adopting a case-mix-expected organs per donor transplanted measure because the SRTR currently does not case mix adjust this measure. However, we are adopting separate organs transplanted per donor measures for SCDs and ECDs, as well as a measure for the number of organs used for research per donor. OPOs will be required to meet 2 out of 3 of these measures at no less than 1 standard deviation below the mean national rate for the following: organs transplanted per donor for SCDs, organs transplanted per donor for ECDs, and organs used for research per donor. (See § 486.318(a)(3).) Therefore, we have established a threshold of 1.5 standard deviations below the national mean for the donation rate outcome measure and 1 standard deviation below the national mean for the yield measure.

General

Comment: Some commenters said that OPOs should suffer no reimbursement consequences if they procure organs that are not accepted for transplantation. Since an OPO's costs for procuring these organs are added to its overall standard acquisition charge for organs, its costs are passed through to transplant hospitals and the Medicare program.

Response: Medicare payment policy and OPO standard acquisition charges are beyond the scope of this regulation. We are not making changes to the final rule based on this comment.

Condition: Participation in Organ Procurement and Transplantation Network (Proposed § 486.320)

The February 4, 2005 proposed rule included language to clarify that an OPO becomes a member of the OPTN only after becoming designated by CMS. We proposed requiring that after being designated, an OPO must become a member of, and abide by the rules and requirements of the OPTN established and operated in accordance with section 372 of the Public Health Service Act (42 U.S.C. 274). (The term ''rules and requirements of the OPTN'' means those approved by the Secretary.) We are adopting this section with one change, which is discussed below.

Comment: A few commenters pointed out that the Public Health Service Act requires OPOs to ''participate in the OPTN'' (42 U.S.C 273(b)(3)(H)). They suggested including this phrase in the requirements for OPTN membership.

Response: We agree with the commenter. Therefore, we have revised § 486.320 to require OPOs to participate in the OPTN.

Condition: Relationships With Hospitals, Critical Access Hospitals, and Tissue Banks (Proposed § 486.322)

We proposed three standards for this condition of participation. For the standards regarding hospital agreements, we proposed that an OPO must have a written agreement with 95 percent of the hospitals and critical access hospitals in its service area that have both a ventilator and an operating room and have not been granted a waiver by CMS to work with another OPO. With regard to training, we proposed that the OPO must offer designated requestor training on at least an annual basis for hospital and critical access hospital staff. Finally, we proposed a standard regarding cooperation with tissue banks that specified the OPO must have arrangements to cooperate with tissue banks that have arrangements with hospitals and critical access hospitals with which the OPO has agreements. We are implementing this section with some changes, which are discussed in detail below.

We received many comments on this proposed condition of participation, particularly on the subsection requiring cooperative arrangements with tissue banks. Overall, commenters approved of our proposal to require agreements with 95 percent of hospitals with a ventilator and an operating room. We received only a few comments on our proposal to require OPOs to offer designated requestor training annually, and commenters strongly disagreed with our proposal to require OPOs to have cooperative agreements with tissue banks.

Comment: One commenter said that we should require OPOs to have agreements with 100 percent (not just 95 percent) of the hospitals in their service areas with a ventilator and an operating room.

Response: We believe that it would be optimal for OPOs to have agreements with 100 percent of the hospitals in their service area that have a ventilator and an operating room. However, as we stated in the preamble to the proposed rule, the PHS Act requires only that an OPO have agreements with a ''substantial majority'' of the hospitals in its service area that have facilities for organ donation. Therefore, we proposed maximizing the number of hospitals with which OPOs have agreements (consistent with the PHS Act) by requiring OPOs to have agreements with 95 percent of the hospitals and critical access hospitals in their service areas that have both a ventilator and an operating room. (Note: If a hospital received a waiver from us to work with another OPO, the hospital would not be counted as part of the OPO's service area.) We reasoned that because it is necessary for a hospital to have a ventilator to maintain a potential donor and an operating room for recovery of organs, we believe a requirement for OPOs to have agreements with 95 percent of hospitals and critical access hospitals with a ventilator and an operating room would capture a ''substantial majority'' of hospitals with facilities for organ donation. For these reasons, we are adopting the requirement that OPOs have agreements with 95 percent of the qualifying hospitals in their service area, as proposed.

Comment: One commenter pointed out that currently OPOs are required to have agreements with only 75 percent of the Medicare and Medicaid hospitals in their service areas. The commenter said that there is no reason to make a change. Another commenter suggested that OPOs should be required to have agreements only with hospitals that have 150 or more acute care beds with an intensive care unit and a ventilator or with a Level I or Level II trauma center.

Response: We disagree that OPOs should be required to have agreements with only 75 percent of the Medicare and Medicaid hospitals in their service areas that have an operating room and the equipment and staff to maintain a potential organ donor, as required under the current regulations. We also disagree that OPOs should be required to have agreements only with hospitals that have 150 or more acute care beds with an intensive care unit and a ventilator or with a Level I or Level II trauma center.

We acknowledge that many hospitals in an OPO's service area do not have a high potential for organ donation. Nevertheless, it is important for OPOs to work with these hospitals to develop appropriate agreements to define terms, ensure that all deaths and imminent deaths are referred to the OPO, and address how the organ donation process will occur, so that when hospitals have potential donors, the organ donation process proceeds smoothly and organ donation is maximized. The success of the Collaborative has proven that organ donation will increase in hospitals where hospital leaders and OPOs have worked together to develop comprehensive, functional agreements that spell out the roles and responsibilities of all parties in the donation process.

Comment: A commenter voiced support for including a requirement that OPOs' agreements with hospitals define both ''imminent death'' and ''timely referral.'' Another commenter said that we should change the term ''imminent death'' to ''clinical triggers,'' because many OPOs and hospitals across the country are using the term ''clinical triggers'' to define the point in time when a hospital should contact the OPO about a patient whose death may be imminent.

Response: We have no objection to OPOs using the term ''clinical triggers'' in their agreements with hospitals. The term has been widely used among OPOs and hospitals participating in the Collaborative as a substitute for the term ''imminent death.'' However, the regulatory text of this final rule includes the term ''imminent death'' because it is the term used in § 482.45, Hospital Condition of Participation for Organ, Tissue, and Eye Procurement, which requires hospitals to report all deaths and imminent deaths to an OPO. Therefore, we would advise OPOs when using the term ''clinical triggers'' in their agreements to include the term ''imminent death'' as well, so that a surveyor reviewing an agreement between an OPO and a hospital can determine that the OPO has met the requirement to include the definition of ''imminent death.''

Comment: A commenter asked for clarification regarding the information an OPO will need to have on hand to show a surveyor that it tried but failed to sign an agreement with a hospital in its service area.

Response: Following publication of this final rule, CMS will develop Interpretive Guidelines for OPO surveyors that will include such specific details. However, we would expect an OPO to be able to show due diligence in attempting to meet this requirement, such as copies of written requests for meetings with hospital leadership, letters to the hospital administration, or documentation of telephone calls and other contacts with hospital decision makers.

Comment: One commenter stated that our proposal to require OPOs to offer designated requestor training on at least an annual basis conflicts with § 482.45, which states that designated requestor training should be provided if it is requested by the hospital.

Response: We did not propose requiring OPOs to provide designated requestor training annually for their hospitals. However, because the commenter misunderstood the proposed

language, we have clarified that the OPO is required only to *offer to provide* designated requestor training annually. If a hospital does not want designated requestor training for its staff, the OPO is not required to provide it. We have revised § 486.322(b) accordingly.

Comment: A commenter said that requiring designated requestor training conflicts with demonstrated best practices (such as the best practices of the Collaborative), which emphasize the importance of a partnership between the OPO representative and hospital staff.

Response: Effective requestors also receive training from OPOs, although the training may take place in real time and not in a classroom setting. Therefore, if an OPO partners with hospital staff and, as a team, the OPO and hospital staff discuss and determine the most appropriate way to approach a potential organ donor family to request consent, the hospital staff are considered trained designated requestors for the purposes of this regulation. We have added language to the proposed definition of ''designated requestor'' to clarify that the terms ''designated requestor'' and ''effective requestor'' are interchangeable.

Comment: One commenter said that we should require OPOs to include tissue and eye agency staff when designated requestor training is provided to a hospital.

Response: The hospital CoP for organ, tissue, and eye procurement at § 482.45 requires hospitals to assure that designated requestor training is ''designed in conjunction with the tissue and eye bank community.'' This final rule requires OPOs to cooperate with tissue banks in providing designated requestor training. This means that if an OPO provides designated requestor training to a hospital, and the hospital or a tissue bank with which the hospital has an agreement asks the OPO to include the tissue bank in the training, the OPO must provide an opportunity for the tissue bank to participate in the training. We have added language to § 486.322(c) that requires OPOs to cooperate with tissue banks in offering designated requestor training.

Comment: Many commenters said that we should not require an OPO to have an arrangement with a tissue bank if the OPO does not agree with the tissue bank's practices. Some OPOs commented that they do not want to be associated with such tissue banks for a variety of reasons, including the possibility of legal liability. Many of the OPOs that commented expressed a willingness to act as a gatekeeper for hospital referrals and pass those referrals to the hospital's tissue bank(s). However, commenters said they should not be required to cooperate with such a tissue bank in obtaining consent from families (in the absence of a donor document) or in the retrieval, processing, preservation, storage, or distribution of tissues.

Response: In developing this subsection for the final rule, we took into consideration three factors: (1) An OPO's role as the agency that receives most referrals of deaths and imminent deaths from the hospitals in its service area (unless referrals are screened by a third-party designated by the OPO); (2) the need to show sensitivity toward the circumstances of potential organ and tissue donor families (such as, ensuring that potential donor families are not approached by more than one agency unnecessarily); and (3) the statutory requirement that an OPO have arrangements to cooperate with tissue banks to assure that all useable tissues are obtained.

The hospital CoP for organ, tissue, and eye procurement at § 482.45, which went into effect in August 1998, requires hospitals to refer all deaths and imminent deaths (rather than just potential organ donors) to an OPO or a third party designated by the OPO. Critical access hospitals also have a CoP for organ, tissue, and eye procurement. (See § 485.643.) The hospital and critical access hospital CoPs state that in the absence of alternative arrangements between a hospital and a tissue bank, the OPO will determine suitability for tissue donation. It has been our experience that very few hospitals have been willing to have alternative arrangements that would require them to make two phone calls: one to the OPO to report a death or imminent death and one to the tissue bank to report a potential tissue donor. Thus, in most areas of the country, OPOs became the de facto gatekeepers for information about potential tissue donors even though our regulations permit alternative arrangements.

The PHS Act, as well as the existing regulations for OPOs at § 486.308(i), require OPOs to have ''arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all useable tissues are obtained from potential donors.'' Cooperation between OPOs and tissue banks often results in more efficient operations, such as shared referral lines for hospitals to use when calling about deaths and collaboration between OPOs and tissue banks in training hospital designated requestors. Further, as we stated in the preamble to the proposed rule, collaboration and cooperation between donation organizations promote a positive public opinion about donation.

Recent years have seen significant growth in the number of OPOs that have their own tissue banks or that have agreements with a specific tissue bank to provide various services, such as obtaining consent on behalf of the tissue bank or recovering tissue. In some cases, this flexibility has worked well, but in other areas, the increased involvement of OPOs in tissue banking has created tension between certain OPOs and the tissue banks in their service areas. It is clear that because of an OPO's role in regard to hospital referrals, we must ensure that the OPO cooperates in the screening and referral of potential tissue donors. Thus, as we proposed at 486.322(c), when an OPO receives a referral of a death or an imminent death from the hospital with which it has an agreement, the OPO must cooperate with the tissue bank with which the hospital has an agreement to ensure that the referral is screened for tissue donation potential and, as appropriate, referred to the tissue bank.

Additionally, as proposed at 486.322(c)(ii), an OPO must cooperate with tissue banks with which a hospital has an agreement in obtaining informed consent for tissue donation. Note that the OPO is *not* required to request tissue donation on behalf of a tissue bank that does not have an agreement with the hospital.

Under the PHS Act at section 371(b)(3)(I), an OPO is required to have arrangements to cooperate with tissue banks in the ''retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all useable tissues are obtained from potential donors.'' The proposed rule has a similar requirement at proposed § 486.322(c)(iii). Although we are finalizing our requirement as proposed, we are clarifying that this requirement does not obligate an OPO to have arrangements with the tissue bank with which the hospital has an agreement (or with any other tissue bank) to collaborate or cooperate with the tissue bank *routinely* in the ''retrieval, processing, preservation, storage, and distribution of tissues.'' An OPO's mission is recovering and distributing organs, not recovering, processing, preserving, storing, or distributing tissues. We do not believe it would be appropriate to require an OPO to engage in these activities on a regular basis. Therefore, a tissue bank should make its own arrangements for these activities, without relying on the OPO.

Comment: One commenter said that CMS should request information directly from tissue banks about OPOs, for example, by sending an annual questionnaire to the tissue banks and eye banks working in conjunction with the OPO. The commenter said that as the Federally mandated OPO, an OPO has a responsibility to provide services to all their customers in the community, including tissue banks and eye banks.

Response: OPOs are responsible for cooperating with the tissue banks and eye banks with which the hospitals in its service area have agreements. Such a tissue bank (or eye bank) that believes an OPO is not cooperating, as required by the OPO regulations, should contact us, and we will assess the situation to see if the OPO has violated a regulatory requirement. However, we are not requiring OPOs to provide services to all the tissue banks and eye banks in their service areas or sending an annual questionnaire to each tissue bank.

Comment: One commenter said that when determining whether an OPO is creating a spirit of cooperation and collaboration, we should look at the issue of referral fees and timely access to data. The commenter described a situation in which an OPO that uses a third party to answer referral calls from hospitals has refused to provide timely access for tissue banks and eye banks to referral calls and other information. Thus, the tissue banks and eye banks were forced to contract with an alternate third party to gain access to needed information. The commenter said that as a result, the tissue banks and eye banks are forced to pay a referral fee both to the OPO and to the alternate third party.

Response: As we stated in our previous response, if we receive a complaint from a tissue bank about an OPO that involves hospital referrals and/or the OPO's gatekeeper function, we assess the situation to see if a regulatory requirement has been violated. We have made no change in the regulations text in response to this comment.

Comment: A commenter suggested that CMS should hold OPOs accountable for obtaining consents on behalf of tissue banks by tracking their consent rates for tissues and making this information public. The commenter said that some OPO procurement coordinators choose not to ask families to donate tissue because they believe such a request may cause a family to say no to organ donation.

Response: An OPO's primary mission is organ donation; therefore, we have no plans to track OPOs' tissue consent rates. As stated earlier, this final rule requires OPOs to cooperate with tissue banks that have agreements with the hospitals with which the OPO has agreements to obtain informed consent from families of potential tissue donors. Further, this final rule at § 486.42(a) requires OPOs to ensure that ''in the absence of a donor document, the individual(s) responsible for making the donation decision are informed of their options to donate organs or tissues * * *.''

Comment: A commenter requested clarification of proposed § 486.322(c)(2), ''An OPO is not required to have an arrangement with a tissue bank that is unwilling to have an arrangement with the OPO.'' The commenter said that regulations must be established that would verify that unreasonable obstacles were not created by the OPO to create an unwillingness to have an arrangement in an effort to keep certain tissue banks out of the hospital. The commenter suggested that we should strengthen the proposed language to say that an OPO ''must make every reasonable effort to have an arrangement with *all* tissue banks that serve their hospitals.''

Response: We are not parties to the agreement, and our regulations do not specify the precise terms of any agreement between an OPO and a tissue bank. The parties to the agreement are in the best position to develop the exact language of the agreement. Our regulations give the parties the flexibility to establish appropriate procedures without the government attempting to impose a one-size-fits-all solution. We included the proposed language to which the commenter refers only to ensure that OPOs would not be penalized if a tissue bank were unwilling to have an arrangement with the OPO. We do not agree with the commenter that we should require OPOs to have a cooperative arrangement with ''all tissue banks that serve their hospitals.'' The suggested language is ambiguous and could be understood to obligate an OPO to have an agreement with a tissue bank that does not have an agreement with a hospital with which the OPO has an agreement. For example, if a tissue bank has an agreement with a medical examiner or coroner for recovery of tissue from potential tissue donors who fall under medical examiner or coroner jurisdiction but does not have an agreement with the hospital, this final rule does not require the OPO to have a cooperative arrangement with the tissue bank.

Comment: A commenter said that it would be helpful if CMS could provide guidance in regard to medical/examiner coroner cases. The commenter stated that in many instances, a medical examiner or coroner may have an affiliation with a tissue bank and may refuse to honor a hospital's agreement with a different tissue bank (or with the OPO) for tissue donation, choosing, rather to ''assert jurisdiction'' over the body and pass the referral to its affiliated tissue bank, one not chosen by the hospital to serve its patients and families.

Response: As stated in our previous response, we do not require an OPO to have a cooperative arrangement with a tissue bank whose agreement is not with the hospital but with a medical examiner or coroner. Moreover, we do not regulate medical examiners or coroners and, thus, we cannot intervene if a medical examiner or coroner refuses to honor an agreement that the hospital has with a tissue bank.

Condition: Administration and Governing Body (§ 486.324)

We proposed creating a separate condition for coverage for administration and governing body with a number of new requirements for membership composition of and bylaws for OPO boards, as well as requirements for the governing body that would have legal authority and responsibility for the management and provision of OPO services.

We proposed that an OPO may have more than one board, and we set forth specific requirements regarding the membership composition of the board. We proposed making certain changes to the structure and composition of OPO boards, including prohibiting cross membership between OPO boards. Other proposals were intended to strengthen requirements for OPO governance to ensure OPOs have policies and procedures to address possible conflicts of interest.

We proposed that an OPO may have as many individual boards as it chooses, but one of its boards must have the specific membership composition prescribed by the PHS Act and must operate under restraints similar to those prescribed by the PHS Act for that board, that is the board that would be limited to recommending policies for the OPO. We proposed that an OPO must have on its advisory board a tissue bank representative from a facility not affiliated with the OPO unless the only tissue bank in the service area is affiliated with the OPO. We proposed that the board would serve only in an advisory capacity and could not also serve as the OPO's board of directors or any other OPO board. We also proposed a requirement for OPOs to have bylaws for each of its boards to address potential conflicts of interest, length of

terms, and criteria for selection and removal of members.

We proposed a requirement for OPOs to have a governing body (for example, a board of directors) that has full legal authority and responsibility for the management and provision of all services. The governing body would be responsible for developing and overseeing implementation of policies and procedures necessary for effective administration of the OPO, including fiscal operations, a QAPI program, and services furnished under contract or arrangement, including agreements for these services. We also proposed a requirement for an OPO to have a procedure to address potential conflicts of interest for the governing body. Finally, we asked the public to comment on whether it would be appropriate for the legal authority and responsibility for the management and provision of all OPO services to lie with an individual, rather than a governing body. We are finalizing the proposed provisions with changes, which are discussed in detail below.

We received numerous comments about our proposals to prohibit cross membership between governing and advisory boards, to require OPOs to have a separate advisory board, and to require OPOs to have conflict of interest policies for their boards and governing bodies. Most commenters were firmly in support of the spirit of these proposals—ensuring that all OPOs are administered and governed in a manner that makes the recovery of viable organs for transplantation the OPOs' first priority. However, many OPO commenters pointed out that some of our proposals, such as prohibiting cross representation between boards and requiring OPOs to have separate advisory boards, would force them to abandon administration and governance frameworks that they believe work very well.

Most commenters were in strong agreement with the need for strict conflict of interest policies. OPO commenters said that by enforcing their conflict of interest policies zealously, they have managed to avoid problems with over representation by transplant centers. However, nearly all commenters disagreed with our proposal to require OPOs to include as a board member, a representative from a tissue bank not affiliated with the OPO.

Transplant Center Representation

Comment: Many commenters said they are concerned about the influence of transplant surgeons and transplant centers on fiduciary matters. One commenter noted that transplant centers and transplant surgeons are overwhelmingly concerned with the volume of organs and the cost of organs to the centers. The commenter said that this understandable concern makes it difficult for transplant centers and surgeons who serve on OPO boards to maintain a proper fiduciary responsibility as OPO board members. The commenter stated, ''They are often unable to focus on the long term needs and investment requirements of the OPO and lack the motivation and incentive to increase costs to their own organizations for the long term well being of the OPO. Some transplant programs are in arrears on organ acquisition fees or are willing to tolerate dangerously low financial reserves for the OPO * * *.''

The commenter suggested that the transplant community should be permitted to serve on an OPO's advisory board to coordinate clinical and operational needs and protocols, as well as placement of organs, but should not be permitted to serve on an OPO's board of directors. The commenter urged CMS to close the ''huge loopholes'' in the regulations for OPO boards and predicted that if loopholes are not closed, there will be national scandals and high profile investigations.

Another commenter agreed that transplant surgeons and their representatives and related parties should be restricted from any involvement in the business affairs of an OPO. Other commenters said that they welcome the involvement of transplant surgeons and other transplant center representatives on their boards, including their boards of directors and other governing bodies.

Response: We do not believe it would be acceptable or in the best interests of all OPOs to prohibit transplant surgeons from serving on an OPO's board of directors or an advisory board. Note that in the proposed rule, we explained that we were proposing to change the PHS Act term ''transplant center'' to ''transplant hospital'' to clarify that we do not expect an OPO to have a transplant surgeon from each individual organ transplant program within a transplant hospital. We said that since some OPOs have more than a dozen transplant hospitals in their service areas, a requirement to have a transplant surgeon from each program within each hospital would result in OPO boards with an overwhelming number of members. We have finalized this clarification. Therefore, an OPO needs to have a transplant surgeon from each transplant hospital but not from each transplant program within the transplant hospital. This rule is consistent with 42 U.S.C. 274b(d)(1), which defines the term ''transplant center'' to mean ''a health care facility in which transplants of organs are performed.''

Comment: One commenter suggested that the CMS regulations for OPOs should specifically prohibit a board structure that could result in violations of laws (such as the Stark Amendments) and other regulations that prohibit fraud and abuse. The commenter added that the ''transplant-dominated groups can easily create excess benefit transactions and invite intermediate sanctions'' in violation of the Internal Revenue Service (IRS) rules for non-profit organizations. The commenter stated, ''The grip of control on the business affairs, charge structure, financial objectives, professional fees to [transplant surgeons] and their friends is extremely tight and there are often threats and intimidation and harassment used against those who want reform. The high level board committees * * * are often overwhelmingly controlled by transplant surgeons or their proxies.'' The commenter also charged that the individuals and organizations ''are already planning to circumvent the intent of the proposed OPO governance regulations by simply maintaining control of their executive and finance committees and have their business associates or other colleagues appointed to the boards * * *.''

Response: Possible violations of law or regulations by OPO board members should be reported to the appropriate authority, such as the IRS, the Department's Office of Inspector General, or CMS. If we receive a complaint that OPO board members are attempting to circumvent the requirements for administration and governing body in this final rule, we will conduct a complaint investigation. A violation of a regulatory condition for coverage may lead to de-certification.

Comment: Some commenters recommended that we limit the percentage of governing board members representing transplant hospitals. One commenter stated that the composition of the OPO's governing body should provide a balance between lay people and community representatives on the one hand and transplant professionals on the other. The commenter recommended that at least 50 percent of the members of the governing body should *not* be connected with transplant hospitals that receive organs from the OPO. Other commenters said that transplant physicians and surgeons should comprise less than 50 percent of the membership of the governing board.

One commenter predicted that such a limitation on transplant center representation, in conjunction with enhanced conflict of interest provisions, would allow for adequate protection from conflicts and simultaneously maintain the necessary consultation and input from the members represented on the advisory board.

Response: By statute, the board of directors or an advisory board is composed of a variety of parties with particular perspectives on organ procurement. A transplant surgeon for each transplant hospital (termed ''transplant center'' in the statute) in the service area is a statutory requirement. Some of the requested changes would require additional legislation and are beyond the scope of this regulation. Further, we believe that generally an OPO should have the flexibility to decide the composition of its boards and governing body based on its particular needs, as long as the OPO complies with statutory and regulatory requirements.

Comment: One commenter addressed our proposal to clarify that the OPO's advisory board should have a transplant surgeon from each transplant hospital and said that instead the requirement should be that there must be a transplant surgeon from each ''unique UNOS transplant center'' because a single center may contain a number of hospitals.

Response: We proposed changing the current requirement for an OPO to have a transplant surgeon from each transplant center on its board to a requirement for an OPO to have a transplant surgeon from each transplant hospital in keeping with our definition of ''transplant hospital'' in § 486.302. We said in the preamble to the proposed rule that although ''transplant hospital'' and ''transplant center'' are often used interchangeably, the term ''transplant center'' sometimes is used to refer to an individual transplant program (such as a heart transplant program or liver transplant program) within a hospital that performs transplants. While the PHS Act specifies that an OPO must have a transplant surgeon from each transplant *center on its board*, we said that we did not consider a ''transplant center'' to be a program for transplantation of a single organ type but a hospital that performs transplants. Thus, we proposed a change in language to clarify that even if a hospital has multiple transplant programs, the OPO need have only one transplant surgeon per transplant hospital. We have included this language in the final rule.

Cross Representation and Separate Advisory Boards

Comment: Many commenters disagreed with our proposal to require OPOs to have more than one board and to prohibit individuals from serving on more than one board, such as both the governing and advisory boards. These commenters said that our proposal would unnecessarily force it to revert to multiple boards. Some commenters said they would have difficulty recruiting an adequate number of qualified individuals with the required backgrounds and specialties to serve on two boards. Commenters said that cross membership provides an essential link between matters considered by both boards. An OPO said that prohibiting cross representation would inhibit communication and coordination between boards and would deny both groups access to appropriate qualified individuals to serve as members. One commenter said that preventing cross representation could delay decision making because of the difficulty of communicating between two bodies. Several commenters recommended that we allow OPOs that have more than one board the flexibility to decide whether to have cross representation among their boards.

Response: The PHS Act requires an OPO to have an advisory board whose members are limited to making recommendations on specific, delineated activities, and the statute specifically prohibits the board from having authority over other activities. (See U.S.C. 273(b)(1)(H).) This limitation was included to ensure that those making recommendations on the policy issues described in the statute would not also be in the position of making decisions on other issues, such as budgeting. Therefore, permitting advisory board members simply to be on both boards at the same time would subvert the intent of the statute. Thus, we are retaining the language from our proposed rule.

Comment: One commenter said that CMS should consider adding language to paragraph (b) that describes the expectation for and duties of advisory board members, such as the specific subject matters that may be addressed (but not the standards to be applied or how the governing board should evaluate their contributions). The commenter recommended that this paragraph should provide that individuals on the advisory board should use their expertise to assist the governing body with its duties and functions.

Response: This final rule includes the PHS Act language we proposed, which specifies the OPO activities that an OPO's advisory board is permitted to address. Under the Act, members of the advisory board have no authority over any other activity of the OPO.

Conflict of Interest

Comment: One commenter said that the proposed rule ignores already-existing State and Federal laws that address conflicts of interest, such as state corporate laws. The commenter said that state laws and common law have clear standards requiring board members to uphold their fiduciary responsibility to the organization they serve. The commenter pointed out that Federal law governing tax-exempt organizations also imposes standards and safeguards.

Response: We acknowledge that there are existing laws requiring board members to uphold their fiduciary responsibility to the organizations they serve. However, given the unique nature of an OPO's business, we believe that OPOs need specific bylaws and procedures to address potential conflicts of interest for OPO boards and governing bodies. We believe the most important decisions entrusted to the members who make decisions for the administration and governing of an OPO are those that directly affect the OPO's ability to maximize the recovery of viable organs for transplantation. Thus, we urge OPOs to adopt conflict of interest policies that are clear and unequivocal in addressing these matters.

Comment: An OPO commented that it supports the intent of the proposed rule to mitigate the influence of transplant centers on OPO operations. However, the OPO said that by adding community-based members who are not affiliated with the transplant centers and by enforcing a strong conflict of interest policy, it has developed a diverse and appropriately involved board of directors. Another OPO commented favorably on our proposal to address conflict of interest issues within OPO boards. The OPO said it enforces its conflict of interest policies to prevent members from asserting their own agendas in board votes.

Response: We agree that adding board members who are not affiliated with transplant centers helps to balance transplant center representation on an OPO's board, and implementing strong conflict of interest policies can prevent members from asserting their own agendas. Therefore, although we are making no changes to the regulations text, we suggest that OPOs consider

balancing transplant center representation on their boards by adding community-based members and developing and implementing strong conflict of interest policies.

Comment: A commenter said that OPOs' conflict of interest policies should require conflict of interest disclosure statements consistent with state corporation law and IRS requirements and practices.

Response: We expect that OPOs will follow all pertinent local, State, and Federal laws that govern conflict of interest, including the specifics of those laws in regard to conflicts of interest disclosure statements.

Comment: One commenter recommended that OPO surveyors review board minutes to ensure that OPOs are complying with the requirement to have conflict of interest policies.

Response: We will develop Interpretive Guidelines for surveyors following publication of this final rule. The Guidelines will provide specific information about how surveys will be conducted under the new regulations, including how surveyors will determine whether OPOs are in compliance with the requirement to have conflict of interest policies.

Representation on OPO Boards

Comment: In the preamble to the proposed rule, we asked the public to comment on whether OPOs should be required to have a certain board membership beyond that which is already required under the PHS Act, for example, we asked whether we should require OPOs to include members representing donor families, chaplains, and research institutions. One commenter said that OPOs should consider OPO board representation from other stakeholders, but the commenter did not agree that such representation should be required. The commenter stated that OPOs should have the discretion to add stakeholders to advisory boards consistent with the OPOs needs and priorities. The commenter acknowledged that constituents such as research facilities, donor family members, transplant recipients, coroners or medical examiners, social workers, and chaplains can all add valuable input for an OPO and bring considerable influence. Several OPOs said that they have added donor hospitals, non-transplant health professionals, donor family members, transplant recipients, clergy, minorities, and others to their board of directors. However, most commenters said that OPOs must have the flexibility to bring those resources to bear as needed in each community. One commenter who said we should not require specific board representation pointed out that Medicare conditions of participation for hospitals do not have specific requirements for board membership. However, one commenter recommended that we require OPOs to include donor families on OPO boards.

Response: We agree with the commenters who stated that the addition of stakeholders and community representatives to OPO boards provides OPOs with valuable input and helps to balance the interests of the transplantation community. We would urge OPOs that do not have such wide representation to add additional members to their boards. For the most part, we agree that OPOs should have the flexibility to determine the knowledge, skills, and background they need for the members who will serve on their boards and their governing bodies (except, of course, for the membership required under the PHS Act). However, we agree with the commenter who recommended that donor family members be included on OPO boards. OPOs have many ''customers,'' including transplant centers and tissue banks, but, arguably, the most important of an OPO's customers is the donor family. Every OPO needs the unique perspective that a donor family member brings to the table to address the many issues that relate to the interaction between donor families and the OPO. These issues range from consent rates to whether family members are permitted in the operating room prior to a donation after cardiac death. Therefore, in addition to those representatives required under the PHS Act, this final rule requires an OPO to have a representative from an organ donor family on one of its boards.

Comment: One commenter said that our proposal that only a transplant surgeon (not a transplant physician) can represent a transplant center on an OPO's board ignores the valuable input that a transplant physician can provide.

Response: We agree that a transplant physician is likely to be a useful and effective addition to an OPO board, and we would encourage all OPOs to consider adding a transplant physician. However, OPOs that have a large number of transplant hospitals in their service areas and, therefore, a large number of transplant surgeons on their boards may find that adding an additional transplant physician is too burdensome. Therefore, this final rule does not include a requirement for an OPO board to include a transplant physician.

Tissue Bank Representative

Comment: One commenter said that the PHS Act requirement to include a tissue bank representative is intended only to ensure that there is a board member with tissue banking experience. The commenter suggested that the tissue bank representative could be from a tissue bank outside the OPO's service area.

Response: We disagree with the commenter. Clearly, the intention of the PHS Act is that OPOs should include tissue banks from within their service areas. The Act requires, ''members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in the OPO's service area * * *.'' Thus, we are not accepting the commenter's suggestion to change the final rule.

Comment: Several commenters said that if the OPO is offering competitive tissue recovery or banking services, it is inappropriate to put a competitor on its board. They said that if the OPO is not offering such services, then it is likely using a tissue bank or processor as a vendor and it would be just as inappropriate to place a major vendor on the board because the conflict would be too pervasive. Commenters also said that vendor relationships can change quickly, which could leave an ex-vendor on the board as a director. Several commenters objected to the proposed requirement because they said that tissue banks are OPOs' competitors. One commenter stated that the requirement appears to expand the statutory objective to a market objective of ensuring that the commercial issues of competitive or vendor tissue banks in the OPO's service area are addressed by the OPO. The commenter questioned whether CMS should be concerned about tissue banks since they are not regulated by CMS.

Other commenters suggested that a tissue bank representative would act as the representative of an outside entity rather than as a fiduciary of the OPO. Commenters said that an individual from a tissue bank, by the very nature of the appointment, would appear to have primary responsibilities back to the tissue bank. Commenters said that we should be concerned only about whether an OPO is making a good faith effort to cooperate with the tissue banks in its service area. Other commenters said that our proposal would create a conflict of interest situation by expecting one tissue bank representative to represent the best interests of all the competing tissue banks in the OPO's service area.

Response: We understand the commenters' concerns, and acknowledge that it may not be appropriate for a tissue bank to be privy to or have the right to vote on an OPO's fiduciary matters. Furthermore, since tissue banks are often in competition with one another, we agree with the commenter that it would be difficult for one tissue bank to represent the interests of every tissue bank in an OPO's service area.

Nevertheless, under this final rule, an OPO still is required to have tissue bank members on one of its boards, because it is required by the PHS Act. However, the tissue bank members may be from the OPO's tissue bank or any other tissue bank of the OPO's choice. It is not necessary that the tissue bank members represent all tissue banks in the service area. We have revised our proposed language accordingly. (See § 486.324(a)(1).)

Governing Body

Comment: Commenters noted that we asked for comments about whether ''legal authority and responsibility for management and provision of all OPO services should lie with an individual rather than a governing body.'' The commenters said that this form of governance would be inconsistent with the requirements of state nonprofit corporation law and IRS rules for 501c(3) organizations. Commenters also said that giving a single individual all legal authority and responsibility for an OPO would have the effect of eviscerating the valuable ''checks and balances'' provided by a board of directors and that the OPO would be likely to lose its tax-exempt status. One commenter said that it would be inappropriate to charge an individual with all OPO functions without oversight. The commenter said that OPOs should have a chief executive officer who is charged with day-to-day operations but who remains subject to board oversight. One commenter stated that OPOs should be able to select the most efficient and effective form of government and management because it permits innovation.

Response: We agree with the commenters that OPOs should have flexibility to structure its business to the greatest extent possible, consistent with the restrictions in our statutes and regulations. Therefore, in this final rule, we have finalized our proposed language, which states that a governing body must have full legal authority and responsibility for the management and provision of all OPO services and must develop and oversee implementation of policies and procedures considered necessary for the effective administration of the OPO, including fiscal operations, the OPO's quality assessment and performance improvement (QAPI) program, and services furnished under contract or arrangement, including agreements for these services. The governing body must appoint an individual to be responsible for the day-to-day operation of the OPO. (See § 486.24(e).)

Comment: One commenter questioned the existence of hospital-based OPOs and said that their elimination should be seriously considered. The commenter said that because hospitals are under such extreme financial pressure, hospital-based OPOs might not be given sufficient resources to maximize donation.

Response: We understand the commenter's concern that an OPO's mission to maximize organ donation may not be supported sufficiently by those who make financial decisions for the OPO. However, it is not within the purview of this regulation to eliminate hospital-based OPOs.

Condition: Human Resources (Proposed § 486.326)

In the February 4, 2005 proposed rule, we proposed that all OPOs have a sufficient number of qualified staff, including a director, a medical director, organ procurement coordinators (OPCs), and hospital development staff, to ensure that they obtain all usable organs from potential donors. We proposed that the OPO must have sufficient staff to ensure that the families of potential donors, hospitals, tissue banks, and individuals and facilities that use organs for research receive all of the services required by the proposed rule.

We proposed that OPOs ensure that all persons who provide services and/or supervise services are qualified to provide or supervise those services. This requirement would include services that were furnished both under contract or provided through another arrangement. We proposed that each OPO would be required to develop and implement a written policy to address conflicts of interest for the OPO's director, medical director, senior management, and procurement coordinators.

We proposed requiring OPOs to have credentialing records for the physicians and other practitioners who routinely recover organs in hospitals that are under contract or have an arrangement with the OPO. We proposed that an OPO also would be required to ensure that all physicians and other practitioners who recover organs in hospitals with which the OPO has agreements are qualified and trained.

We proposed staffing requirements, including sufficient coverage to assure that both referral calls from hospitals are screened for donor potential and potential donors are evaluated timely for medical suitability. We proposed requiring that OPOs have sufficient staff to provide information and support to potential organ donor families; request consent for donation; ensure optimal maintenance of the donor, efficient placement of organs, and adequate oversight of organ recovery; and conduct QAPI activities, such as death record reviews and hospital development. We also proposed that OPOs must have sufficient recovery personnel to ensure that all usable organs are recovered in a manner that, to the extent possible, preserves them for transplantation.

We proposed that OPOs must provide their staff with the education, training, and supervision necessary to furnish required services. At a minimum, that training was to include performance expectations for staff, applicable organizational policies and procedures, and QAPI activities. We proposed that OPOs would be required to evaluate the performance of their staffs and provide training, as needed, to improve both individual and overall staff performance and effectiveness.

We proposed that all OPOs must have a medical director who would be responsible for implementing the OPO's protocol for donor evaluation and management and organ recovery and placement. We proposed that the medical director would be responsible for oversight of the clinical management of potential donors, including providing assistance in managing a donor case when the surgeon on call is unavailable.

Below we have provided a summary of the public comments we received on our proposed provisions, along with our responses to the comments.

General Comments

Comment: Commenters expressed concern that the requirements in the human resources section at § 486.326 were too prescriptive, especially the staffing requirements. They stated that the requirements would not allow OPOs to decide upon the staffing arrangements that would best suit their needs. They were also concerned about the cost implications of these requirements.

Commenters recommended that instead of our proposed human resources requirements at § 486.326, we require OPOs merely to develop and implement a human resources plan and

policy. Each OPO's practices would be expected to conform to its own plan and policy. These commenters stated that an OPO's human resources plan and policy should include staff adequacy, education and training, supervision, and performance assessment. One commenter pointed out the Collaborative has already demonstrated that OPOs can be successful with a variety of staff configurations.

Response: Our intention is not to publish prescriptive staffing requirements for OPOs. In fact, we believe the staffing requirements in this final rule will give OPOs the flexibility to decide upon the staffing configurations that best suit their needs. We require only that each OPO have sufficient staffing for the activities that we require OPOs to perform or provide, but we do not require specific numbers or ratios of staff for these activities. Each OPO is free to decide how to staff their OPO to best provide the required activities and services. We believe the human resources requirements will result in consistency of outcomes among OPOs to ensure that all OPOs provide required services.

Comment: Some commenters stated that the accountability for an OPO's success or outcomes should be broader than the OPO itself. They wanted other entities, especially the donor hospitals and transplant centers, to share accountability for OPO's performance.

Response: Standards or requirements for donor hospitals and transplant centers are outside the scope of this regulation. We acknowledge that the actions of others, including donor hospitals and transplant centers, can affect an OPO's performance and/or outcomes. However, we must stress that OPOs are responsible for all requirements and outcomes in this final regulation. If OPOs encounter problems with other entities, they should first try to resolve the problem with that entity. If they cannot, they can seek assistance from the appropriate CMS Regional OPO Coordinator.

Section 486.326(a) Standard: Qualifications

Comment: Many commenters expressed concern over the requirement at 486.326(a)(3) that each OPO must have credentialing records for physicians and other practitioners who routinely recover organs in hospitals that have agreements with the OPO and that the OPO must ensure that all physicians and other practitioners who recover organs in hospitals with which the OPO has an agreement are qualified and trained. Some commenters stated that they agreed that OPOs should verify physician and surgeon credentials, but asked for clarification on exactly what would be required.

Response: As we stated in the February 4, 2005 proposed rule, OPOs would be required ''to have credentialing records for physicians and other practitioners who routinely recover organs in hospitals under contract or arrangement with the OPO * * *.'' We are not requiring that OPOs actually conduct a credentialing process of their own. We expect OPOs to have records that clearly demonstrate that these practitioners are credentialed in their own medical or surgical facilities. An OPO could satisfy this requirement with a letter from the credentialing facility indicating that a practitioner is credentialed in their facility and any limitations or conditions that facility has placed upon the practitioner's practice. An OPO does not need to maintain the entire credentialing file. However, if the OPO does not have the entire file or a copy of it, the OPO should have an agreement with the appropriate facility for access to the entire record should the OPO have any questions or concerns about a practitioner's qualifications or training.

Comment: Some commenters supported verification of recovery personnel's credentials or qualifications and training but did not believe it should be the OPO's responsibility. Commenters stated that OPOs should be allowed to rely on a transplant hospital's extensive credentialing system to determine that recovery surgeons and other personnel are qualified. They stated that to require OPOs to maintain credentialing records was duplicative.

Other commenters suggested that we should require transplant centers to be responsible for verifying physicians' credentials prior to recovery. A commenter suggested that credentialing be a requirement in the Hospital Conditions of Participation, especially for recovering physicians and other practitioners utilized by the OPO on an infrequent basis and outside the designated service area. Commenters noted that since the transplant hospital sends the recovery team, the transplant hospital has both the leverage and the authority to require compliance with a credentialing process. Commenters said that we should require the transplant hospital that sends out the recovery team to provide the OPO with information about the recovery staff's qualifications in advance of any recovery and respond promptly to OPO requests for information.

Another commenter said there should be a national standard and suggested that DHHS ask the OPTN to develop policies for recovery team qualifications that OPTN members would be required to follow as a condition of membership in the OPTN.

Response: We disagree with the commenters. We believe that an OPO should be responsible for ensuring that personnel who recover organs and tissues in hospitals with which the OPO has agreements are appropriately credentialed. As we pointed out in the preamble to the proposed rule, it is difficult, if not impossible, for a donor hospital to credential and grant privileges to recovery surgeons and other members of the recovery teams who are not members of the hospital's medical staff and who may recover organs in a particular donor hospital no more than once in a period of several years (70 FR 6105). The recovery personnel's work in the donor hospital is too limited to undergo effective review by the donor hospital for the granting of clinical privileges (70 FR 6105).

However, all hospitals, including transplant hospitals, are responsible for credentialing and granting privileges to medical staff. Section 482.22 of the Hospital Conditions of Participation requires that a hospital's medical staff must examine credentials of candidates for medical staff membership and make recommendations to the governing body for appointments. Further, the medical staff bylaws must include criteria for determining the privileges to be granted to individual practitioners and a procedure for applying the criteria to individuals requesting privileges.

In this final rule at § 486.344(d), OPOs are required to collaborate with transplant programs to establish protocols that define the roles and responsibilities of the OPO and the transplant program for all activities associated with, among other activities, organ recovery. We expect that OPOs will use these collaborative agreements to spell out how they will obtain credentialing information on recovery personnel. We believe that OPOs should verify that recovery personnel are credentialed by a transplant hospital or that they are otherwise qualified and trained as part of the services they provide to donor hospitals. Therefore, we will finalize § 486.326(a)(3) as proposed.

The suggestion that the OPTN develop policies for recovery team qualifications is beyond the scope of this final regulation. However, this suggestion will be forwarded for consideration to the agency that oversees the contract for the OPTN, the

Health Resources and Services Administration (HRSA).

Comment: Commenters recommended that the Memorandum of Agreement or Understanding between a transplant hospital and the OPO should specify how the credentialing responsibility would be handled between the transplant hospital and OPO. Other commenters recommended that any surgical recovery team that is currently provided privileges by one OPO should received reciprocity from other OPOs.

Response: As we stated in our previous response, § 486.344(d) requires OPOs to collaborate with transplant programs to establish protocols that define the roles and responsibilities of the OPO and the transplant program for all activities associated with organ recovery. Therefore, we agree with the commenters that the Memorandum of Agreement or Understanding may provide an opportunity to address how the credentialing responsibility will be handled. However, we believe that the OPO and the transplant hospital should have the flexibility to determine what works best for their situation. Reciprocity is certainly one method that OPOs can use to ensure the credentialing and/or qualifications and training of the recovery personnel. However, we believe that OPOs need the flexibility to decide how to handle this responsibility.

Comment: Some commenters noted that OPOs should have a way to verify the credentials of recovery personnel 24 hours a day, especially for a ''visiting team.''

Response: We agree with the commenters. OPOs operate on a 24-hour-a-day, 7-day-a-week schedule, 365 days a year. OPOs should maintain documentation of credentialing and/or qualifications and training for recovery personnel who routinely recover organs for the OPO. Each OPO should have a method in place for quickly obtaining verification of the credentials and/or qualifications and training of recovery personnel who do not routinely recover organs for the OPO.

Section 486.326(b) Standard: Staffing

Comment: Many commenters agreed that sufficient staffing is an extremely important consideration for an OPO's successful performance and that each OPO needs the flexibility to determine what staffing levels should be. However, there were concerns that CMS was suggesting specific staffing levels. Commenters noted that CMS indicated in the February 4, 2005 proposed rule that ''* * * we do not propose to establish specific staffing levels because OPOs must have the flexibility to determine their own staffing levels.'' (70 FR 6106). Yet, commenters said that we provided ''guidance to OPOs so that they can determine if the number of staff they have would be sufficient.'' (70 FR 6106). One commenter specifically noted one of the examples, that an ''OPO should look closely at hospital development staffing because effective hospital development creates a culture that supports and promotes donation.'' (70 FR 6106). Commenters expressed concern that requests we made for comments on various ''staff markers'' and the guidance we provided would eventually lead to a requirement for actual numbers of staff. Commenters also noted that many successful OPOs have different staffing patterns.

Response: We agree with the commenters that there is no one staffing pattern that all OPOs should follow. As we stated in the February 4, 2005 proposed rule, we are not requiring specific staffing levels for OPOs because we believe that OPOs need the flexibility to establish those levels based upon their needs (70 FR 6106). The guidance provided in the proposed rule was intended only to provide some direction to OPOs in assessing what staffing levels their own OPO needs to provide the services and activities required by this regulation. We would note that we do not prescribe staffing levels for other Medicare providers or suppliers and have no intention of doing so for OPOs.

Comment: Commenters were concerned about how CMS was going to determine what was sufficient or adequate staffing. They were also concerned about how CMS was going to enforce this requirement.

Response: The determination of whether or not an OPO has adequate staffing is primarily based upon outcomes (70 FR 6106). We also noted that outcomes included the ''intermediate steps that lead to the procurement (such as assessing the potential donor and obtaining consent), as well as those critical activities that support and surround the actual donation process (such as hospital development and death record reviews).'' (70 FR 6106). We would not expect to cite an OPO for having insufficient staff if the patient outcomes are good. The requirement is intended to give surveyors the option of citing an OPO when there is a pattern of consistent understaffing in critical areas, and the OPO has not taken the appropriate steps to improve the situation (for example, if the board of directors has refused to approve funds for additional staff needed to improve the OPO's performance).

Comment: Commenters expressed concern that the requirements for sufficient staffing could ultimately be inconsistent or out-of-date with the ''best practices'' being shared through HRSA's Collaborative. Commenters noted that the Collaborative has resulted in a rapid evaluation of staffing models and organizational change in OPOs. As staffing models are modified as a result of the Collaborative, the proposed requirements may be ''out of synch'' with what the OPOs are doing with staffing. One commenter suggested that adequacy of staffing levels should be an element in an OPO's human resources plan.

Response: As we stated in our previous response, we are not requiring any specific number of staff to achieve ''sufficient'' staffing levels. We are requiring only that OPOs determine how much staff they need to achieve the outcomes mandated under this final rule. This final rule requires OPOs to have sufficient staff to provide the activities and services required of all OPOs, but we believe the requirements are flexible enough to accommodate any changes in staffing models that may be developed in the future.

Comment: Commenters said that in § 486.326(b)(1), we proposed that OPOs ''provide sufficient coverage * * * to assure * * * that potential donors are evaluated for medical suitability in a timely manner.'' This language concerned commenters who said that if OPO staff made a ''suitability determination,'' it would interfere with the transplant surgeon's decision whether or not to transplant a particular organ into a particular patient.

Response: We do not intend to interfere with any transplant surgeon's decision whether to transplant a particular organ into a particular patient. However, OPOs are responsible for assessing potential organ donors to determine whether they meet the initial medical criteria for organ donation. The proposed language merely requires that OPOs have sufficient staff coverage to ensure that this assessment takes place in a timely manner. Therefore, we have revised the language in § 486.326(b) by adding ''for organ and/or tissue donation'' after ''medical suitability'' to clarify that this is for the initial determination of whether or not the potential donor meets the criteria for organ and/or tissue donation.

Comment: Commenters were also concerned that the ''suitability'' language in the proposed rule discussed above could result in increased liability for the OPOs. Commenters noted that OPOs have been dismissed from ''bad organ'' state malpractice cases because

the OPOs make no determination as to the suitability of organs. They felt that the language above could result in OPOs no longer having that defense.

Response: OPOs do not make any determination as to the suitability of a particular organ for a particular patient. That determination remains the exclusive prerogative of the transplant surgeon. As discussed in the previous comment and response, we have revised the language in § 486.326(b) to clarify that the ''medical suitability'' determination made by an OPO concerns only whether or not the potential donor meets the medical criteria for organ and/or tissue donation.

Comment: One commenter expressed particular concern with the working conditions of OPO procurement coordinators. The commenter pointed out that by not mandating a maximum number of working hours, procurement coordinators will continue to be worked to the ''point of physical and emotional exhaustion and profound sleep deprivation.'' The commenter noted that the Federal Government mandates working hours for several occupations, such as air traffic controllers and truck drivers and said that a procurement coordinator's work is just as crucial as other occupations for which the Federal government mandates working hours. The commenter also wanted CMS to mandate maximum hours before a rest period and on-call hours for OPCs.

The commenter also said that some OPOs are not hiring a sufficient number of procurement coordinators, which results in many procurement coordinators suffering from sleep deprivation due to working very long hours. The commenter stated that even though some OPOs may claim they cannot afford to hire more staff, the situation results in increased turnover of procurement coordinators. As a result, the OPOs must pay higher wages, they have less cohesive work teams, and their relationships with their hospitals are impaired.

Response: We too are concerned that some OPOs do not have enough procurement coordinators to prevent staff burnout and high staff turnover, and we agree that OPO procurement coordinators and other staff must have adequate rest and reasonable working hours to perform their jobs properly. Also, we would expect that high staff turnover could impair working relationships among OPO staff and between OPO staff and hospitals. In the February 4, 2005 proposed rule, we provided guidance to ''OPOs so they can determine if the number of staff they have would be ''sufficient'' (70 FR 6106). This guidance recommends looking at the intermediate steps in the donation process, not just the ultimate outcome. We will not mandate working hours for OPO staff in this final rule, because we believe each OPO must have the flexibility to determine its own staffing protocols. However, we expect OPOs to take whatever steps are necessary to ameliorate their staffing problems, including the hiring of additional procurement coordinators. OPOs that do not address consistently inadequate staffing in critical areas are likely to find that their shortcomings are reflected in their performance on the outcome measures in this final rule.

Section 486.326(c) Standard: Education, Training, and Performance Evaluation

Comment: Some commenters urged CMS to require the certification of procurement coordinators through the American Board of Transplant Certification (ABTC). They pointed out that certification ensures that the evaluation of potential donors, medical management of donors, retrieval arrangements, and family consultation are performed with the highest standards accepted within the transplant community.

Response: There is no evidence available at this time that indicates that certification increases the quality of services provided. While it is likely that certification guarantees a certain level of competence, many OPOs have highly competent, successful procurement coordinators who are not certified. Therefore, we believe that to impose a certification requirement for procurement coordinators may be unduly burdensome. Furthermore, this final rule at § 486.326(c), requires OPOs to ensure that their staff get the necessary education and training to perform their required responsibilities. One way for an OPO to satisfy this requirement in regard to procurement coordinators would be to assist them in obtaining certification, but this final rule does not require procurement coordinators to be certified. Therefore, we have made no changes to our proposed language.

Comment: Commenters urged us to be less prescriptive in our human resources requirements, including the requirements for competency through industry training.

Response: We disagree that our requirements for education, training, and performance evaluation are too prescriptive. This standard requires an OPO to provide its staff with the education, training, and supervision necessary to furnish required services. Training must include, but is not limited to, performance expectations for staff, applicable organizational policies and procedures, and QAPI activities. OPOs must evaluate the performance of their staffs and provide training, as needed, to improve individual and overall staff performance and effectiveness. We are not requiring OPOs to conduct the required training, education, or performance evaluation in any specific manner or use a particular method. We believe that these are reasonable requirements and that they provide the OPOs with sufficient flexibility to develop and implement training programs, policies, and procedures that will suit their particular needs.

Comment: One commenter expressed approval for the requirement for OPOs to conduct training. However, the commenter recommended that we establish a national standard for training. Conversely, one commenter said that while each staff member should have an appropriate orientation to his or her job, we should not mandate that staff handle a particular number of donation cases during an orientation or that an orientation should last for a specified amount of time. The commenter stated that such a requirement could result in OPOs providing only that amount of training without allowing for the individual staff member's needs.

Response: We disagree with the commenter. We do not believe that we should either endorse or require a particular type or length of training for all OPOs beyond the minimum requirements established in this final rule at § 486.326(c). Each OPO should have the ability to develop training programs tailored to its own particular circumstances, policies, and activities.

Thus, the requirements in this final rule provide flexibility for OPOs to evaluate their staff and provide the training necessary to meet the needs of individual staff members.

Section 486.326(d) Standard: Medical Director

Comment: One commenter stated that the requirement for OPOs to have a medical director was overly prescriptive.

Response: We disagree. As we stated in the February 4, 2005 proposed rule, ''Although current regulations do not require OPOs to have a medical director, most if not all OPOs employ a medical director as part of their management staff and recognize the value and expertise this position brings to their OPO programs.'' (70 FR 6108). We also noted that ''We believe that nearly all OPOs have a full-time or one or more

part-time directors * * *.'' (70 FR 6124).

In addition, the OPTN's bylaws for their members state that all OPOs must have a medical director. Under this final rule, we are requiring OPOs to be members of and participate in the OPTN. Thus, rather than being overly prescriptive, a requirement that OPOs have a medical director reflects the current practice in the industry.

Comment: In addition to requiring that OPOs have a medical director, some commenters wanted us to impose additional conditions on this position. One commenter wanted us to include a requirement for a medical director to be a ''licensed physician'' and to define ''licensed physician'' as a physician licensed in the United States to prevent physicians licensed outside the United States from becoming OPO medical directors.

Response: We agree with the commenter. In fact, § 1861(r)(1) of the Act defines ''physician'' for the Medicare program as ''a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action * * *.'' We expect each OPO to hire a medical director who is able to fulfill all the functions required under this final rule and under the laws of the State(s) or territory in which the OPO operates. Since the OPO medical director is responsible for overseeing the clinical management of potential donors and providing assistance in managing donor cases when the surgeon on call is unavailable, the OPO medical director should be a physician licensed in at least one of the States within the OPO's service area or as required by state law. Thus, we are revising the first sentence in § 486.326(d) to read, ''(d) Standard: Medical Director. The OPO's medical director is a physician licensed in at least one of the States or territory within the OPO's service area or as required by State or territory law.'' The medical director is responsible for * * *.''

Comment: Some commenters stated that medical directors should be physicians with specific expertise or experience. Some commenters recommended that medical directors have experience in organ donor intensive care medical management or organ transplantation. Another commenter simply stated that the medical director should have the knowledge and experience to support the OPO.

Response: Once again, we believe that flexibility is the key. In this final rule, we have attempted to avoid overly prescriptive requirements that would force OPOs to make changes in successful OPO staffing arrangements or OPO functioning. We believe that requiring an OPO to have a medical director is sufficient. Although we expect that most OPOs want and need medical directors who have relevant expertise and experience, we do not believe that we should establish minimum qualifications for a medical director, beyond requiring that the medical director be a physician licensed in at least one of the States within the OPO's service area or as required by State or territory law.

Comment: Commenters expressed concern that having a medical director involved in donor evaluation could interfere with the transplant surgeon's decision on whether to transplant a particular organ or tissue into a particular patient. Commenters stated that transplant surgeons or physicians should make the ultimate decision on transplantation. When these commenters were discussing the role of medical directors, they also added that the organ offers and placement by the OPO staff should be made in accordance with United Network for Organ Sharing (UNOS) allocation policies.

Response: As stated in our earlier response, the suitability determination made by OPO staff, including the medical director, concerns only a potential donor's medical suitability for organ and/or tissue donation. OPOs are not required by this final rule to make any determination as to the suitability of a particular organ for a particular patient. That determination remains the exclusive prerogative of the transplant surgeon.

Comment: Commenters requested that the role of the medical director be clarified, especially regarding the expected level of medical oversight and involvement. Commenters stated that medical directors should provide medical consultation on specific cases when needed but should not be required to evaluate each case. Commenters were very concerned that requiring the medical director to be involved in day-to-day operations in the clinical management of donors would be very onerous and would vary greatly among the OPOs. Commenters said that the medical director's role should be to guide the development of donor management policies.

Response: In § 486.344 of the February 4, 2005 proposed rule, we proposed requiring that the OPO medical director would be responsible for ensuring that donor evaluation and management protocols are implemented correctly and appropriately to ensure that every potential donor is thoroughly assessed for medical suitability for organ and/or tissue donation and clinically managed to optimize organ viability and function. We also proposed that an OPO must implement a system that ensures the medical director or other qualified physician is available to assist in the medical management of a donor when the surgeon on call is unavailable.

The level of oversight provided by a medical director will vary from case to case. We are not requiring that the medical director either evaluate every potential donor or be involved in the management of every donor case. While the medical director is responsible for overall implementation of the protocols, we expect that in most cases, he or she will delegate the responsibility for direct implementation of the protocols to other staff. We agree with the commenters who said that medical directors should provide medical consultation on specific cases when needed but should not be required to evaluate each case. We also expect that a medical director will provide assistance in the clinical management of donation cases when needed.

Condition: Reporting of Data (Proposed § 486.328)

The February 4, 2005 proposed rule we stated that we would require OPOs to provide individually-identifiable, hospital-specific organ donation and transplantation data to the OPTN and the SRTR, as directed by the Secretary. In addition, we proposed requiring OPOs to provide hospital-specific organ donation data to transplant hospitals annually. We also proposed requiring OPOs to report individually-identifiable, hospital-specific organ donation and transplantation data and other information to us, as requested by the Secretary.

We proposed that the data would include, but not be limited to, number of hospital deaths; results of death record reviews; number and timeliness of referral calls from hospitals; potential donor denominator; data related to non-recovery of organs; data about consents for donation; number of donors; number of organs recovered (by type of organ); and number of organs transplanted (by type of organ). We also proposed that the potential donor denominator data reported to the OPTN to be used for OPO re-certification must include data for all deaths that occurred in hospitals and critical access hospitals in the OPO's service area, unless a hospital or critical access hospital was granted a waiver to work with a different OPO. We proposed requiring OPOs to report data to the OPTN within 30 days after

the end of the month in which a death occurred. We proposed that if an OPO determined through death record review or other means that the potential donor denominator data it reported to the OPTN was incorrect, it would be required to report the corrected data to the OPTN within 30 days of the end of the month in which the mistake was identified. We proposed specific definitions for determining the information to be collected, such as how a split liver would be counted. Finally, we proposed requiring an OPO to report organ donation data to hospitals annually.

Based on public comments, we are not finalizing our proposal to require OPOs to report hospital organ donation data to the public annually because those data are readily available on the SRTR Web site, *http://www.ustransplant.org.* We have made minor changes to our proposed data reporting requirements to incorporate the definitions of ''eligible deaths'' and ''eligible donors.''

We have provided a summary of the comments we received on our proposed section and our responses are discussed below:

Comment: A few commenters asked for clarification about which data would need to be ''individually identifiable.'' One commenter stated that OPOs currently report individually-identifiable data on actual organ donors to the OPTN, but the data reported on eligible deaths is aggregated by hospital. Commenters pointed out that reporting individually-identifiable data on eligible deaths would add a significant reporting burden.

Response: Currently, OPOs report the data on eligible deaths to the OPTN as aggregated by hospitals. However, for all individuals who become organ donors for the purpose of transplantation or research, the OPOs do report individually-identifiable health information to the OPTN.

The type of data and how it is reported to the OPTN is governed by the OPTN. We are not asking for individually-identifiable health information to be reported directly to us.

Comment: One commenter took exception to the proposed requirement to report an error in data reporting ''within 30 days of the end of the month in which the mistake is identified.'' The commenter said that because we proposed no required time frame for conducting death record reviews, it could be a year or more before a mistake was identified and reported.

Response: We agree that data reporting errors must be corrected promptly because the data will be used for certification purposes in the future and both OPOs and hospitals need reliable eligible donor and eligible death data to inform their decision making and their quality improvement programs. We have decided to retain the language in proposed § 486.328(b) concerning an OPO reporting data and corrected data to the OPTN. In the final rule, this language has been moved to § 486.328(d). We are retaining this language due to a change we have made in the requirement for death record reviews. In § 486.348(b), we are now requiring OPOs to conduct death record reviews at least monthly in every Medicare and Medicaid participating hospital with a Level I or Level II trauma center or with 150 or more beds and a ventilator and an intensive care unit (ICU). The only exceptions are hospitals that have a waiver to work with another OPO and psychiatric and rehabilitation hospitals. This requirement will provide OPOs with timely data so that they can inform the OPTN of data reporting errors promptly.

Comment: Commenters protested our proposed requirement for OPOs to report hospital organ donation data to the public annually. They pointed out that the SRTR publishes on its website extensive hospital organ donation data, which is updated twice each year.

Response: We agree with the commenters. At the time we developed the OPO proposed rule, the SRTR did not publish hospital organ donation data. Now that it is readily available to the public, we see no need to burden OPOs with this requirement. However, we would urge OPOs to inform their hospitals where to access the data and to provide the data directly to hospitals that request it.

Comment: Many commenters voiced apprehension that data on organ donor potential would not be reported correctly. They said that the outcome measures would not be fair to all OPOs if some OPOs under reported their donor potential.

Response: Because organ donor potential (now termed ''eligible deaths'') forms the basis for one of the outcome measures in this final rule, accurate reporting of data is critically important. We would strongly emphasize that OPOs must adhere meticulously to the definition of ''eligible deaths'' when reporting data to the OPTN. Whereas we acknowledge there is some potential for inaccurate reporting, as we stated earlier in this preamble in our discussion of the outcome measures, the SRTR statistical methodology will act as a ''check'' on the eligible donor and eligible death data OPOs report to the OPTN. In addition, CMS Regional OPO Coordinators will be working with the OPOs and are available to provide guidance to the OPOs. We will also work with HRSA to determine whether a procedure can be established to assist OPOs that have a questionable case.

Condition: Information Management (Proposed § 486.330)

In the February 4, 2005 proposed rule, we proposed that OPOs must establish and use an information management system to maintain the required medical, social and identifying information for every donor and transplant recipient and develop and follow procedures to ensure the confidentiality and security of the information. We proposed specific information that must be maintained in the record for every donor. We proposed that an OPO must also maintain records showing the disposition of each organ that is recovered for the purpose of transplantation, including information identifying the transplant recipient. We proposed requiring OPOs to maintain donor and recipient records for 7 years in a format readable by humans and reproducible in a paper or electronic format. In addition, in the event that a successor OPO takes over an OPO's donation service area, we proposed that an OPO must maintain the data in a format that can be readily transferred to a successor OPO and must be able to provide copies to CMS of all records. We proposed that the records and data subject to this requirement would include donor and transplant recipient records and procedural manuals and other materials used in conducting OPO operations.

Comment: One commenter recommended that we insert ''electronic'' before ''information management system'' at the beginning of this provision. The commenter said that donor information needs to be maintained in an electronic format so that the data can be communicated to Federal agencies and contractors, as well as to ensure that the information can be transferred easily to a successor OPO. The commenter also noted that each OPO should specify in its agreements with hospitals the method of electronic access that will be used so that information can be communicated during the donation process to its own data systems, the OPTN, and any other organization to which the OPO grants access.

Response: We agree with the commenter that in today's health care environment, information management systems must be electronic. In fact, the Department released a health

information technology plan in 2004 that was ordered by President Bush and prepared by the National Coordinator for Health Information Technology, David J. Brailer, M.D. The 10-year plan would transform the delivery of health care by building a new health information infrastructure, including electronic health records and a new network to link health records nationwide. At the time, then Secretary Tommy Thompson said, ''America needs to move much faster to adopt information technology in our health care system * * *. We can't wait any longer.''

It is our understanding that all of the OPOs already have electronic information management systems to manage the immense amount of information they must maintain. Thus, we will add ''electronic'' before ''information management system'' to the § 486.330 introductory text.

We also agree that it would be a good business practice for an OPO to include information about electronic access in their agreements with hospitals, but we do not believe it is necessary to include such a requirement in this final rule. We believe OPOs should be free to work out the logistics of electronic access with their individual hospitals.

Comment: A commenter recommended that we add a new subsection to § 486.330 to address data confidentiality and security. The commenter said that the subsection should require OPOs to adhere to federally-published data confidentiality and security standards and follow security and confidentiality requirements established by the OPTN. The commenter added that in maintaining data within its physical control, the OPO should consider and include patient data confidentiality measures outlined by the National Institute of Standards and Technology and required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), to protect the identities of potential donors, donors, donor next-of-kin, transplant candidates, and transplant recipients.

Response: We agree that OPOs must ensure the confidentiality and security of the information they acquire and maintain. However, § 486.330 already requires that OPOs ''must establish and use an information management system to maintain the required medical, social and identifying information for every donor and transplant recipient and develop and follow procedures to ensure the confidentiality and security of the information.'' We believe that this language is sufficient and that the new section proposed by the commenter is unnecessary. We expect OPOs to adhere to all applicable Federal, State, and local requirements to ensure the confidentiality and security of the information they maintain.

Comment: A commenter recommended that we insert a new subsection addressing technology standards. The commenter recommended that the subsection should require OPOs to maintain basic technology standards, as published by CMS and the OPTN, to provide for donation information access, communication, storage, redundancy, privacy and security.

Response: We appreciate the comment. However, we believe the proposed requirements, which we have finalized in this rule, are sufficient to ensure that OPOs maintain basic technology standards to provide for information access, communication, storage, redundancy, privacy and security.

Comment: One commenter objected to OPOs having to maintain donor records related to tissue and eye donation when the OPO is not a tissue or eye recovery agency.

Response: We proposed this requirement at the request of the Food and Drug Administration and the Centers for Disease Control and Prevention so that Federal and State authorities can access both organ and tissue donor information from one central point when they investigate any potential transmission of infectious disease from donated organs or tissues. The requirement does not apply to all recovered tissue. It applies only when tissue is recovered in addition to organs. Whether or not the OPO provides tissue and eye recovery services, the OPO is still in the best position to maintain these records. Thus, the section concerning data retention requirements will be finalized as proposed.

Comment: One commenter submitted a sample of a form developed to provide documentation of the donor and recipients data.

Response: We appreciate the commenter's submission of the proposed form. However, CMS is not the appropriate agency to review the submitted form. Therefore, we have forwarded the form to HRSA for the OPTN's review.

Comment: Commenters recommended that we request public comment regarding additional requirements for hospitals under the CMS conditions of participation for hospitals. Commenters recommended requirements for hospitals to: (1) Ensure that OPOs have access to key physicians and other health care professionals; (2) have provisions for neurologists or other qualified medical professionals to adopt brain death declaration criteria consistent with state law; (3) notify OPOs prior to the withdrawal of life support to a patient; (4) if the hospital has more than 100 beds, identify an advocate for organ and tissue donation from within the hospital clinical staff; and (5) establish policies and procedures in conjunction with the OPO to manage and maximize organ retrieval from donors without a heartbeat. Commenters also said that if a patient is a potential donor, the OPO should reimburse the hospital for appropriate costs related to maintaining that patient as a potential donor.

Response: Although these recommendations for hospital conditions of participation are beyond the scope of this final regulation for OPOs, we will consider integrating them into a future regulation for the hospital conditions for participation.

Condition: Requesting Consent (Proposed § 486.342)

In the February 5, 2005 proposed rule, we proposed that OPOs must encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of potential donor families. We also proposed requiring that OPOs have a written protocol to ensure that the individual(s) responsible for making the donation decision are informed of their options to donate organs and tissues (when the OPO is also requesting consent for tissue donation) or to decline to donate. We proposed several items of information that OPOs would be required to provide in requesting consent. The specific items we proposed were: A list of the organs or tissues that may be recovered; all possible uses for the donated organs or tissues; information that the individual(s) have the right to limit or restrict use of the organs or tissues; a description of the screening and recovery processes; the information (such as for-profit or non-profit status) about the organizations that will recover, process, and distribute the tissue; information regarding access to and release of the donor's medical records; an explanation of the impact the donation process will have on burial arrangements and the appearance of the donor's body; information about the procedure for filing a complaint; contact information in case the individual(s) making the donation decision have questions; and a copy of the signed consent form, if the donation is made. In addition, we proposed that if the OPO does not request consent because the donor previously completed a donor document that satisfies applicable state

law, the OPO would be required to provide information to the donor's family upon their request.

Comment: Some commenters believed the provision was overly prescriptive and too detailed concerning the minimum amount and types of information that are required for informed consent. However, other commenters endorsed the principles expressed in the requesting consent requirements and said that the provision reflected current practices in the industry.

Response: In general, we disagree with the commenters who stated that the provision is overly prescriptive and too detailed concerning the amount and types of information that is required for informed consent. Donor families need a certain amount of information upon which to base their donation decision. We believe there must be a minimum standard to assure that when families provide consent, they are providing informed consent. However, after analyzing the comments we received on some specific proposed items of required information, we have changed or eliminated some of the requirements. These items are discussed below in the following comments and responses.

Comment: Some commenters stated that the requirements for requesting consent are unnecessary. They noted that each State's anatomical gift law has requirements for informed consent and that the applicable state law should determine the standard for each OPO.

Response: We disagree with the commenters. We are not aware of any State anatomical gift legislation that has detailed requirements for information that must be provided to potential donor families to ensure informed consent. We believe there must be a minimum standard that will apply to all of the OPOs and ensure that when an OPO requests consent, potential donor families receive the information they need to make an informed decision about donation.

Comment: One commenter provided the following alternative language for § 486.342(a): ''* * *. The OPO must provide *adequate information* to the individual(s) responsible for making the donation, *which may include* the following if appropriate and *if sensitive to the individual(s) circumstances, views, and beliefs* * * * .''

Response: The commenter has provided very subjective language that does not appear to establish any minimum requirements. Section 486.342 in this final rule states, ''An OPO must encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of potential donor families.'' We believe that OPOs can tailor the informed consent requirement in this final rule, so that it can be conveyed in a sensitive and appropriate manner based upon the circumstances of each potential donor family's situation. Thus, we are not adopting the commenter's suggested language.

Comment: Some commenters noted that the language requiring ''information about the procedure for filing a complaint'' could be problematic. A commenter pointed out that to their knowledge ''the doctrine of informed consent has never included a procedural component for filing a complaint.'' The commenter noted that adding information about a complaint process could adversely affect an OPOs' efforts to obtain consent for donation and said that ''introducing an unnecessary element, particularly one that suggests subsequent failure, unhappiness, or change of mind, will likely undercut the consent success rate that OPOs are struggling so hard to improve.'' The commenter said that their experience has shown that parties who are unhappy about something that occurred during the donation process have not had any difficulty with locating the OPO to discuss their concerns.

Response: We believe the commenters have a good point. OPOs approach potential donor families during an extremely sensitive time: the death or imminent death of a loved one. It is important that the decision maker(s) for organ and/or tissue donation receive all the information they need for informed consent; however, there is no reason to introduce unnecessary information that may adversely affect the donation decision. Therefore, we have removed the proposed 486.342(a)(8) and revised the proposed § 486.342(a)(9). Thus, in the final rule § 486.342(a)(7) reads, ''Contact information for individuals with questions or concerns.''

Comment: Some commenters felt that the requirement for informed consent to include ''All possible uses for the donated organs or tissues'' was unreasonable and overly burdensome. One commenter questioned to what degree the OPO had to go to satisfy this requirement. The commenter asked the following questions:

- Does every research project have to be disclosed?
- Does every type of therapeutic surgical procedure for which donated gifts can be used have to be disclosed to the family?

One commenter noted that the typical standard under State law is whatever a ''reasonable person'' would want to know. Another commenter felt that complying with this provision could result in the consent process being lengthy, time consuming, and too graphic to be appropriate considering the sensitive nature of the consent process and the need for compassion for the potential donor family. One commenter recommended that we simply remove the word ''all'' from (a)(2).

Response: We agree with the commenters that informing families of potential donors and other decision makers of all possible uses for the donated organs and tissues may be more information than they need or want to know. However, the decision makers should be informed in general terms of the ''most likely'' uses of the organs and/or tissues they are being asked to donate. We believe this can be done without going into the detail that the above questions posed by the commenter suggest. For example, we believe most families would be satisfied with knowing that the organs and/or tissue might be used for research without wanting to know the specific research projects or that tissue might be used for therapeutic surgeries without wanting to know the specific types of surgeries. However, if a family requests additional or more detailed information, we would expect the OPO to provide that information. We believe that OPOs need the flexibility to determine what is appropriate to disclose concerning the most likely uses of donated organs and tissue and that they can tailor this information so that it is presented in a sensitive and appropriate manner.

Thus, in § 486.342(a)(2) we are deleting the words ''all possible'' before ''uses'' and inserting the words ''the most likely'' before ''uses.'' The revised § 486.342(a)(2) reads as follows: ''The most likely uses for the donated organs or tissues.''

Comment: One commenter stated that the requirement to describe the screening and recovery processes, as well as give information about all of the potential organizations that may be involved in the recovery, process, and distribution of tissues could generate a substantial amount of paperwork. And, rather than being helpful and informative, it could actually be more confusing and distracting to the potential donor family or perhaps too graphic.

Response: We disagree with the commenter that any of these requirements would generate a substantial amount of paperwork. Once an OPO has developed a standard consent form, the OPO's staff needs to explain only the applicable sections to the donor family during the consent

process. We believe OPOs can explain the screening and recovery process to potential donor families and decision makers in a manner that is not too graphic, confusing, or upsetting to the potential donor family.

Comment: A large number of commenters objected to the parenthetical language in § 486.342(a)(5), ''Information (such as for-profit or non-profit status) about organizations that will recover, process, and distribute the tissue.'' While a few commenters felt that disclosing the profit status of tissue banks involved in the donation process conformed to the tissue banking industry's standards, others did not. Some commenters noted that informed consent guidelines developed by the Association of Organ Procurement Organizations, the American Association of Tissue Banks, and the Eye Bank Association of America, the Model Elements of Informed Consent for Organ and Tissue Donation (adopted November 30, 2000) (Model Elements of Informed Consent), indicate that disclosing whether businesses involved in the donation process are non-profit or for-profit should be viewed as an additional or supplemental element rather than included in minimum requirements for informed consent.

Some commenters felt that the requirement would be contrary to the statute, saying that the OPO Certification Act of 2000 mandates that process performance measures must be based on empirical evidence obtained through reasonable efforts of organ donor potential and other related factors in each service area of qualified organ procurement organizations. These commenters stated that the proposed requirement had the potential to impede efforts to increase organ donation.

Although some commenters suggested specific language that could be used to inform families about the profit status of tissue banks, other commenters stated that disclosing profit status is not relevant or meaningful information for the donor family. Some commenters pointed out that the organizations involved in the tissue donation process (tissue banks) are inherently a mixture of both for-profit and non-profit entities. Further, commenters said that there is no realistic way to assure a potential donor family that a for-profit entity will not at some point be involved in handling the tissue they donate.

Most commenters' chief concern was that informing potential donor families that for-profit entities will be involved in the tissue donation process could result in fewer families consenting to tissue and even organ donation or to decision makers restricting their donation to non-profit tissue banks. Commenters pointed out that many people have misconceptions about for-profit tissue banks. One commenter pointed out that technological advances in tissue donation generally are made by for-profit, not non-profit, tissue banks. Commenters also noted that there was a common misconception that non-profits are more altruistic and more deserving of the donation. However, other commenters stated that it was important to explain the differences between for-profit and non-profit tissue banks so that families can appreciate the important contributions of both.

Response: Based upon these comments, we believe that requiring OPOs to disclose that for-profit entities will be involved in recovering, processing, and distributing tissue is not necessary. Both for-profit and non-profit tissue banks contribute significantly to the tissue industry and to the benefits that patients receive from donated tissue. However, explaining the nuances of for-profit and non-profit tissue banking to the families of potential donors being asked to consent to organ and/or tissue donation simply is not feasible.

We believe the most appropriate course of action is to allow each OPO to determine independently what information it needs to disclose about the various organizations that will be involved in the donation process. Thus, we have not finalized a requirement for OPOs to disclose the profit status of tissue banks to families of potential donors and other decision makers.

In addition, in reviewing the Model Elements of Informed Consent, we noted that neither the basic elements nor the additional elements of informed consent contain any requirement to inform decision makers about the right to limit or restrict the use of organs and/or tissue. As noted above, we believe there should be a minimum standard for informed consent. However, there is no reason to introduce unnecessary information that may adversely affect the donation decision. The disclosure of the decision maker's right to limit or restrict the use of organs and/or tissue could result in unreasonable or unnecessary limitations on donated organs and tissue. Since this could have an adverse effect on organ and/or tissue donation and availability, this requirement has been removed from the final rule. We believe it should be up to each individual OPO if and how the right to limit or restrict the use of donated organs and/or tissue should be handled.

Evaluation and Management of Potential Donors and Organ Placement and Recovery (Proposed § 486.344)

We proposed that an OPO must have written protocols for donor evaluation and management and organ placement and recovery that meet current standards of practice and are designed to maximize organ quality and optimize the number of donors and the number of organs recovered and transplanted per donor.

We also proposed that an OPO's medical director must be responsible for ensuring that donor evaluation and management protocols are implemented correctly and appropriately to ensure that every potential donor is thoroughly assessed for medical suitability for organ donation and clinically managed to optimize organ viability and function. We proposed that an OPO must implement a system that ensures that the medical director or other qualified physician is available to assist in the medical management of a donor when the surgeon on call is unavailable.

We proposed that to evaluate a potential donor, an OPO must: Verify that death has been pronounced according to applicable local, State, and Federal laws pertaining to organ donation; determine whether there are conditions that may contraindicate donation; if possible, obtain the potential donor's medical and social history; review the potential donor's medical chart and perform a physical examination of the donor; and obtain the donor's vital signs and perform all pertinent tests.

We proposed that the OPO must: Arrange for screening and testing of the donor for infectious disease according to current standards of practice, including testing for the human immunodeficiency virus (HIV); ensure that screening and testing of the donor (including point-of-care testing and blood typing) are conducted by a laboratory that is certified in the appropriate specialty or subspecialty of service in accordance with the Clinical Laboratory Improvement Amendments (CLIA) regulations; ensure that the donor's blood is typed using two separate blood samples; and document the donor's record with all test results, including blood type, before organ recovery.

We also proposed requiring OPOs to collaborate with transplant programs by establishing protocols that define the roles and responsibilities of the OPO and the transplant program for all activities associated with donor evaluation, donor management, organ recovery, and organ placement. We

proposed that the protocol for organ placement must include procedures to ensure that the blood type of the donor is compared with the blood type of the intended recipient by two OPO staff members before organ recovery takes place and that documentation of the donor's blood type must accompany the organ to the hospital where the transplant will take place. Further, we proposed that the protocols must be reviewed periodically with the transplant programs to incorporate best practices in the field and maximize organ donation.

We proposed a requirement for OPOs for documentation of recipient information. We proposed that prior to recovery of an organ for transplantation, an OPO must have written documentation from the OPTN showing, at a minimum, the intended recipient's position on the waiting list in relation to other suitable candidates and the recipient's OPTN identification number and blood type.

We also proposed that an OPO must have a system to allocate donated organs among transplant patients that is consistent with the rules and requirements of the OPTN, as defined in § 486.320. Finally, we proposed that an OPO must develop and implement a protocol to maximize placement of organs for transplantation.

Comment: Some commenters objected to our proposal that the medical director would be responsible for ensuring that donor evaluation and management protocols are implemented correctly and appropriately to ensure that every potential donor is thoroughly assessed for medical suitability for organ donation and clinically managed to optimize organ viability and function. Commenters pointed out that some medical directors are transplant surgeons who may have expertise only in their own specialty. Commenters said that such medical directors might rule out a case before all options have been exhausted and that leaving the rule-in/out decision to one individual may do a disservice to the goal of maximizing organ utilization.

Response: We believe the commenters may have misunderstood our proposed language. We were not proposing to require that the OPO medical director be directly responsible for determining medical suitability for every potential organ donor. Rather we proposed (and are finalizing) language at § 486.344(a) to require the medical director to be responsible for ensuring that the OPO's protocols for evaluating and managing potential donors are implemented correctly.

To accomplish this, we expect that a medical director will: Fulfill his or her own responsibilities under the OPO's protocols for donor evaluation and management; review organ donation cases periodically or in real time to determine whether the OPO's protocols were followed correctly (both in regard to the evaluation of potential donors and the clinical management of potential donors to ''optimize organ viability and function'') and, as needed, work with the OPO procurement coordinators and other OPO staff to improve the protocols, as well as implementation of the protocols.

Comment: A few commenters viewed our proposal to make the OPO medical director responsible for implementation of protocols for donor evaluation and management as inappropriately interfering in the transplant surgeon's judgment and relationship with his or her patient. One commenter said that our requirement would interfere with the transplant surgeon's/physician's decision whether to accept a particular organ for transplant into a particular patient.

Response: Under our proposal, a protocol for donor evaluation would include only the evaluation activities necessary to determine whether a patient is medically suitable for organ donation, such as reading the patient's chart, examining the patient, and ordering or performing any necessary lab work or other testing. The protocol would not cover evaluation of an individual organ's suitability for transplantation into a specific patient, which is the purview of the individual patient's transplant surgeon. We have changed the title of § 486.344 and § 486.344(b) and other wording throughout the regulatory text to clarify that the required protocols are for evaluation and management of *potential* donors.

Comment: Commenters said that OPOs should be able to decide who should provide assistance in clinical management of donors. Several commenters said that the OPO medical director may not always be the best physician to assist with donor management challenges faced in the field. Commenters said that a hospital's critical care intensivist physicians may be in a better position to look objectively at the donor picture and provide management expertise. However, the commenter also stated that some OPOs have highly trained clinical experts who function in the role of donor management consultants on a case-by-case basis within their OPOs and these OPOs have very high organs-per-donor yields. The commenter said that other OPOs may consult with the intensivist groups at individual hospitals on a case-by-case basis to receive input on management and that these OPOs also have high organs per donor yields.

Response: We agree with the commenters that the OPO medical director may not always be the best individual to consult on issues of donor management. We proposed that ''an OPO must implement a system to ensure that the medical director or other qualified physician is available to assist in the medical management of a donor when the surgeon on call is unavailable.'' Our intention was simply to ensure that assistance in managing a potential donor would be available to the OPO's procurement coordinator if the surgeon on call was unavailable. However, OPOs clearly have the expertise to determine whether the medical director, a critical care intensivist physician, or another clinical expert is the best person to assist a procurement coordinator in medically managing a potential donor. Many OPOs with high organs-per-donor outcomes utilize the services of a non-physician clinical expert. Therefore, in § 486.344(a)(2) we are removing the word ''physician'' after the words ''or other qualified'' and inserting ''individual. The language in this final rule provides OPOs with the flexibility to determine who will assist in medically managing potential donor cases. To provide OPOs with the highest degree of latitude possible, we will not define ''clinical expert'' or ''other qualified individual.'' Instead, under this final rule we require an OPO, in their policies and procedures, to define who is considered a ''qualified individual'' based on current standards of practice and implement a system that ensures that a qualified physician or other qualified individual is available to assist in the medical management of a donor when the surgeon on call is unavailable.

Comment: One commenter suggested that that the phrase in 486.344(b)(1), ''pertaining to death and/or declaration of death,'' be substituted for ''pertaining to organ donation.''

Response: We do not believe it is necessary to revise the text as suggested by the commenter. Stating that when pronouncing death, an OPO must abide by ''applicable'' State, Federal, and local laws and, in addition, describing the laws as ''pertaining to death/and/or declaration of death'' is unnecessarily descriptive. In fact, after reviewing our proposed language in § 486.344(b)(1), we have concluded that the phrase ''pertaining to organ donation'' is not

necessary and could be confusing. Therefore, we have changed the language in 486.344(b)(1) to read simply, ''Verify that death has been pronounced according to applicable local, State, and Federal laws.''

Comment: One commenter said that the proposed requirement at 486.344(b)(2) for an OPO to ''determine whether there are conditions that may contraindicate donation,'' is overly broad and too generally stated. The commenter stated that it is unclear whether the language refers to the overall quality of the donor or to organ-specific decisions.

Response: We are not adopting this comment. We do not believe the requirement is overly broad, as all donors must be evaluated by the OPO for clinical contraindications to donation. Further, we have changed the language to reflect the OPTN's requirement that potential donors be evaluated to determine whether there are conditions that influence donation. However, we have added the word ''potential donor'' to the title of paragraph § 486.344(b) to clarify that the evaluation pertains only to the donor, not to specific organs.

Comment: One commenter said that with respect to the requirement for OPOs to ''obtain the donor's vital signs and perform all pertinent tests,'' CMS should require that the activities be performed according to current OPTN standards.

Response: As we have stated previously, the ''rules and requirements of the OPTN'' are those OPTN policies and bylaws that have been approved formally by the Secretary by being published in the **Federal Register** with an opportunity for the public to comment. Therefore, simply adding language to a regulation that states OPOs must adhere to OPTN standards is not sufficient. We must include the specific language of the OPTN standard as a rule in order to make the standard a requirement.

Comment: One commenter said that we should not use the term ''waiting list'' in the final rule because a ''waiting list'' is a pool of transplant candidates, whereas, in the OPO community, the term ''match run'' is commonly used to describe a list generated to rank and match potential transplant recipients with the donor's specific characteristics. The commenter suggested that we use the terms ''match run'' or ''match program'' instead of ''waiting list.''

Response: We agree with the commenter that the use of the term ''waiting list'' is misleading when used in this context. However, we will not use the term ''match run'' or the term ''match program'' because of the possibility that the OPTN may change its terminology. Therefore, in this final rule, we have revised § 486.344(e) to require OPOs to have written documentation from the OPTN showing, at a minimum, the intended recipient's ranking in relation to other suitable candidates.

Comment: Some commenters disagreed with our proposal specifying that prior to recovery of an organ for transplant, the OPO must have documentation from the OPTN showing, at a minimum, the intended organ recipient's position on the waiting list in relation to other suitable candidates and the recipient's OPTN identification number and blood type. The commenters said that it would be impossible for OPOs to meet this requirement because the OPO may not know the identity of the recipient prior to organ recovery.

Response: Our proposal was intended only to require OPOs to obtain documentation of the recipient's information when the identity of the recipient is known prior to recovery of the organ. Clearly, if the recipient has not yet been identified, the OPO cannot obtain such documentation. We have clarified our language at § 486.344(e) to say, ''If the intended recipient has been identified prior to recovery of an organ for transplantation, the OPO must have written documentation from the OPTN showing, at a minimum, the intended recipient's ranking in relation to other suitable candidates and the recipient's OPTN identification number and blood type.''

Comment: A commenter recommended that to align practices between OPO, OPTN, and transplant center policies for blood type verification, CMS should not include the following proposed sentence in the final rule: ''The protocol for organ placement must include procedures to ensure that the blood type of the donor is compared with the blood type of the intended recipient by two OPO staff.'' The commenter recommended that instead, CMS should add the following sentences to the final rule, ''The OPO shall have two separate determinations of the donor's ABO type prior to incision for ensuring the accuracy of the donor's ABO during the OPTN match run. Each OPO shall establish and implement a procedure for proving on-line verification by another OPO staff person other than the one initially entering the donor's ABO into the OPTN donor's registration. The protocol for organ placement must ensure that all donor versus transplant candidate blood type verification will be completed through the OPTN match run.''

Response: The language recommended by the commenter was taken from the OPTN policies for verification of donor blood type. While we believe it is advisable in many cases for us to align our requirements for OPOs with the policies of the OPTN and the policies and procedures of transplant centers, we believe the recommended language is too specific and too prescriptive. If the OPTN were to change these detailed policies, we could change our requirements, if necessary, only by initiating rulemaking. However, in this final rule, we have added additional detail to our proposed requirement that we believe will satisfy the intent of the commenter. Therefore, this final rule requires an OPO to have a protocol to ensure that: (1) The OPO is responsible for two separate determinations of the donor's blood type; (2) if the identity of the intended recipient is known, the OPO has a procedure to ensure that prior to organ recovery, an individual from the OPO's staff compares the blood type of the donor with the blood type of the intended recipient, and the accuracy of the comparison is verified by a different individual; and (3) documentation of the donor's blood type accompanies the organ to the hospital where the transplant will take place. Note that in meeting the requirements of paragraph (2), the individual who verifies the donor's blood type does not have to be from the OPO because a second member of the OPO's staff may not be available for verification. Therefore, as an example, an individual on the staff of the donor hospital could verify the donor's blood type.

Comment: A commenter objected to our use of the term ''best practices'' in 486.344(d)(2). The commenter said that the use and interpretation of ''best practices'' in this context would be problematic, since there is no consensus on ''best practices'' for donor evaluation and management or organ placement and recovery. The commenter said that in using the term ''best practices,'' CMS would be mandating ''extremely unclear'' standards subject to the interpretation that OPOs should be held to standards far in excess of ''typical standards.''

Response: We agree with the commenter that the use of the term ''best practices'' could be problematic. We will rephrase our proposed language to clarify our intention that in collaboration with their transplant centers, OPOs must regularly reassess their protocols for potential donor evaluation and management and organ

placement and recovery to incorporate practices that have been shown to maximize organ donation and transplantation. Therefore, we have removed the term ''best practices'' from the language and moved the language in the proposed § 486.344(d)(2) to § 486.344(d)(3) in the final rule. Thus, in § 486.344(d)(3), we require OPOs to review their established protocols regularly with their transplant programs ''to incorporate practices that have been shown to maximize organ donation and transplantation.''

Section 486.346 Condition: Organ Preparation and Transport

We proposed that OPOs must arrange for organs to be tested for infectious diseases according to the current standards of practice by appropriately certified laboratories.

We also proposed that OPOs would be required to send complete documentation of donor information with the organ(s) to the transplant center and that the information must include donor evaluation, the complete record of the donor's management, as well as documentation of consent, pronouncement of death, and determination of organ quality. In addition, we proposed requiring that two OPO staff members must verify the accuracy of the information being sent with the organ(s).

We proposed that OPOs develop and follow a written protocol for packaging, labeling, handling, and shipping organs in a manner that ensures that they arrive without compromising the quality of the organ or the health of the recipient. We proposed that this protocol must include procedures to check the accuracy and integrity of labels, packaging, and contents prior to transport, including verification by two OPO staff members that information listed on the labels is correct. We proposed that all of the packaging for the organ(s) must be marked with the identification number, specific contents, and donor's blood type.

We received several comments on this section. Commenters expressed a great deal of concern over how some of the language could affect the donation process, as well as the OPO's potential liability under state tort laws. We have summarized those comments below and explained the changes we have made to the regulation text.

Comment: One commenter questioned the need for this proposed section. The commenter noted that UNOS had determined ''that the root cause of many of these errors involved the reuse of organ shipping boxes.'' Commenters also noted that the OPTN/UNOS Board of Directors had instituted policy changes that prohibit reuse of organ shipment boxes and implemented requirements that are the same as those proposed by CMS.

Response: Although the OPTN/UNOS Board of Directors have instituted policy changes similar or even identical to those in this provision, this section is needed to make them mandatory for the OPOs and to enable CMS to enforce these requirements. Thus, we will be finalizing this condition with only the three revisions discussed in the comments and responses below.

Comment: A commenter noted that the proposed rule would require two OPO staff members to verify that the labels, packaging, and contents are correct prior to transport. However, the commenter said that there may be only one OPO staff member present in the operating room when the organs are packaged. The commenter said that we should not require both individuals who check the labels, packaging, and contents to be OPO employees.

Response: We agree with the commenter. There may be times when two OPO staff members are not available to verify that organs are correctly packaged and labeled. Thus, we will revise the language in the proposed § 486.346(c) to read, ''* * *. The protocol must include procedures to check the accuracy and integrity of labels, packaging, and contents prior to transport, including verification by two individuals, one of whom must be an OPO employee, that information listed on the labels is correct.''

Comment: A commenter expressed concern about ''language suggesting that the OPO would be held responsible for ensuring that an organ would not compromise the health of a recipient.'' The commenter stated that the transplant center decides whether to transplant a particular organ into a particular recipient. Thus, the transplant center's decision affects the recipient's health, not any decision or action by an OPO. The commenter pointed out that the OPO cannot always control what happens to the organ once it leaves the OPO for transport to the transplant hospitals.

Response: We understand the commenter's concern regarding the proposed language, ''The OPO must develop and follow a written protocol for packaging, labeling, handling, and shipping organs in a manner that ensures their arrival without compromise to the quality of the organ or *health of the recipient.*'' [Emphasis added.] The OPO is responsible for ensuring that an organ(s) arrive at the transplant center ''without compromise to the quality of the organ,'' because it is the OPO that labels, packages, handles, and ships the organ(s) to the transplant center. However, the transplant center, specifically the transplant surgeon, makes the decision to transplant a particular organ(s) into a particular patient and, thus, is responsible for the health of the recipient. Thus, we have revised § 486.346(c) by deleting the words ''or health of the recipient.''

Comment: A commenter submitted a new form that he developed that would be sent to UNOS with the intent that copies would be kept with the UNOS donor documentation at the transplanting OPO.

Response: CMS is not the appropriate agency to review the submitted form. Therefore, we have forwarded the form to HRSA for review by the OPTN. This regulation does not require OPOs to use a specific form.

Comment: One commenter said that there should be an ''enforceable consequence'' for making errors in the packaging and transporting of organs. If the errors continued, the commenters indicated, ''immediate decertification should be implemented even if the OPO is meeting the established criteria to maintain its certification.''

Response: We agree with the commenter that there must be an enforceable consequence for making errors in the packaging and transportation of organs. As discussed earlier in this preamble, OPOs are required to satisfy all requirements of the conditions for coverage in this final regulation. An OPO's failure to satisfy any of these requirements, including those in this condition, could result in action being taken by CMS. The severity of the action depends upon the severity of the deficiency. However, an immediate de-certification would be based on urgent need. (See discussion in this preamble of the definition of ''urgent need'' in ''Definitions (proposed § 486.302)'' and ''De-Certification (proposed § 486.312).''

Condition: Quality Assessment and Performance Improvement (QAPI) § 486.348

We proposed that OPOs must develop, implement, and maintain a comprehensive, data-driven QAPI program that is designed to monitor and evaluate performance of all donation services, including services provided under a contract or an agreement. We proposed that the QAPI program must include objective measures to evaluate and demonstrate improved performance with regard to OPO activities. We included examples of components that

should be included in a QAPI program: hospital development, designated requestor training, donor management, timeliness of on-site response to hospital referrals, consent practices, organ recovery and placement, and organ packaging and transport. (Hospital development refers to an OPO's activities related to developing good working relationships with the hospitals with which the OPO has an agreement.) We also proposed requiring OPOs to take actions that will result in performance improvements and to track performance to ensure that improvements are sustained.

We proposed that each OPO must conduct death record reviews as part of its QAPI program. We proposed requiring OPOs to conduct death record reviews in every Medicare and Medicaid participating hospital in its service area that has a Level I or Level II trauma center or 150 or more beds (unless the hospital has a waiver to work with another OPO), with the exception of psychiatric and rehabilitation hospitals. We proposed that when an OPO identifies missed opportunities for donation, it must implement actions to improve its performance.

We proposed defining an adverse event ''as an untoward, undesirable, and usually unanticipated event that causes death or serious injury or the risk thereof.'' We indicated that for OPOs, adverse events would include, but were not limited to transmission of disease from a donor to a recipient, avoidable loss of a medically suitable potential donor for whom consent for donation has been obtained, or delivery to a transplant center of the wrong organ or an organ whose blood type does not match the blood type of the intended recipient.

We proposed that an OPO be required to establish a written policy to address adverse events that occur during any phase of an organ donation case. We proposed that at a minimum, the policy must address a process for the identification, reporting, analysis, and prevention of adverse events. Under the proposed rule, an OPO would be required to conduct a thorough analysis of any adverse event they identify and use their analysis to change its policies and practices to prevent any reoccurrence of similar incidents. In addition, we proposed that an OPO be required to report an adverse event to us within 10 business days of becoming aware of the event and provide written documentation of the investigation and analysis of the adverse event to us within 15 days of becoming aware of the event.

Comment: Many commenters wrote to us expressing their approval of the requirement to establish a QAPI program. Most who commented on the proposed QAPI requirement specifically endorsed the language in proposed § 486.348(a). One commenter suggested that an OPO QAPI program should include specific goals to enhance consent rates and the quality of donor management.

Response: We appreciate the overwhelming support expressed by commenters for a QAPI program requirement. We agree that increasing consent and the quality of donor management are worthy goals for OPO QAPI programs. In fact, the regulations text of the February 4, 2005 proposed rule lists examples of OPO activities for which OPOs can develop objective measures to evaluate and demonstrate improved performance and includes donor management and consent practices. However, in this final rule, we do not mandate that OPOs include any specific activities in their QAPI programs. OPO operations and function vary throughout the country, along with the demographics within each OPO's service area. We believe it is important to give an OPO sufficient flexibility to design its QAPI program in a manner that will raise its level of performance, given the OPO's specific weaknesses and strengths. Therefore, we are finalizing § 486.348(a) as proposed.

Comment: Most commenters supported our proposal to require an OPO to perform death record reviews in every Medicare and Medicaid participating hospital in its service area that has a Level I or Level II trauma center or 150 or more beds (unless a hospital has a waiver to work with another OPO), with the exception of psychiatric and rehabilitation hospitals. However, some commenters recommended that we change the language slightly so that the requirement would read, ''150 or more acute care beds, a ventilator and an ICU * * *''

Response: We believe this change is reasonable in part, because a hospital without a ventilator would be unable to maintain a potential donor, and a hospital without an intensive care unit is unlikely to have 150 or more beds. However, we disagree that death record reviews should be limited to hospitals with 150 or more ''acute care'' beds. Medicare does not recognize the term ''acute care bed'' for certification purposes. For example, in recent years, many hospitals have been converting some hospital units to ''sub-acute care units'' or ''a hospital within a hospital.'' Unless such a unit or ''hospital'' becomes a separate provider and provider type (such as a skilled nursing facility), Medicare regards the beds in these units or ''hospitals'' as hospital beds. However, an OPO might argue that such beds are not ''acute care'' beds. We believe using this term would lead to confusion and could lead OPOs to overlook some hospitals with significant donor potential. Therefore, we have modified the requirement to say that an OPO is required to perform death record reviews in hospitals with 150 or more beds, a ventilator, and an intensive care unit.

Comment: Some commenters recommended that we establish requirements for the frequency of conducting death record reviews. One commenter stated that some OPOs do not perform death record reviews, even in their large hospitals and that other OPOs conduct death record reviews only annually. One commenter suggested that we should require OPOs to perform death record reviews monthly for hospitals with 200 or more beds that have an emergency department, an operating room, and an intensive care unit.

Response: As we stated in the preamble to our February 4, 2005 proposed rule, death record reviews are a critical component of any QAPI program. They form the foundation every OPO needs to assess its own performance and the performance of its hospitals so that missed opportunities for donation can be identified and changes made to address the problem. It is important for death record reviews to be performed frequently in large hospitals with the greatest donation potential. HRSA and the CMS OPO Coordinators report that many successful OPOs perform death record reviews weekly in their large hospitals. Some OPOs even perform death record reviews in ''real time.''

Therefore, we agree with the commenters who urged us to establish a time frame for death record reviews. However, we do not agree with the commenter who suggested 200 beds as the appropriate parameter. A recent study found that 19 percent of hospitals account for 80 percent of potential donors. Hospitals with 150 or more beds were more likely than smaller hospitals to have both potential donors and actual donors. (E Sheehy, S Conrad, L Brigham, et al, *Estimating the Number of Potential Organ Donors in the United States*; New England Journal of Medicine, Vol. 349: 667–674, August 14, 2003). We believe that performing death record reviews monthly in these large hospitals is both reasonable and absolutely necessary for an OPO to

determine where it needs to improve. Therefore, in this final rule, we require OPOs to perform death record reviews at least monthly in every Medicare and Medicaid participating hospital in its service area that has a Level I or Level II trauma center or 150 or more beds, a ventilator, and an intensive care unit (unless a hospital has a waiver to work with another OPO), with the exception of psychiatric and rehabilitation hospitals.

Comment: Many commenters said that the performance of death record reviews should be standardized, so that death record review practices are uniform and the reviews are performed correctly. Some commenters suggested that HRSA should establish a technical assistance program to train OPOs; one commenter said that CMS should hire staff to review results of OPO medical record reviews.

Response: We disagree that the Federal Government should be responsible for teaching the OPOs how to conduct death record reviews.

Each OPO should put into place a system to make sure that staff who perform death record reviews are qualified and trained to perform the reviews correctly. Further, we would expect that as part of its QAPI program, every OPO would have a procedure to check the accuracy of the death record reviews after they are performed. Therefore, we are not adopting the commenters' suggestion.

Comment: A few commenters were concerned about using data obtained from death record reviews performed by OPOs. They said that the data, especially data concerning missed referrals, should not be used in the outcome measures until there is a uniform death record review procedure used by all OPOs. One commenter said there could be inter-OPO variations.

Response: Although there is some potential for intra-and/or inter-OPO variability in performing death record reviews, we would point out that any system for conducting death record reviews has some potential for variability. However, we believe that death record reviews will increase organ donation because these reviews will enable OPOs to identify any problems that result in missed opportunities for donation so that they can make changes to address those problems. In addition, since the information in the OPO's death record reviews will be included in the statistical measures for re-certification, it is in each OPO's best interest to develop procedures and processes to ensure that their death record reviews are accurate and valid.

Further, we are adopting the same definition of ''eligible deaths'' that the OPTN uses. This should promote consistency in the reporting of the data if the death record reviews are conducted by staff with the appropriate background and training. As we stated earlier in this preamble, the CMS Regional OPO Coordinators are available to work with the OPOs in implementing their QAPI programs, including the OPOs' performance of death record reviews. Also, we will work with HRSA to determine whether a procedure can be established to assist OPOs that are not sure whether a particular death was an eligible death.

Comment: A few commenters said that there should be some type of validation of the data from death record reviews. Two commenters noted that the current OPTN database requires additional validation. One commenter suggested that CMS surveyors compare death record review results with the SRTR's research on eligible deaths.

Response: We appreciate the recommendation that death record review results should be validated. However, we must point out that OPOs are responsible for ensuring that the data they submit to the OPTN are valid. As stated above, we expect that every OPO will have a procedure to check the accuracy of the death record reviews after they are performed.

Also, it is important to note that the donation rate outcome measures in this final rule are based on *both* self-reported data and the SRTR statistical methodology. Although the number of ''eligible deaths'' is reported by OPOs to the OPTN, the number of ''notifiable deaths'' (the subset of all in-hospital deaths age 0–70 with no exclusionary medical diagnoses for possible donation) is calculated by the SRTR based on data from the Office of Analysis and Epidemiology, National Center for Health Statistics, Centers for Disease Control and Prevention. By assessing an OPO's reported number of eligible deaths in view of its notifiable deaths, the SRTR can ascertain whether the data reported by an OPO are likely to be correct. If the data indicate that an OPO may not be reporting the number of eligible deaths in its donation service area correctly, CMS will regard this information as a complaint and will conduct a complaint investigation of the OPO.

Comment: One commenter suggested we add ''* * * language to hold hospitals accountable to provide computerized mortality lists within 15 days of the last day of the month and work to provide for timely review of records to all donation agencies.'' This same commenter also encouraged the ''* * * hiring of CMS representatives to begin to review results of OPO medical record reviews and reports to hospitals and for CMS to set guidelines on how and when those fines would be established.''

Response: We support hospitals providing timely information to the OPOs. However, this final rule is a regulation for OPOs; hospital performance is not within the purview of this regulation.

Adverse Event Definition

Comment: Some commenters requested that CMS clarify the definition of ''adverse event.'' Commenters stated that the proposed definition was too broad or that it should be limited to situations where there was an immediate risk to the patient.

Response: We agree that the definition of ''adverse event is broad and could be subject to varying interpretations. We would expect that as part of an OPO's effort to develop, implement and maintain a comprehensive, data-driven QAPI program, the OPO would customize the definition of ''adverse event'' in their written policies to meet their own needs, as well as ensure compliance with the QAPI requirements. Therefore, we have finalized the definition as proposed.

Adverse Event Reporting

Comment: While most of the comments were supportive of adverse event identification and analysis, many of the commenters were concerned about the reporting requirement. Many commenters said that their major concerns were related to the mechanical issues of reporting. Their primary concern, however, was whether CMS would be able to keep the information confidential or whether we would be required to release it under the Freedom of Information Act (FOIA). Other commenters were concerned about their liability should the information become public. Some commenters were also concerned over how CMS would use the information; specifically, they wanted to know if CMS intended to use the information in future re-certification or designation decisions.

Other specific issues identified by commenters included the need to: Clarify what constitutes a ''business day;'' expand the 5-day timeframe between the initial report and the second report to give the OPO adequate time for a thorough analysis of the incident; and, clarify CMS's intention to publish or share this information (without identifying information) so that

other OPOs can avoid similar incidents. Commenters recommended that CMS address these specific issues before mandating a requirement of this nature. Commenters also expressed concern regarding the broad approach to addressing adverse events ''that occur during any phase of an organ donation case'' as part of an OPO's QAPI program.

Commenters also noted the proposed rule for Transplant Centers, CMS–3835–P, that was published on February 4, 2005, has a requirement that transplant centers ''establish and implement written policies to address adverse events that occur during any phase of the organ transplantation case.'' (§ 482.96(b)). However, there is no reporting requirement for transplant hospitals that corresponds to the proposed reporting requirement for OPOs.

Response: Based on public comments, we have deleted the reporting requirement in this final rule. We have retained the requirement that OPOs establish and implement written policies to address, at a minimum, the process for identification, reporting, analysis, and prevention of adverse events. We agree that the phrase referring to adverse events ''that occur during any phase of an organ donation case'' needs to be clarified. We believe that an OPO should be responsible for the identification, reporting, analysis and prevention of any adverse events that occur during the organ donation process. We believe that this process begins when an OPO is notified by the hospital or critical access hospital of a death or imminent death and concludes when the organ(s) are delivered to a transplant center. It would also include any adverse events that were identified or occurred at a transplant center but the root cause of the adverse event appears to have occurred before the organ(s) arrived at the transplant center. * * * (should be say anything about organs for research-based on our definition of adverse event it appears it would have to be something that could affect a patient? Also, what about tissue?) Thus, § 486.348(c)(1) will be revised to read ''An OPO must establish written policies to address, at a minimum, the process for identification, reporting, analysis, and prevention of adverse events that occur during the organ donation process.''

We have also retained the requirement that OPOs must conduct a thorough analysis of any adverse event and must use the analysis to affect changes in OPO policies and practices to prevent repeat incidents. Although CMS will not receive written reports from OPOs on identified adverse events, a description of the adverse event, the circumstances surrounding the incident, the OPO's analysis and subsequent policy and practice changes must be available on-site at the OPO for the OPO coordinator's and surveyor's use in reviewing this information and monitoring the OPOs' response to an adverse event.

Additional Conforming Changes (§ 413.200, § 413.202, § 441.13, and § 498.2)

In addition to the changes discussed above, we also proposed a number of conforming and correcting amendments.

As discussed previously, we proposed making changes to § 498.1 to remove OPOs from the definition of ''supplier'' under part 498. Since we proposed an alternate process for OPOs to appeal a de-certification on substantive and procedural grounds, OPOs would not need the part 498 appeals process.

We also proposed to correct a number of cross-references related to the certification of OPOs. In § 441.13(c), and in § 498.2, we proposed to change references to ''part 485, subpart D'' to read, ''part 486, subpart G''. On September 29, 1995 (60 FR 50447), the conditions for coverage for OPOs was re-designated from part 485, subpart D to part 486, subpart G. When this re-designation occurred, these two references were not amended to reflect the change.

In addition, § 413.202 refers to OPOs ''as defined in § 435.302 or this chapter''. This is an error. We proposed correcting this reference to read ''as defined in § 486.302 of this chapter''.

We received no public comments on these conforming changes in the proposed provisions. Therefore, we are adopting the provisions as final without change.

Living Donation

In the February 4, 2005 proposed rule, we noted that living donation was becoming increasingly important. In 2001, for the first time, living donors outnumbered deceased donors, with 6,445 living donors and 6,077 deceased donors. In 2004, there were 7,150 living donors and 7,004 deceased donors. However, OPOs do not play a role in living donation, with the exception of two pilot programs in which OPOs assist transplant hospitals by arranging for medical and psychological evaluations of living kidney donors. We stated that the mission of the OPOs was to increase the number of deceased donors. However, in view of the increasing importance of living donation, we specifically requested public comments on what, if any, role OPOs should play in living donation.

Comment: Commenters had very diverse views on what role, if any, an OPO should play in living donation. Many commenters recognized the importance of living donation but stated that the OPOs' core or primary mission is increasing donation from deceased donors. Some commenters expressed concern that living donation could divert resources that should be directed to increasing deceased donation. Further, commenters did not want living donation to play any part in how we evaluate an OPO's performance.

Some commenters were strongly opposed to OPOs having any role. One commenter noted that the OPOs do not have the skills or staffing to address living donors' needs and that this could strain the OPO's relationships with their hospitals. Some commenters felt that if the OPOs played any role, it should be a very limited one. Another commenter suggested that OPOs simply refer any inquiries to their transplant centers.

One commenter wanted to limit the OPOs that could be involved in living donation. That commenter noted that devoting resources to living donation would only divert the OPO's resources from increasing deceased donation. Therefore, unless an OPO is in the top one-third of performing OPOs, an OPO should not be required to play any role in living donation. This commenter said that living donation should be arranged between the potential donors and the transplant center.

Conversely, one OPO indicated that some OPOs are recognized as the sources of information on both deceased and living donation and receive many questions from both individuals and volunteer groups concerning living donation. The commenter said that OPOs should play a coordination role, especially when it concerns unrelated living donors. One commenter suggested that OPOs could play a role by including information on living donation in their public education efforts. Other commenters simply said that OPOs should play a more active role in living donation.

Response: We agree that living donation should not play any role in the evaluation of an OPO's performance. As many commenters stated, the OPOs' core mission is increasing donation from deceased donors. Therefore, we will continue to evaluate OPOs only on their performance in regard to deceased donation.

Further, we share the concern some commenters expressed that an OPO's involvement in living donation could result in the diversion of resources from

its core mission. As we stated in the proposed rule, given the demonstrated risks to living donors (primarily living liver donors), we believe that living donation should remain a medical decision between individuals interested in donating and their physicians. Thus, our expectation is that OPOs will have only limited involvement in living donation, and we will not be including any requirement concerning living donation in this final regulation.

Public Education

In the February 4, 2005 proposed rule, we noted that the current regulations contained a requirement for professional education but no requirement for public education. We also noted that most OPOs were aware of how important public education is in ''reaching ethnic populations, dispelling myths about organ donation, and addressing other issues that create barriers for consent to donation.'' However, we acknowledged that some researchers believe that available funding should go to basic research, professional education, and hospital development rather than public education. We said, ''While we believe that systematic efforts by OPOs to identify specific barriers to donation, along with public education programs designed to address those barriers, may result in increased rates of consent to donation among targeted populations, the OPO community appears to lack consensus about this issue.'' Thus, we specifically requested comments on whether we should require OPOs to conduct public education based on systematic evaluation of specific barriers to donation within their individual service areas.

Comment: Many commenters stated that they were very supportive of OPOs conducting public education and believed that it was very important in increasing donation. Some commenters noted that they had already seen increases in individuals signed up for donor registries due to public education. Another commenter noted that it was important to conduct public education in addition to professional education. However, one commenter noted that it can be difficult to determine the effectiveness of public education and other commenters noted that public education is really a long-term process, and the positive effects may not be seen for months or years.

Many commenters were supportive of including a general requirement in this final regulation for OPOs to provide public education. Some commenters wanted the requirement to be more specific, such as assessing and targeting or focusing on specific needs in an OPO's donation service area. One commenter said that we should require OPOs to include their public education efforts in their QAPI programs. Another commenter expressed concern that the lack of a requirement for public education in CMS regulations may hinder or even discourage public education efforts by OPOs. Other commenters believed that even if we did not make this a requirement, we should encourage OPOs to conduct public education.

Response: Although we agree with the commenters who emphasized the importance of public education, we also agree with the commenter who said that it is difficult to determine the effectiveness of public education. Clearly, public education is important for increasing public awareness of the importance of donation, and it appears that most, if not all, OPOs conduct some public education efforts. However, we believe that OPOs need the flexibility to decide how they will use their educational resources. Many OPOs may need to devote resources to public education; however, other OPOs may have a greater need for professional education. Thus, although we certainly encourage OPOs to assess the needs for public education in their donation service areas and address them and appreciate the comments we received, we will not be incorporating a requirement for public education in this final regulation.

III. Provisions of the Final Rule

In this final rule we are adopting the provisions as set forth in the February 4, 2005 proposed rule with the following revisions:

Amend § 486.301, ''Basis and scope'' by revising paragraph (b)(4) to clarify that the scope of the subpart sets forth the requirements for an OPO to be re-certified.

Amend 486.302, ''Definitions'' by—

- Revising the definition of ''certification'' with minor clarifying changes that are discussed in this preamble under ''Certification (proposed § 486.303).''
- Amending the definition of ''de-certification'' by removing language related to specific conditions, measures, and requirements and revising it so to be consistent with the definition of ''certification.''
- Amending the definition of ''designated requestor'' by adding language to state that a ''designated requestor'' is also known as an ''effective requestor.''
- Revising the term ''service area'' to read ''donation service area (DSA)'', so that our terminology is consistent with the terminology generally used and accepted in the OPO and transplant communities. We have adopted the definition as proposed.
- Revising the definition for ''re-certification cycle.''
- Adding the following definitions to this final rule: ''donor after cardiac death'', ''eligible death'', ''eligible donor'', ''expected donation rate'', ''observed donation rate,'' and ''standard criteria donor (SCD)'' These terms were not proposed in our February 4, 2005 rule. Because we will be using data from the OPTN and the SRTR in assessing whether OPOs have satisfied these outcome measures, we are adopting the definitions currently used by the OPTN and SRTR in their statistical evaluation of OPO performance.
- Adding the term ''urgent need''. This occurs when an OPO's noncompliance with one or more conditions for coverage has caused, or is likely to cause, serious injury, harm, impairment, or death to an organ recipient.

Amend § 486.303, ''Requirements for certification'' by—

- Revising to make conforming changes we made to § 486.312 (De-certification).
- Revising paragraph (a) to state that in order to be certified as a qualified OPO, an OPO must have received a grant under 42 U.S.C. 273(a) or have been certified or re-certified by the Secretary within the previous 4 years as being a qualified OPO.
- Revising § 486.304 *''Requirements for Designation''* by moving some standards to other conditions of coverage or deleting them. We moved the requirements for designation at § 486.304(a) through (c)(1) and combined them with the requirements for certification at § 486.303. We deleted the requirements at § 486.304 (c)(2) through (c)(7) that specify elements of the agreement. The remaining elements of the agreement with CMS specified at § 486.304(c)(3) through (c)(7) are standard elements of provider/supplier agreements with CMS and will be addressed in manual instructions. The requirements at § 486.304(d) Application for designation has been moved to § 486.316 Re-certification and competition processes. Finally, the requirements at § 486.304(e) Designation periods have been moved to § 486.308. The changes are identified in the following crosswalk:

Proposed	Final
§ 486.304(a)–(c)(1)	Moved to § 486.303.
§ 486.304(c)(2)–(c)(7)	Deleted.

Proposed	Final
§ 486.304(d)	Moved to § 486.316.
§ 486.304(e)	Moved to § 486.308.

Amend § 486.306, ''OPO service area size designation and documentation requirements'' by revising paragraph (d)(2) to permit an exception for an OPO whose service area includes Hawaii and does not include any part of the continental United States.

Amend § 486.308, ''Designation of one OPO for each service area'' by—

• Redesignating § 486.308(b) through § 486.308(f) as § 486.308(c) through § 486.308(g) and adding § 486.308(b). Newly added paragraph (b) was relocated from § 486.304(c) as part of our reorganization and clarification in this final rule of the sections that address certification and designation.

Amend § 486.309, ''Re-certification from August 1, 2006 through July 31, 2010'' to specify that OPOs that were certified by CMS in the past and currently have agreements with the Secretary are re-certified August 1, 2006 through July 31, 2010 and the current agreements will be extended through January 31, 2011.

Amend § 486.310, Changes in control or ownership or service area by clarifying that this section applies to changes in the control over an OPO, as well as changes in ownership or in an OPO s service area.

Amend § 486.312, ''De-certification'' by—

• Clarifying in paragraph (b) that de-certification due to involuntary termination of an agreement occurs ''during the term of the agreement.''

• Clarifying paragraph (c) de-certification due to non-renewal of an agreement. We removed our proposed language ''or if the OPO s designation status has been terminated'' because we have streamlined the requirement by including requirements for designation status at § 486.303. We added language that requires the OPO to meet the requirements for certification at § 486.303. We made these revisions to clarify that CMS's decision not to renew an OPO's agreement is not based on a single requirement but rather is based on multiple outcome measures and other information collected over the course of the 4-year agreement, consistent with statutory requirements.

Amend § 486.314, ''Appeals'' by—

• Revising the appeals section to expand the circumstances under which an OPO can appeal a decertification due to involuntary termination or non-renewal of its agreement with us to include both substantive and procedural grounds. We also establish new procedures for notice of an initial decertification determination, requirements for evidence and the OPO's right to reconsideration. To avoid undue procedural delays, the final rule also establishes a time-sensitive process by which an OPO can request reconsideration, other requirements for filing, and a hearing before a hearing officer. Further, to ensure that protections available in existing regulations were maintained, the appeals process was expanded to specify CMS requirements for reconsiderations, hearings, standards of evidence.

Amend § 486.316, ''Re-certification and competion processes'' by—

• Removing the proposed requirement that all OPO service areas are open for competition at the end of every recertification cycle. Under this final rule, an OPO that meets the following criteria will be re-certified for an additional 4 years and its service area will not be opened for competition if the OPO: (1) Meets all 3 of the outcome measure requirements in 486.318; (2) meets the requirements for certification at 486.303 and (3) has been shown by survey to be in compliance with the conditions for coverage at 486.320 through 486.348.

• Revising the section to establish that the contiguity of a competing OPO s service area to that of an open area is one of the factors that we will consider when selecting the OPO for designation of the open area.

Amend § 486.318, ''Condition: Outcome measures'' by—

• Establishing 3 revised outcome measures for OPOs that differ from what we proposed: (1) Donation rate; (we will account for DCDs and donors over the age of 70 by adding a 1 to both the numerator and the denominator); (2) observed donation rate compared to the expected donation rate, as calculated by the SRTR; and (3) a yield measure for both organs transplanted per donor (including pancreata used for islet cell transplantation) and organs used for research per donor. We are not adopting the proposed outcome measures.

• Removing, from the revised outcome measures, the distinction between kidneys and extra-renal organs, except for OPOs operating exclusively in non-contiguous U.S. States, commonwealths, territories, and possessions.

• Revising the outcome measure for OPOs operating exclusively in non-contiguous U.S. States, commonwealths, territories, or possessions.

Amend § 486.320, ''Condition: Participation in organ procurement and transplantation network'' by revising the section to include language that requires OPOs to ''participate'' in the OPTN.

Amend § 486.322, ''Condition: Relationships with hospitals, critical access hospitals, and tissue banks'' by—

• Revising to clarify that the OPO is required only to offer to provide designated requestor training annually. If a hospital does not want training, the OPO is not required to provide it.

• Revising to require OPOs to cooperate with tissue banks in offering designated requestor training.

Amend § 486.324, ''Condition: Administration and governing body'' by revising to clarify that tissue bank members may be from the OPO's tissue bank or any other tissue bank of the OPO's choice. It is not necessary that the tissue bank member represent all tissue banks in the service area.

Amend § 486.326, ''Condition: Human resources,'' by revising paragraph (b)(1), by inserting the words ''for organ and/or tissue donation'' before ''in a timely manner.''

Amend § 486.328, ''Condition: Reporting of data'' by removing paragraph (d) that requires the OPO to report hospital-specific organ donation data, including organ donor potential and the number of donors, to the public at least annually, because that data is readily available on the SRTR website. We also revised § 486.328(a) to remove the term ''potential donor denominator'' and added the terms ''eligible deaths'' and ''eligible donors''. In addition, in § 486.328(b) we clarified that an OPO must provide hospital-specific organ donation data annually to the transplant hospital with which it has agreements.

Amend § 486.330, ''Condition: Information management'' by adding ''electronic'' before information management system in the introductory text.

Amend § 486.342 ''Condition: Requesting consent'' by revising paragraph (a)(8) to read, ''Contact information for individuals with questions or concerns.''

Amend § 486.344 ''Condition: Donor evaluation and management and organ placement and recovery'' by—

• Removing, the word ''physician'' in paragraph (a)(2) and replacing it with the word ''individual'' to provide OPO's with the flexibility to determine who will assist in medically managing potential donor cases.

• Adding the word ''potential donor'' to the heading of § 486.344(b) to clarify the evaluation pertains only to the donor, not the specific organs.

• Removing the phrase ''pertaining to organ donation'' in paragraph (b)(1) because it is not necessary and could be confusing. We have revised paragraph

(b)(1) to read simply, ''Verify that death has been pronounced according to applicable local, state, and federal laws.''

• Revising paragraph (e) to require OPOs to have written documentation from the OPTN showing at a minimum, the intended recipients ranking in relation to other suitable candidates.

Amend § 486.346, ''Condition: Organ preparation and transport'' by—

• Removing the words ''OPO staff members'' and inserting ''individuals, one of whom must be an OPO employee,'' in paragraph (b)

• Removing the words, ''or health of the recipient.'' after the words ''quality of the organ'' in paragraph (c) and removing the words, ''OPO staff members'' and inserting the words, ''individuals, one of whom must be an OPO employee,'' in the last sentence.

Amend § 486.348 ''Condition: Quality assessment and performance improvement (QAPI)'' by—

• Adding a requirement for OPOs to develop, implement, and maintain a QAPI program that is designed to monitor and evaluate the performance of all donation services.

• Adding a requirement that the OPO's QAPI program include objective measures designed to evaluate and demonstrate improved performance with regard to OPO activities, including services provided under contract or arrangement.

• Adding a requirement that OPOs conduct death record reviews at least once a month in every Medicare- and Medicaid-participating hospital in its service area that has a level I or level II trauma center or 150 or more beds, a ventilator, and an intensive care unit. There is an exception for any hospital that has been granted a waiver to work with another OPO and psychiatric and rehabilitation hospitals.

• Revising paragraph (c) to require that ''[a]n OPO must establish written policies to address at a minimum, the process for identification, reporting, analysis, and prevention of adverse events.''

• Removing paragraph (c)(3) which had required that OPOs report adverse events to CMS.

IV. Collection of Information Requirement

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of our agency.

• The accuracy of our estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

Section 486.306 OPO Service Area Size Designation and Documentation Requirements

Section 486.306(a) states that an OPO must make available to CMS documentation which verifies that it meets the requirements of paragraphs (b) through (d) of this section at the time of application and throughout the period of its designation.

The burden associated with this requirement is the time and effort it would take for an OPO to provide such documentation to CMS. We estimate that it would take one OPO 30 minutes to gather the documentation necessary for such verification. In order to conduct business, an OPO would need to have all of this data readily available. The requirement for the retention of documentation of this type is usual and customary business practice. Therefore, we estimate the annual burden hours for this requirement to be 29 hours.

Section 486.306(c)(1) through (3) requires an OPO to define and document a proposed service area's location and characteristics through the following information:

(1) The names of counties (or parishes in Louisiana) served or, if the service area includes an entire State, the name of the State.

(2) Geographic boundaries of the service area.

(3) The number of and the names of hospitals and critical access hospitals in the service area that have both a ventilator and an operating room.

The burden associated with this requirement is the time and effort necessary for an OPO to document such information. We estimated that it would take a typical OPO an average of 1 hour to document such information. There are 58 OPOs that would have to comply with this requirement; therefore, there would be a total of 58 hours needed to comply annually.

Hours/est. salary/# of OPOs	Annual burden hours	Annual cost estimate
1 organ procurement coordinator (RN or SW) @ $26.87 hr. × ½ hr. annually per 58 OPOs × 58 OPOs	29.00	$779.23
1 secretary @ $16.11/hr. × ½ hr. annually per 58 OPOs	29.00	467.19
Totals	58.00	1,246.42

Section 486.308 Designation of One OPO for Each Service Area

Section 486.308(d) states that if CMS changes the OPO designated for an area, hospitals located in that area must enter into agreements with the newly designated OPO or submit a request for a waiver in accordance with paragraph (e) of this section within 30 days of notice of the change in designation.

Section 486.308 (e) states that a may request and CMS might grant a waiver permitting the hospital to have an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located. To qualify for a waiver, the hospital would have to submit data to CMS establishing that—

(1) The waiver is expected to increase organ donations; and

(2) The waiver will ensure equitable treatment of patients listed transplants within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement.

The burden associated with this section is the time it would take a hospital to request a waiver and to create an agreement with an OPO. Based upon historical data, we estimate that

about 2 hospitals would request a waiver annually and that all of these would need to enter into an agreement with the designated OPO.

Under 5 CFR 1320.3(c), a ''collection of information'' does not include requirements imposed on fewer than ten entities. Therefore, the final regulations of this section are not subject to the PRA.

Section 486.310 Changes in Control or Ownership or Service Area

Sections 486.310(a)(1)&(2) requires a designated OPO considering a change in ownership or in its service area would have to notify CMS before putting it into effect and would have to obtain prior CMS approval. In the case of a service area change that results from a change of ownership due to merger or consolidation, the OPOs would have to resubmit the information required in an application for designation. The OPO would have to provide information specific to the board structure of the new organization, as well as operating budgets, financial information, or other written documentation CMS determines to be necessary for designation.

The burden associated with this section is the time it takes to gather and submit the information CMS needs. We estimate that two OPOs would be affected annually and that it will be the same amount of time it would take a potential OPO requesting designation. While this requirement is subject to the PRA, we believe it is exempt because there are less than 10 respondents.

Section 486.312 De-Certification

Sections 486.312(a) states that if an OPO wishes to terminate its agreement, it would have to send written notice of its intention with the proposed effective date to CMS. In the case of voluntary termination, Section 486.312(e) states that the OPO would have to give prompt public notice of the date of de-certification, and such other information as CMS may require, through publication in local newspapers in the service area. In the case of involuntary termination, Section 486.312(e) states that CMS would provide public notice of the date of de-certification.

The burden associated with these requirements is the time it would take to send written notice to CMS and to publish pertinent information in the local newspapers. We estimate that one OPO would be affected by these requirements per year.

While this requirement is subject to the PRA, we believe it is exempt because there are less than 10 respondents.

Section 486.314 Appeals

Section 486.314 states that if an OPO's de-certification is due to involuntary termination or non-renewal of its agreement with CMS, the OPO may appeal the de-certification on substantive and procedural grounds. In its appeal, the OPO may request a reconsideration before the Regional Administrator for the OPO's region. If the de-certification is upheld by the Regional Administrator, the OPO may request a hearing before a CMS Hearing Officer.

The burden associated with this provision is the time it will take an OPO to request a reconsideration, and if necessary, a hearing, as well as the time to prepare for both proceedings. However, we do not expect to de-certify more than nine OPOs in a given year. As such, this requirement is not subject to the PRA as stipulated under 5 CFR 1320.3(c).

Section 486.316 Re-Certification and Competition Processes

Section 486.316(a) requires OPOs to meet all 3 outcome measures requirements at § 486.318 and to be shown to be in substantial compliance with the requirements for certification at § 486.303, including the conditions for coverage at § 486.320 through § 486.348. If all of these requirements are not met, the OPO is de-certified. The de-certified OPO can appeal. If the de-certification is upheld, the de-certified OPO cannot compete for its service area. If the de-certification is overturned on appeal, the OPO is re-certified and its service area is not opened for competition.

Section 486.316(d) states that for an OPO to compete for an open service area, it must have meet the criteria for re-certification at § 486.316(a), donation rate and yield outcome measures at or above 100 percent of the mean national rate averaged over 4 years of the re-certification cycle, and its donation rate must be at least 15 percentage points higher than the donation rate of the OPO currently designated for the service area. Section 486.316(e) states that CMS will determine which OPO to designate for an open service area based upon (1) performance on the outcome measures at § 486.318; (2) relative success in meeting the process performance measures and other conditions at §§ 486.320 through 486.348; (3) contiguity to the open service area; and (4) success in identifying and overcoming barriers to donation within its own service area and the relevance of those barriers to barriers in the open area. The competing OPO must submit information and data that describe the barriers in its own service area, how those barriers affected organ donation, what steps the OPO took to overcome them, and the results.

The burden associated with this requirement is the time it would take to create a document that contains the required information and data related to the OPO's success in identifying and addressing the barriers in its own service area and how they relate to the open service area. We will refer to this documentation as a plan.

In the February 4, 2005 proposed rule, we proposed that it would take approximately 16 hours to develop an acceptable plan to increase organ donation. We believe that the document or plan that OPOs would be required to prepare to compete under the final rule would require approximately the same amount of resources. However, we received public comments stating that 16 hours is underestimated. Thus, based on further analysis of the multitude of tasks involved in meeting this requirement, we are estimating it will take an average of 104 burden hours to develop the plan needed to meet this requirement to compete for an open service area.

In each of the 1996, 1998, and 2000 re-certification cycles, approximately two to three OPOs failed the performance standards. However, with the new outcome and process measures in this rule, we believe that as many as 9 OPOs may be de-certified. All de-certified OPOs will have the right to appeal their de-certifications. We believe that 3 OPOs will have their de-certifications reversed at some point during the appeal process. Therefore, 6 de-certifications will be upheld and 6 service areas will be open for competition.

Based on historical data and our previous experience with the OPOs, we would expect a total of 9 OPOs will want to compete for a new service area and 3 of those OPOs may want to compete for more than one service area. Thus, we believe there will be a total of 12 plans that will need to be developed for the competition process.

We believe that developing each plan will require the collective efforts of the QAPI director (Registered Nurse) (RN), organ procurement coordinator (RN or social worker (SW)), medical director, OPO director, and secretary would be expected in developing a plan. Assuming that it would take these professionals 104 hours, instead of the proposed 16 hours, to develop such a plan, each competition would require 1,248 burden hours for all 9 OPOs to complete 12 plans and would cost all 9 OPOs $50,022. For the annual burden,

each of these figures needs to be divided by 4, since competition for open service areas will typically occur every 4 years. Thus, the annual burden hours for all 9 OPOs to prepare 12 plans would be 312 [1,248 divided by 4 = 312] and the annual cost estimate would be $12,505.50 [$50,022 divided by 4 = $12,505.50].

PER COMPETITION AND ANNUAL BURDEN HOURS AND COSTS ESTIMATES FOR 9 COMPETING OPOS PREPARING 12 PLANS

Hours/Est. salary/9 OPOs/12 plans	Per competition burden hours	Per competition cost estimate	Annual burden hours	Annual cost estimate
1 QAPI director* (RN) @ $26.87/hr. × 30 hrs. × 9 competing OPOs for 12 plans	360	$9,673.20	90	$2,418.30
1 organ procurement coordinator (RN or SW)* @ $26.87/hr. × 30 hrs. × 9 competing OPOs (preparing 12 plans)	360	9,673.20	90	2,418.30
1 OPO director** @ $50.48/hr. × 30 hrs. × 9 competing OPOs (preparing 12 plans)	360	18,172.80	90	4,543.20
1 medical director ***@ $84.14/hr. × 12 hrs. × 9 competing OPOs (preparing 12 plans)	144	12,116.16	36	3,029.04
1 secretary *@ $16.11/hr. × 2 hrs. × 9 competing OPOs (preparing 12 plans)	24	386.64	6	96.66
Totals	1,248	50,022	312	12,505.50

* National Compensation Survey: Occupational Wages in the United States, July 2004; U.S. Department of Labor, U.S, Bureau of Labor Statistics, August 2005.

** Per OPO Consortium survey mean salary for OPO Director is $105,000 annually ($50.48 per hour) as stated in the proposed OPO rule (70 FR 6124).

*** *http://swz.salary.com/salarywizard/layouthtmls/swzl_compresult_national_EX05000020.html*.

The burden associated with this section is the time it takes to gather the required information and data, evaluate it, and prepare a plan to submit to CMS. While this requirement is subject to the PRA, we believe it is exempt because there are less than 10 respondents.

Section 486.322 Condition: Relationships With Hospitals, Critical Access Hospitals, and Tissue Banks

Section 486.322(a) requires an OPO to have a written agreement with 95 percent of the Medicare and Medicaid hospitals in its service area that have both a ventilator and an operating room, that describes the responsibilities of both the OPO and hospital in regard to the requirements for hospitals in § 482.45. The agreement would have to address the requirement in § 486.326 that the OPO would have to maintain credentialing records for physicians who routinely recover organs in hospitals under contract or arrangement with the OPO and would have to assure that physicians and other practitioners who recover organs in hospitals are qualified and trained.

The burden associated with this requirement is the time it will take an OPO to enter into an agreement with a hospital. Currently, OPOs are likely to have agreements with all hospitals in their service areas because the hospital CoP for organ, tissue, and eye procurement, which was effective August 21, 1998 (see section 482.45) requires all hospitals to have agreements with their OPO.

However, many OPOs will need to rewrite their agreements. In this case, we expect OPOs would develop a standard agreement that addresses OPO and hospital responsibilities and defines ''imminent death'' and ''timely death'' and would ask each of these hospitals to sign the standard agreement.

We believe an attorney would be key in this process. We estimate that it would take an attorney 8 hours to draft a new standard agreement that the OPO could present to each hospital. Thus, it would require 464.00 annual burden hours at an estimated annual cost of $23,200.00 for all 58 OPOs to have a new standard agreement drafted.

Hours/est. salary/# of OPOs	Annual burden hours	Annual cost estimate
1 attorney × 8 hrs. × $50/hr. × 58 OPOs	464.00	$23,200.00
Totals	464.00	23,200.00

U.S. Department of Labor and salary.com.

The average OPO has approximately 100 hospitals in its service area. Based on past experience, we expect that between 50 percent and 67 percent of the hospitals in an OPO's service area would sign the standard agreement with no changes. With few exceptions, the remainder of hospitals would sign the agreements after a minimal amount of negotiation. If 50 hospitals (50 percent of the 100 hospitals in an OPO's service area) requested changes in the agreement before signing, and it took the OPO's attorney 2 hours per agreement to make the changes, it would require 116.00 burden hours at an estimated annual cost of $5,000.00 per OPO.

Hours/est. salary/# of OPOs	Annual burden hours	Annual cost estimate
1 attorney × 2 hrs. × $50/hr. × average of 50 hospitals/OPO	116.00	$5,000.00
Totals	116.00	5,000.00

Thus, it would require 116.00 burden hours at an estimated annual cost of $5,000.00 per OPO. It would require 6,728.00 burden hours at an estimated cost of $290,000 for all of the 58 OPOs to make changes in their agreements with hospitals.

Hours/est. salary/# of OPOs	Annual burden hours	Annual cost estimate
1 attorney × 2 hrs. × $50/hr. × average of 50 hospitals/OPO × 58 OPOs	6,728.00	$290,000.00
Totals	6,728.00	290,000.00

Section 486.324 Condition: Administration and Governing Body

Section 486.324 states that the OPO must have bylaws for its board(s) that address conflicts of interest, length of terms, and criteria for selecting and removing members.

A governing body or individual would have to have full legal authority and responsibility for the management and provision of all OPO services and would have to develop and implement policies and procedures necessary for the effective administration of the OPO, including services furnished under contract or arrangement, fiscal operations, and continuous quality assessment and performance improvement.

The OPO would have to have a procedure to address conflicts of interest for the governing body or individual described above.

The burden associated with the above requirements is the time it would take an OPO to create bylaws and to develop policies and procedures necessary for the effective administration of the OPO. While this requirement is subject to the PRA, we believe it is exempt as it is usual and customary business practice to have such bylaws, policies, and procedures.

Section 486.326 Condition: Human Resources

Section 486.326(a)(2) requires the OPO to have a written policy that addresses conflicts of interest for the OPO's director, medical director, and senior management, and procurement coordinators.

Section 486.326(a)(3) states that an OPO must maintain credentialing records for physicians who routinely recover organs in hospitals with which the OPO has an agreement.

While the burden associated with these requirements is subject to the PRA, we believe these requirements reflect usual and customary business practices and thus do not create any additional burden and are exempt from the PRA.

Section 486.328 Condition: Reporting of Data

Section 486.328(a) requires the OPO to provide individually identifiable, hospital-specific organ donation and transplantation data to the OPTN and the SRTR, as directed by the Secretary. The OPO would have to provide hospital-specific data directly to transplant hospitals, annually. In addition, the OPO would be required to provide individually identifiable, hospital-specific organ donation and transplantation and other information to the Secretary, as requested. Such data may include, but are not limited to:

(1) Number of hospital deaths;

(2) Results of death record reviews;

(3) Number and timeliness of referral calls from hospitals;

(4) Potential donor denominator (as defined in 486.302);

(5) Data related to non-recovery of organs,

(6) Data about consents for donation;

(7) Number of donors;

(8) Number of organs recovered (by type of organ); and

(9) Number of organs transplanted (by type of organ).

Sections 486.328(c) & (d) require potential donor data reported to the OPTN to be used for OPO re-certification would have to include data for all deaths that occurred in hospitals in the OPO's service area, unless a hospital has a waiver to work with a different OPO. If an OPO determines through death record review or other means that the potential donor denominator data it reported to the OPTN was incorrect, it must report the corrected data to the OPTN.

The burden associated with these requirements is the time it would take the OPOs to report certain information. In this section, we proposed that this would take no more than 4 hours per OPO per year, or a national total of 236 hours. Based on comments, we are increasing this figure to 12 hours per OPO per year.

Hours/est. salary/# of OPOs	Annual burden hours	Annual cost estimate
1 data entry person @ $19.25/hr. × 12 hrs. annually per 58 OPOs	696.00	$13,398.00
Totals	696.00	13,398.00

In addition, although it appears this requirement has the potential to add a significant new reporting burden, OPOs are required as a condition of their membership in the OPTN to report a large amount of data to the OPTN (which, in turn, provides the data to the SRTR for analysis). For example, the cadaver donor registration form, (OMB approved #0915–0157), OPOs are required to complete for each donor contains more than 300 data elements. In addition, 42 CFR 121.11(b)(2) requires OPOs and transplant hospitals to submit information about transplant candidates, transplant recipients, organ donors, transplant program costs and performance, and ''other information that the Secretary deems appropriate.'' Thus, most information needed by the OPTN, the SRTR or the Department is already being reported by OPOs.

We believe that almost any OPO data needed by CMS or other agencies within the Department could be obtained from the OPTN or the SRTR. We are including this provision only to give CMS and other agencies the flexibility to request data from OPOs in the event that needed data cannot be obtained expeditiously from the OPTN or the SRTR. We would not request data from

OPOs if the data were readily available from other sources.

Section 486.330 Condition: Information Management

Section 486.330 requires OPOs to include specific data elements in their records and to maintain their records in a human readable and reproducible paper or electronic format for 7 years. In support of public comment, we now will require that these records be maintained in electronic format. Additionally, we finalized the proposed requirement that these records be maintained for 7 years instead of 5 years.

We do not anticipate a significant burden associated with this requirement since we believe all OPOs are using computer systems due to the OPTN requirements. Additionally, because the final rule governing the operation of the OPTN states that OPOs must maintain donor records for 7 years, OPOs must already meet the proposed requirement. Otherwise, all other elements in this information management CoC will be finalized as proposed. While there is burden associated with these requirements we believe it is exempt under 5 CFR 1320.3.

Section 486.342 Condition: Requesting Consent

Sections 486.342 paragraphs (a) and (b) requires that an OPO have a written protocol to ensure that the individual(s) responsible for making the donation decision are informed of their options to donate organs and tissues (when the OPO is making a request for tissues) or to decline to donate. The OPO must provide to the individual(s) responsible for making the donation decision, at a minimum, the following:

(1) A list of the organs or tissues that may be recovered.

(2) The most likely uses for the donated organs or tissues.

(3) A description of the screening and recovery processes.

(4) Information about organizations that will recover, process, and distribute the tissue.

(5) Information regarding access to and release of the donor's medical records.

(6) An explanation of the impact the donation process will have on burial arrangements and the appearance of the donor's body.

(7) Contact information for individual(s) with questions or concerns.

(8) A copy of the signed consent form if a donation is made.

(b) If an OPO does not request consent to donation because a potential donor consented to donation before his or her death in a manner that satisfied applicable State law requirements in the potential donor's State of residence, the OPO must provide information about the donation to the family of the potential donor, as requested.

We believe that all OPOs currently have policies regarding informed consent, so there would basically be no additional burden to them as the policies are usual and customary business practice. Some OPOs might have to add some information, which could minimally increase the time it takes to inform the individual(s) making the donation decision. We estimate that 10 percent of the 58 OPOs (that is, rounded to 6 OPOs) may have to add information to adequately meet this requirement. This requirement affects fewer than 10 OPOs that may need to make slight adjustments to information to adequately meet this requirement. Therefore, according to 5 CFR 1320.3(c), a ''collection of information,'' the ICRs of this section are not subject to the PRA.

Section 486.344 Condition: Evaluation and Management of Potential Donors and Organ Placement Recovery

Under this section, the OPO must have an effective written protocol for donor evaluation and management and organ placement and recovery.

We have revised the proposed requirement that the OPO must implement a system to ensure that the ''medical director or other qualified physician'' is available to assist in the medical management of a donor when the surgeon on call is unavailable. Instead, we have lessened the potential burden by allowing a ''qualified physician or other qualified individual'' to meet this requirement. Also, we have removed reference to the term ''best'' practices in response to commenters' suggestions. Otherwise, only minor editorial and regulatory formatting changes have been made in this final rule.

We have finalized the proposed requirement that the OPO must include documentation in the donor's record of all test results, including blood type, prior to organ recovery. We are requiring that prior to recovery of an organ for transplantation, the OPO must have written documentation from the OPTN showing, at a minimum, the intended recipient's position on the waiting list in relation to other suitable candidates and the recipient's OPTN identification number and blood type.

The burden associated with this finalized requirement is the same as the proposed burden. It includes the time it would take to create the protocols. We believe that good business practices would dictate that an OPO have written protocols to address the requirements of this section. Therefore, there would be no additional burden and we believe this to be exempt from the PRA.

Section 486.346 Condition: Organ Preparation and Transport

We have finalized this COP with minor technical changes to the regulatory language. These changes have resulted in no additional associated burden.

The ICR in this section requires that the OPO develop and follow a written protocol for packaging, labeling, handling and shipping of organs in a manner that ensures their arrival without compromise to the quality of the organ. The protocol would have to include procedures to check the accuracy and integrity of labels prior to transport.

The burden associated with this requirement is the time it would take to create the protocols. We believe that good business practices would dictate that an OPO have written protocols that address the requirements of this section. Therefore, there would be no additional burden and we believe it is exempt from the PRA.

Section 486.348 Condition: Quality Assessment and Performance Improvement (QAPI)

The ICRs under this section were published in the NPRM on February 4, 2005 and are being finalized in this rule. We require an OPO to develop, implement, and maintain a comprehensive, data-driven quality assessment and performance improvement (QAPI) program designed to monitor and evaluate ongoing and overall performance of all donation services, including services provided under contract or arrangement.

The burden associated with these requirements would be the time and effort required to develop a QAPI program. While this burden is subject to the PRA, we believe the collection requirements are exempt as defined in 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (for example, in compiling and maintaining business records) will be excluded from the burden. We believe that a typical OPO would already have an established QAPI as part of its usual and customary business practices, thus, would not incur any associated burden.

If you comment on these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attn.: Melissa Musotto, CMS–3064–F, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Carolyn Lovett, CMS Desk Officer, CMS–3064–F, *carolyn_lovett@omb.eop.gov.* Fax (202)–395–6974.

V. Regulatory Impact Analysis

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354). Section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This final rule is an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, non-profit organizations, and units of local government. Most hospitals and most other providers and suppliers are small entities, either by non-profit status or by having revenues of $6 million to $29 million in any one year. For purposes of the RFA, all OPOs are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For the purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. No such hospitals are significantly affected by this rule because none are either transplant centers or among those normally targeted for intensive organ donation efforts.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates may result in expenditure in any one year by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, or about $120 million in 2006 dollars.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule does not impose substantial direct requirement costs on State or local governments and does not preempt State law or have other federalism implications.

Section 701 of Public Law 106–505, which was passed by the Congress in 2000, requires us to publish regulations with new OPO outcome measures and to certify OPOs under those new measures by January 1, 2002. The new outcome and process performance measures must rely on empirical evidence, obtained through reasonable efforts, of organ donor potential and other related factors in each OPO's service area. The regulations must include multiple outcome measures.

All 58 OPOs would be affected by the requirements in this final rule to a greater or lesser degree. Many OPOs have already put into practice many of the final rule requirements. Thus, while we do not believe the requirements in this final rule will have a substantial economic impact on a significant number of OPOs, we believe it is desirable to inform the public of our projections of the likely effects of this final rule on OPOs. It is important to note that since OPOs are paid by the Medicare program on a cost basis, any additional costs that exceed an OPO's annual revenues would be fully reimbursed by the Medicare program.

Our projections are based largely on data and information provided by the CMS OPO Coordinators. Each Coordinator is responsible for the OPOs located in one of the four CMS Consortia areas (Midwest, West, South, and Northeast). In some cases, no data were available for one or more of the Consortia. However, OPO practices typically vary by size and affiliation (hospital-based or independent), rather than by geographic location. Since all types of OPOs are represented within each Consortium, we feel confident that the practices and experiences of the OPOs within two or three of the Consortia are representative of all OPOs. Therefore, where data were not available for all four Consortia, we based our projections on data from fewer than four.

The provisions of this final rule would have a limited economic impact on hospitals. It is expected that improved OPO performance would result from the rule and would increase organ donation and, therefore, the number of organs available for transplantation. Most of the costs of transplantation estimated later in this analysis fall upon hospitals. However, transplant hospitals are reimbursed for performing transplants, and donor hospitals are reimbursed by OPOs for the cost of maintaining potential donors. Therefore, there are no negative economic impacts on hospitals that would result from the rule.

Reason for This Regulation

Approximately 70 people receive an organ transplant every day. However, another 16 die due to the lack of transplantable organs (*http://organdonor.org*). OPOs play a critical role in securing transplantable human organs for seriously ill patients suffering from end-stage organ failure. In fact, OPO performance is one of the most critical elements in the nation's organ transplantation system. An OPO that is effective in procuring organs and delivering them safely to transplant centers clearly will save more lives than an ineffective one.

In passing the Organ Procurement Organization Certification Act of 2000, Pub. L. 106–505, Section 701, the Congress made certain findings related to OPOs and the current re-certification process for OPOs. These findings included:

a. Organ Procurement Organizations play an important role in increasing organ donation.

b. The uncertainty that resulted from the Department of Health and Human Services' current certification and re-certification process was actually interfering with the OPOs' effectiveness in increasing the level of organ donation.

c. The limitations noted in the DHHS' re-certification process included:

i. Sole reliance on population-based measures of performance that do not

take into consideration a particular population's organ donation potential.

ii. No allowance for other outcome and process standards that may more precisely reflect each OPO's performance and potential.

iii. Lack of a process to appeal for re-certification on either procedural or substantive grounds to the Secretary of DHHS.

The Organ Procurement Organization Certification Act required that the Secretary of DHHS promulgate regulations that incorporate certain key requirements. Those requirements have been incorporated into this final rule.

The Congress clearly wanted the Secretary to establish a certification process that would decrease the uncertainty inherent in the current CMS certification process and improve OPO performance. The goal was to increase organ donation and the number of transplantable organs available for persons experiencing organ failure. We believe that this final rule establishes certification and competition processes that will meet those goals.

1. Feasible Alternatives for Competition Among OPOs for Service Areas

This final rule allows OPOs to compete for another OPO's service area if the incumbent OPO has been de-certified by CMS. OPOs meeting certain criteria may compete for these OPO service areas at the end of each 4-year certification cycle. The competing OPO must meet the following criteria that is specified in § 486.316: (1) the OPO's performance on the donation rate outcome measure and yield outcome measure is at or above 100 percent of the mean national rate averaged over the 4 years of the re-certification cycle; and (2) the OPO's donation rate is at least 15 percentage points higher than the donation rate of the OPO currently designated for the service area.

OMB Circular A–4 recommends that agencies explore modifications of some or all of a regulation's attributes or provisions to identify appropriate alternatives. CMS believes that competition is important to facilitate improvement in OPO performance.

Three levels of competition were considered. We have defined these alternatives, some of which are also discussed in the preamble of the proposed rule, as:

a. *Full Competition.* All OPO service areas would be open for competition every 4 years. Every OPO that has met the conditions for coverage would be eligible to compete for another OPO's service area.

b. *Limited Competition.* All OPO service areas would be open for competition every 4 years. Only those OPOs that meet the conditions for coverage, the outcome performance measure thresholds, and have at least a 15 percent higher donation rate in their own service area compared to the incumbent OPO would be allowed to compete for another OPO's service area. The incumbent OPO would be allowed to compete for its own service area unless it had been de-certified by CMS.

c. *Restricted Competition.* Competition between OPOs would be allowed for the service areas of OPOs that had been de-certified by CMS and for service areas of OPOs that did not meet the outcome performance measure thresholds. The competing OPO would have met the conditions for coverage and the outcome performance measure thresholds. The incumbent OPO would not be allowed to compete.

In this final rule, CMS has attempted to strike a balance between the costs of competition in terms of resource use and disruption of normal business operations and the benefits of competition, namely the ability of competition to improve performance and inspire innovative activity.

Under this final rule, we would select an OPO to replace an incumbent, de-certified OPO if, in our assessment, the OPO could significantly increase organ donation within that service area. This assessment would be based on the competing OPO's (1) performance on the outcome measures at § 486.318; (2) relative success in meeting the process performance measures at §§ 486.320 through 486.348; (3) contiguity to the open service area: and (4) submission of documentation detailing its success in identifying barriers to donation within its own service area. The competing OPO would have to submit information and data that describe the barriers in its service area, how they affected organ donation, what steps the OPO took to overcome them, and the results.

Although these criteria are more objective than those contained in the proposed rule, they will still give us the flexibility to exercise reasonable judgment in choosing between competing OPOs. When comparing competing OPOs, we will first consider each OPO's performance on the outcome measures and the degree to which the top-performing OPO's performance on the outcome measures exceeds the performance of other competitors. Although we may view small variations as relatively meaningless, if one OPO performed significantly better than its competitors on all three outcome measures, we will rank that OPO very high.

We will also take into account each competitor's relative success in meeting the process performance measures. By ''relative success,'' we mean that we will judge whether the OPO simply satisfied the requirements necessary to meet the process performance measures or whether the OPO exceeded the requirements. In addition, we will take into consideration whether the competing OPO's service area is contiguous to the open area.

We will also carefully assess each OPO's experience and success in identifying and surmounting barriers to organ donation in its own donation service area and the relevance of those barriers to the barriers in the open service area. For this criterion, the competing OPO would have to submit information and data that described the barriers in its own service area, how they affected organ donation, what steps the OPO took to overcome them (such as, hospital development, training, or public education), and the results of the OPO's efforts. Although all OPOs face obstacles to organ donation in their donation service areas, the nature of the barriers and the degree to which they interfere with organ donation vary widely throughout the country.

When we select among competing OPOs, we will weight each of the first, second, and fourth criteria equally. We will use the third criterion, contiguity to the open area, as a deciding factor only if we determine that two or more competing OPOs are equally competent to take over an open area.

Many factors can affect organ donation rates. For example, a service area might have a large elderly population, a low motor vehicle accident rate, or a high incidence of diseases that are incompatible with organ donation. Cultural, ethnic, or racial factors may also affect organ donation rates. For example, if there is a large immigrant population in a service area, there might be significant cultural and language barriers to donation. Therefore, an OPO that is contemplating whether to compete for an open service area might need to perform significant research and data analysis to determine whether or not it wants to compete for a particular open service area. Once this analysis was completed, the OPO's staff would have to develop a document detailing its success in identifying barriers to donation within its own service area, as well as its success in developing and implementing processes to overcome barriers.

We received comments on the proposed rule that were critical of our cost analysis stating that we grossly

underestimated the cost of the new requirements. After further analysis of the multitude of tasks involved in meeting these requirements, we agree that the estimate of 16 hours is insufficient. We estimate that it would take a competing OPO approximately 104 hours to evaluate whether it wanted to compete for a particular open service area and, if it decided to compete, to prepare and submit the required written documentation to CMS to compete for the open service area. A competing OPO would likely need to include at least the following steps in its evaluation: collection of information and data for the potential new service area, analyses of the data and assessment of the incumbent OPO's service area, identification of the factors that affected the incumbent's performance, analysis of the existing internal and external barriers to increasing organ donation in the service area, identification of the specific activities and interventions the competing OPO will have to perform to increase organ donation, and finally, preparation and submission of the required information and data that describe the barriers the competing OPO faced in its own service area, how those barriers affected organ donation, what steps it took to overcome them, and the results.

We would generally expect that 5 OPO staff members would participate in the evaluation and preparation and submission of the required documentation: The QAPI Director, Procurement Coordinator, Medical Director, OPO Director, and a secretary. We have estimated the number of hours each staff person would need to spend developing an acceptable plan, based on the activities listed above, and calculated the cost using mean wage figures and added fringe benefit costs (see table 1). The mean physician hourly wage per the U.S. Department of Labor is $57.90 and in the proposed rule we used a rate of $60 per hour or $125,000 annually. We received comment that wages for medical directors are significantly higher. We are now using a median pay rate that is unique to medical directors obtained from the salary.com Web site, a source of salary survey data reported only by human resource professionals.

TABLE 1.—OPO STAFF TIME REQUIRED TO COMPETE FOR AN OPEN SERVICE AREA

Staff person	Hourly wage	Hours of work	Total cost
QAPI Director (RN)	* $26.87	30	$ 806.10
Procurement Coordinator (RN or SW)	* $26.87	30	$ 806.10
OPO Director	** $50.48	30	$1514.40
Medical Director	*** $84.14	12	$1009.68
Secretary	* $16.11	2	$ 32.22
Subtotal	.....	104	$4168.50
Fringe Benefits: 30.8% total compensation	****	.....	$1855.34
Total Staff Costs	.....	.....	$6023.84

* National Compensation Survey: Occupational Wages in the United States, July 2004; U.S. Department of Labor, U.S, Bureau of Labor Statistics, August 2005.

** Per OPO Consortium survey mean salary for OPO Director is $105,000 annually ($50.48 per hour) as stated in the proposed OPO rule (70 FR 6124).

*** *http://swz.salary.com/salarywizard/layouthtmls/swzl_compresult_national_EX05000020.html.*

**** Employer Costs for Employee Compensation, a Bureau of Labor Statistics compensation measure, Table 28, September 2005 data. (*http://www.bls.gov/ncs/ect/home.htm.*)

The cost of evaluating whether or not to compete for an open service area and preparing and submitting the required documentation to CMS is estimated to be $6,023.84 for each plan.

Full Competition Under Existing Regulations

Under the current conditions for coverage for OPOs, there was full competition for each service area at the end of each re-certification cycle (42 CFR 486.316). OPOs that did not meet the performance standards were de-certified and were not able to compete. Therefore, only OPOs that met the performance standards were permitted to compete for service areas. The full competition alternative we considered is described as alternative (a) above in which all OPOs who meet the conditions for coverage would be allowed to compete for any of the OPO service areas.

Benefits of this approach: All other things being equal, greater competition between OPOs should improve performance. If an OPO knows that it is in danger of losing its service area during the re-certification process, it should have an incentive to perform well. This incentive would likely cause some OPOs to develop new, innovative practices.

Costs of this approach: As explained above, the process of competing for a service area involves the expenditure of resources. We estimate that an OPO will expend $6,023.84 to compete for an open service area. We analyzed the data that is currently available on the OPOs' performance. If the criteria in the final rule were applied to this data, we estimate that 9 OPOs would be de-certified. Based on this data and our prior experience with the OPOs, we believe this is a good estimate of how many OPOs would be de-certified using the criteria in this final rule. Based upon our previous experience, we estimate that 6 of those OPOs will either appeal and have their de-certifications upheld or will chose not to appeal their de-certifications. Based upon historical data and our previous experience with the OPOs, of the 52 (the remaining 49 OPOs and the 3 OPO that had their de-certifications reversed), there may be 26 OPOs that would either elect to compete for other service areas or would have to defend their service area in a competition. Each of the 26 OPOs would have to develop and submit the documentation required to compete for the open service area. Some service areas may have more that one competing OPO and others might have only one. Since each competition would require at least 2 plans (one from the incumbent OPO and one from a competing OPO), we estimate that the OPOs would have to prepare and submit at least 52 plans to CMS. The cost to these 26 OPOs would be $52 \times \$6,023.84$ or $313,239.68. Full competition is an adversarial process. This might adversely affect the current collaborative atmosphere that exists between the OPOs.

Finally, full competition provides an opportunity for a minimally effective OPO to take over a failing OPO. Depending upon which OPOs competed for a particular service area, however,

there is no guarantee that a winning OPO would have more than the minimum requirements to be re-certified, and thus the winning OPO might be unable to improve donation in the service area. Therefore, we did not propose that OPO service areas be opened to competition from all OPOs.

Limited Competition

Under this option, all OPO service areas would be open to competition as under the full competition option; however, only those OPOs that met specific criteria would be allowed to compete for another OPO's s ervice area.

The specific criteria used to designate which OPOs would be eligible to compete for another OPO's service area would ensure that the competition was limited to OPOs that had demonstrated above average performance and that OPOs permitted to compete for open service areas would be measurably superior to the incumbent OPOs.

Benefits of this approach: The intent of establishing competition between the OPOs is to improve the overall performance of OPOs by allowing above average OPOs to take over the service areas of poorly or marginally performing OPOs, and to allow OPOs to bid for areas in which they have the potential to significantly outperform the incumbent OPO. The intent is not to have OPOs competing against one another when there are only marginal differences between the OPOs. Therefore, we believe the specific criteria would have to establish a measurable differential. Costs of this approach: Although limited competition would require fewer resources from OPOs overall, the competitive activities would require resources from OPOs that decide to compete for an open service area in the amount of $6,023.84 per OPO for competition (see Table 1). Based upon the above discussion, we estimate that 9 OPOs would be de-certified at the end of the 4 year certification cycle. We believe that 3 would have their de-certifications reversed on appeal and 6 would either have their de-certifications upheld on appeal or chose not to appeal. Thus, there would be 6 open service areas. We expect that at least one OPO would compete for each newly open service area. Based upon both historical data and our previous experience with the OPOs, of the 29 top performing OPOs eligible to compete, there might be up to 9 OPOs that would elect to compete for other service areas. Of those 9 OPOs, we estimate that 3 would elect to compete for more than one service area. Thus, 12 plans would need to be developed and submitted to CMS. The cost of developing these plans to compete is estimated to be $72,286.08 (or $12 \times \$6,023.84$). Although fewer OPOs would be involved with limited competition, it would still be an adversarial process. We anticipate that most OPOs would soon realize who their potential competitors were and this could adversely affect the current collaborative atmosphere that exists between many of the OPOs. Although this effect would be to a lesser extent than with full competition, the collaborative atmosphere between some OPOs may be adversely affected by limited competition.

Thus, limited competition offers the advantage of having a better performing OPO take over the service area of an incumbent OPO that is not performing as well. It also offers the advantage of setting specific criteria to ensure that the better performing OPO has the expertise to increase organ donation in another service area. This should result in increased organ donation in the competed service area. Further, while limited competition has disadvantages, those disadvantages can be minimized.

Restricted Competition

Under this option, the only competition allowed between OPOs would be for the service areas of OPOs that had been de-certified by CMS. However, the competition would still be limited to OPOs that met specific criteria. The specific criteria would need to ensure that the competing OPOs were performing at a higher level than minimally performing OPOs. The intent would be to have an OPO that is performing measurably better than the de-certified OPO take over the service area.

Benefits of this approach: Limiting competition in this way would restrict competition to areas in which the expectation of significant improvement in service could be met. In addition, fewer resources would be diverted from organ procurement itself to the competitive process.

Costs of this approach: Clearly, restricted competition would severely limit the competition between OPOs. Only service areas of de-certified OPOs would be opened for competition. We estimate that 9 OPOs may be de-certified at the end of the 4-year certification cycle and 6 would have their de-certifications upheld on appeal or would choose not to appeal. Based upon our prior experience with the OPOs and historical data, we estimate that there are 9 OPOs that would want to compete for open service areas. We estimate that there would be at least one competitor for each open service area and that 3 of the OPOs would choose to compete for more than one service area. Thus, we estimate that 9 plans would be prepared and submitted to CMS for the competition. The cost of developing these plans to compete is estimated to be $9 \times \$6,023.84$ or $54,214.56. The service areas of minimally performing OPOs (that is, OPOs that met the requirements for re-certification but were not top performers) would not be opened for competition from OPOs that had performed measurably better. Therefore, restricted competition could not improve organ donation in service areas of minimally performing OPOs.

2. Competition for Open Service Areas Under the Final Rule

Our method for competing the open service areas of de-certified OPOs is a modified limited competition, as we feel this option best balances the benefits and costs of the competitive process. We will not allow a de-certified OPO to compete. The competition would be limited to OPOs that met the requirements for re-certification in § 486.316(a), and that had donation rate and yield outcome measures at or above 100 percent of the mean nation rate averaged over the 4 years of the re-certification cycle and had a donation rate that is at least 15 percentage points higher than the OPO that is currently designated for the open service area. We would select an OPO for the service area based on its success in meeting the outcome and process performance measures, as well as the competing OPO's contiguity with the open service area and its submission of information and data that describes the barriers in its own service area, how they affected organ donation, what steps the OPO took to overcome them, and the results.

We are limiting competition to OPOs that have performed measurably better than the de-certified OPO. We believe such higher performing OPOs would have the expertise to take over such an OPO's service area and improve organ donation. We estimate that 9 OPOs would be de-certified on the basis of the criteria at § 486.316(a) (See also §§ 486.303, 486.312, and 486.318). We also estimate that 3 of those OPOs would have their de-certifications reversed during the appeals process. This would mean that potentially 6 service areas would be open for competition. The number of OPOs allowed to compete is restricted to those that meet the criteria at § 486.316 (c) which means perhaps less than half of the remaining 52 OPOs would be allowed to compete. We estimate that 9 OPOs that meet the criteria will elect to compete for the 6 de-certified OPOs'

service areas and that 3 of those OPOs will elect to compete for more than one open service area. This means that 12 plans would need to be developed by OPOs in order to compete. The cost of these 12 plans would be 12 x $6,023.84 or $72,286.08. OPOs will be required to declare whether they intend to compete for another service area very early in the process. If no OPO plans to apply for an open service area, § 486.316(f) states that CMS may select a single OPO to take over the entire service area or may adjust the service area boundaries of two or more OPOs to incorporate the open service area. CMS will base its decision on the same criteria used to determine which OPOs may compete for open service areas at § 486.316(c). Our preferred competition process would require fewer resources from the OPOs overall than full competition, ensure timely completion of the competitive process, and minimize disruption to operations in service areas.

Cost-Effectiveness and Cost-Benefit Analysis of Option Chosen

Our criteria for selecting a competing OPO are success in meeting the § 486.316(a) re-certification criteria, having a donation rate outcome measure and yield measures at or above 100 percent of the mean national rate averaged over the 4 years of the re-certification cycle, and a donation rate that is at least 15 percentage points higher than the donation rate of the OPO currently designated for the open service area. We estimate that the overall plan development cost of the modified limited competition option would total $72,286.08 across all the OPOs once every 4 years. If we divide this figure by 4 to arrive at an annual dollar figure, the yearly cost would be $18,071.52. We hope to see a benefit in terms of increased organ donation by as much as 3 percent per year, with up to a 15 percent increase over the new 4-year certification period in the new service area. Since the competing OPO would have at least a 15 percent higher rate of donation in its own service area, the expectation would be that this higher level of effectiveness would be transferred over to the newly acquired service area.

Under the statute and current OPO regulations, OPOs must be members of and abide by the rules of the OPTN (as defined in § 486.320); therefore, there is no additional burden associated with this condition. This rule requires that OPOs make available to CMS documentation verifying that the OPO meets the provisions of § 486.306 regarding service area location and characteristics to include specific information. We believe that it would take an OPO an average of 1 hour (½ hour of organ procurement coordinator time and ½ hour of secretarial time) annually to make the information available. Using pay rates of $26.87 for the organ procurement coordinator and $16.11 for the secretary, the cost of 58 OPOs making the information available would be $1,246.42.

Current OPO regulations require OPOs to have a board of directors or an advisory board with a specific membership composition. This final rule would require OPOs to have bylaws to address potential conflicts of interest, length of terms, and criteria for selection and removal of board members. It requires a governing body to have full legal authority and responsibility for management and provision of all OPO services, including development and implementation of policies and procedures for administration of the OPO.

The economic impact on OPOs that do not have bylaws for their boards addressing conflicts of interest, length of terms, and criteria for selection and removal of board members would be the cost of developing such bylaws. The extent of the impact would depend on the process used to develop the bylaws. For example, at some OPOs, it is likely an executive committee of the board would develop bylaws for approval by the entire board. This process would result in little or no cost to the OPO because the bylaws would be developed by unpaid board members. However, other OPOs might include the OPO director in the development of the bylaws. In this case, there would be a cost to the OPO, based on the number of hours needed to develop the bylaws and the director's salary. We do not expect that development of bylaws would take more than a few hours, since information and advice regarding development of bylaws would be available from OPOs that already have bylaws in place for their boards.

It appears that about 70 percent of OPOs do not have bylaws for their boards addressing conflicts of interest, and approximately 22 percent do not have bylaws addressing length of terms and criteria for selection and removal of board members. This would mean that approximately 41 OPOs would need to develop bylaws addressing conflicts of interest, and approximately 13 would need to develop bylaws addressing length of terms and criteria for selection and removal of board members. Thus, under this final rule, OPOs would need to write 54 sets of bylaws for their boards of directors.

In one CMS Consortium, OPO Directors' salaries range from approximately $80,000 to more than $130,000. To estimate the economic impact, we assumed that all OPOs would choose to have their directors participate in developing bylaws for their boards, and that the development of each set of bylaws would take 8 hours of an OPO director's time. If every director made $105,000 per year ($50.48 per hour), it would cost an OPO $403.84 to develop a set of bylaws, for a total of $21,807.36 to develop 54 sets of bylaws. We expect that most, if not all, OPOs currently have an individual or governing body legally responsible for management and provision of OPO services. Therefore, we do not expect that there would be a cost to OPOs to implement this provision of the regulation.

It is extremely difficult to quantify the costs for OPOs of meeting the requirements for human resources. The human resources condition requires every OPO to have a medical director, although it does not specify that the medical director must be full time. We believe all OPOs have medical directors, because the OPTN standards state that OPOs must have medical directors who are licensed physicians and who are responsible for medical and clinical activities of the OPO. However, our final rule requires the medical director to be involved in the day-to-day operations of the OPO because he or she would be responsible for implementation of protocols for donor evaluation and management and organ placement and recovery, as well as assisting in management of donor cases if the surgeon on call were unavailable.

We believe that nearly all OPOs have a full-time medical director or one or more part-time directors whose responsibilities include implementation of protocols for donor evaluation and management and organ placement and recovery and who assist in the management of donor cases if the surgeon on call is unavailable. These OPOs would already meet the requirements of the final rule. In fact, we believe that every OPO in two of the CMS Consortia already fully meet this proposed requirement. However, in a very small number of OPOs, medical directors are not actively engaged in OPO operations; their participation may be limited to consulting and attending board meetings.

It is difficult to quantify the cost to these few OPOs of meeting the proposed requirement because the cost to an individual OPO would be dependent on whether the OPO needed to hire a full-time medical director, hire one or more

additional part-time medical directors, or increase the hours of an existing medical director, and to what extent. Furthermore, salaries of medical directors vary widely. Some local transplant surgeons who serve as part-time OPO medical directors do not accept a salary for the services they provide to the OPO; other part-time medical directors are paid up to $100,000 per year. A full-time medical director may be paid less than $100,000 or as much as $250,000 annually. As explained earlier in this regulatory impact analysis, we are using an annual salary of $175,011 (or $84.14 per hour) for OPO medical directors.

To estimate the economic impact of the medical director requirement, we assumed that 10 percent of OPOs (6 OPOs) would need to hire a part-time or full-time medical director or increase the hours of an existing director and that, on average, each of these OPOs would need a medical director for an additional 20 hours per week. If the OPOs reimbursed the medical directors based on a rate of $175,011 annually, it would cost each of these 6 OPOs $87,505, and the total economic impact would be $525,033.

We will require each OPO to maintain sufficient staff to carry on essential OPO activities, such as answering hospital referral calls in a timely manner and providing information and support to potential donor families. Most OPOs have sufficient staffing to carry on essential activities; to the extent that they do not, this rule requires them to hire additional staff. However, the impact on individual OPOs would vary, depending upon their situations. For example, all OPOs in one CMS Consortium appear to have sufficient staff to carry on essential activities. In another Consortium, all but two OPOs appear to have sufficient staff. These two OPOs have added staff based on comparative data from successful OPOs and from the AOPO Annual Report have increased staffing over the past two years. However, in a third Consortium, slightly more than half of the OPOs most likely would need one or two procurement coordinators or other professionals in order to have sufficient staff.

Most staff carrying on what would be considered ''essential'' activities (for example, procurement, hospital development, and screening of referral calls) have a medical background. Procurement coordinators are usually registered nurses (RNs), but sometimes they are social workers. According to the U.S. Bureau of Labor Statistics report published in August 2005 the 2004 median annual income of an RN was $55,889.60 and the median annual income of medical and public health social workers was $38,500. We have observed that procurement coordinators generally earn about $40,000 to $45,000 to start. Hospital development staff are sometimes RNs and sometimes individuals with public relations backgrounds. In 2004, public relations managers had a median annual income of $101,192. Sometimes OPOs' hospital development and procurement staffs screen referral calls; however, OPOs may hire other individuals to screen calls, such as medical and nursing students or emergency medical technicians. In 2006, emergency medical technicians have a median annual income of $24,600 according to *salary.com* data.

We estimate that 10 percent of OPOs (6 OPOs) would need to add one additional professional staff person and 5 percent (3 OPOs) would need to hire 2 additional staff, for a total 12 additional staff. (This estimate includes additional staff needed to meet all proposed requirements except the QAPI requirements, which are discussed later in this preamble.) If each staff person was paid $53,036 on average, the total economic impact would be $636,432.

The human resources condition also would require OPOs to provide the education, training, and supervision to their staffs necessary to furnish required services. We have found that OPOs generally offer three types of staff education and training, depending upon the size and resources of the OPO: (1) On-the-job-training; (2) in-depth training provided within the OPO, sometimes using a modular training structure; and/or (3) classroom training that, in some cases, leads to certification in procurement and transplantation.

Costs for training vary widely; however, we have found that good staff training need not be expensive. OPOs provide no-cost training to each other, in the form of on-site training sessions in hospital development, as well as opportunities for staff details and ''shadowing'' of staff at high-performing OPOs. UNOS Regional Forums, which are held once or twice per year in the 11 UNOS Regions, provide opportunities for staff training at a low cost (for example, $75 per day). Since the training is held within the UNOS Region, travel costs are kept to a minimum. Two OPOs in one of the CMS Regional Consortia have elected to use modular training with demonstration and examination required to move to the next level. Training will be provided to all new and existing OPO professional staff; the cost is estimated at $5,000 per OPO. Some OPOs send their procurement coordinators for training provided by the North American Transplant Coordinators Organization, which costs approximately $1,000 to $1,500 per coordinator.

If we estimate that 25 percent of OPOs (approximately 15 OPOs) would need to provide additional education and training to their professional staff in order to meet the requirements of the final rule, and all 15 chose to use in-depth modular training within the OPO, the cost to each OPO would be approximately $5,000, and the total cost for all 15 OPOs would be $75,000.

The human resources condition would require an OPO to have a written policy to address potential conflicts of interest for its director, medical director, senior management, and procurement coordinators. Although we expect that most OPOs have written policies in place, we know that some OPOs do not. If an OPO had to develop such a policy, it is likely it would be developed by the OPO director and would take approximately 8 hours. If the director is paid $105,000 annually ($50.48 per hour), the cost to the OPO would be approximately $404. If 25 percent of OPOs (approximately 15 OPOs) needed to develop such bylaws, the total economic impact would be $6,058.

The human resources condition requires OPOs to maintain credentialing records for physicians and other practitioners who routinely recover organs in donor hospitals with which the OPO has agreements and ensure that all physicians and other practitioners who recover organs in hospitals are qualified and trained. We have been told by OPOs that most, if not all, OPOs have some type of process to ensure that physicians and other practitioners who recover organs are qualified.

In most cases, organs are recovered by transplant surgeons from the hospital that will perform the transplant or by physicians or technicians employed by or under contract with OPOs. OPOs that do not have a process to ensure that physicians and other practitioners are qualified and trained would incur some costs to put a process into place. An OPO would incur a cost for the staff time needed to request and review credentialing records for transplant surgeons and to request and review documentation of the qualifications of other recovery personnel.

We estimate that requesting and reviewing a record would take no more than 15 minutes. There are approximately 270 hospitals in the United States with transplant programs. Thus, each of the 58 OPOs has, on average, about five transplant hospitals

in its service area. If each hospital has 20 surgeons who recover organs, an OPO would have to request and review approximately 100 records. Presuming this activity was performed by an OPO medical director making $175,000 per year ($84.14 per hour), the cost to the OPO for the medical director to spend 25 hours reviewing 100 records would be $2,104. If we estimate that 10 percent of OPOs (approximately 6 OPOs) will need to perform this activity, the total cost would be $12,621.

We have not assigned a cost for an OPO to request and review records for physicians or other recovery personnel who work for or are under contract to the OPO because we assume the OPO would perform those activities in the normal course of business. Likewise, we have not assigned a cost for activities associated with ensuring the qualifications and training of physicians and other recovery personnel from outside an OPO's service area. The time needed to verify qualifications and training of these recovery personnel, who only occasionally recover organs in an OPO's service area, would be minimal and could be accomplished by contacting a transplant hospital to confirm that a surgeon who will recover an organ at one of the OPO's hospitals is credentialed and has privileges at the transplant hospital.

The former OPO regulations required OPOs to maintain donor records with specific data elements, although there was no requirement for how long the records must be kept. The new information management condition requires OPOs to include specific data elements in their records and maintain their records for 7 years. We do not anticipate a significant burden associated with this requirement because the final rule governing the operation of the OPTN state that OPOs must maintain donor records for 7 years; thus, we expect OPOs already meet the new requirement.

The condition for reporting of data specifies that an OPO must provide organ donation and transplantation data as requested by the OPTN, the SRTR, and transplant hospitals. Additionally, the OPO is required to provide data and other information directly to the Department as requested by the Secretary. The former regulations required only that OPOs report five performance data elements to us annually and ''maintain and make available to CMS, the Comptroller General, or their designees data that show the number of organs procured and transplanted.''

Although it appears this requirement has the potential to add a significant new reporting burden, OPOs already report a large amount of data to the OPTN (which, in turn, provides the data to the SRTR for analysis). For example, the cadaver donor registration form that OPOs are required to complete for each donor contains more than 300 data elements. Further, regulations governing the operation of the OPTN at 42 CFR 121.11(b)(2) require OPOs, as specified by the Secretary, to submit data to the OPTN. Thus, most information needed by the OPTN, the SRTR or the Secretary would already be reported by OPOs.

Although it is difficult to quantify the impact of the data reporting requirement, as data would be requested on an as-needed basis, we believe that almost any OPO data needed by us or other agencies within the Department could be obtained from the OPTN or the SRTR. We are including this provision only to give us and other agencies the flexibility to request data from OPOs in the event that needed data cannot be obtained expeditiously from the OPTN or the SRTR.

However, we can quantify the impact on OPOs of reporting the four hospital-specific data elements they currently report voluntarily to the OPTN (that is, referrals, medically suitable potential donors, consents, and donors). All 58 OPOs have the capability of reporting data to the OPTN electronically. HRSA estimates that reporting the four data elements takes OPOs about 1 hour per month. If the data are entered by a data coordinator earning $40,000 per year (approximately $19.25 per hour), the cost to the OPO would be approximately $231 annually, for a total cost for all 58 OPOs of approximately $13,398.

We have included provisions in this rule for OPOs' relationships with hospitals that do not appear in our current regulations for OPOs. First, the condition would require an OPO to have written agreements with 95 percent of the hospitals and critical access hospitals in the OPO's service area (unless a hospital has a waiver to work with another OPO) that have both a ventilator and an operating room. In addition, the agreement must describe the responsibilities of both the OPO and hospital or critical access hospital in regard to donation after cardiac death, if the OPO has a protocol for donation after cardiac death. We expect that OPOs already have agreements with all Medicare and Medicaid participating hospitals in their service areas (unless a hospital in the service area has a waiver to work with another OPO) because the hospital and critical access hospital conditions of participation for organ, tissue, and eye procurement, (see 42 CFR 482.45 and 485.643) require Medicare and Medicaid participating hospitals and critical access hospitals to have an agreement with an OPO. We have found that most agreements between OPOs and hospitals are ''generic'' in nature and do not specify the OPO and hospital roles in the donation process. However, we are requiring OPOs to address the responsibilities of both the OPO and the hospital in implementing § 482.45 and § 485.643 and include definitions for the terms ''imminent death'' and ''timely referral.''

Many OPOs will need to rewrite their agreements; however, we expect OPOs would develop a standard agreement that addresses OPO and hospital responsibilities and defines ''imminent death'' and ''timely death'' and would ask each of their hospitals to sign the standard agreement. We also expect that OPOs will develop an agreement concerning the responsibilities of both the OPO and the hospital concerning donation after cardiac death for those hospitals that have a donation after cardiac death protocol. We estimate that it would take an attorney 8 hours to draft a new standard agreement that the OPO could present to each hospital. The average hourly wage for an attorney is $50 (Attorney II; per salary.com); therefore, the cost to the OPO would be $400. The total cost for all 58 OPOs to have a new standard agreement drafted would be $23,200.

The average OPO has approximately 100 hospitals in its service area. Based on past experience, we expect that between 50 percent and 67 percent of the hospitals in an OPO's service area would sign the standard agreement with no changes. With few exceptions, the remainder of the hospitals would sign the agreements after a minimal amount of negotiation. If 50 hospitals (50 percent of the 100 hospitals in an OPO's service area) requested changes in the agreement before signing, and it took the OPO's attorney 2 hours per agreement to make the changes, it would cost the average OPO $5,000. The total cost for all OPOs to make changes in their agreements with hospitals would be $290,000.

The condition also requires OPOs to offer annual designated requestor training to hospital and critical access hospital staffs. Although the hospital and critical access hospital conditions of participation give OPOs the responsibility for offering or approving designated requestor training for hospitals, very few OPOs have actually provided a significant amount of training to their hospitals. In fact, an August 2000 OIG report (Medicare Conditions of Participation for Organ

Donation: An Early Assessment of the New Donation Rule) criticized OPOs for not providing more designated requestor training.

Therefore, complying with this proposed requirement may add some costs for an OPO that has provided little or no designated requestor training if hospitals and critical access hospitals in its service area respond positively to the OPO's offer to provide training. However, we do not anticipate a significant economic impact because most hospitals cannot spare staff to attend training in the entire consent process and prefer to have their OPO handle most of the consent process. Additionally, although many hospital staff act as designated requestors in a supportive or collaborative role, we expect training for the supportive or collaborative role to be significantly less extensive (and therefore less costly) than training hospital staff for a requestor role. For example, complete designated requestor training might last for 4 to 8 hours, whereas supporter or collaborator training might last for 2 hours or less. Designated requestor training also may be provided through the use of a videotape. At least one OPO provides designated requestor training over the Internet.

Generally, OPO hospital development staff (who are likely to earn about $56,000 per year) provide designated requestor training in hospitals. If the average training session lasts 4 hours and is given at a hospital located 20 miles from the OPO, the total cost of a training session (including salaries for two trainers for preparation, travel, and training time; mileage; and preparing and printing training packets) would be approximately $350. Based on our experience, we expect that nationwide, approximately 75 hospitals might request designated requestor training. Thus, the total economic impact would be approximately $26,250, with an average of less than $453 per OPO.

OPOs will be required to have arrangements to cooperate with tissue banks that have agreements with hospitals with which the OPO has agreements. OPOs will be required to cooperate in screening and referring potential tissue donors, obtaining informed consent on behalf of tissue banks, and in the retrieval, processing, preservation, storage, and distribution of tissues. Most OPOs already have arrangements with the tissue banks in their service areas that address such issues as screening and referral of tissue donors. We proposed this requirement to address situations in which an OPO has refused to have an arrangement with the tissue bank selected by the hospital.

There are approximately 300 tissue banks in the United States (166 conventional tissue banks and 134 eye banks) or approximately 5 tissue banks per OPO service area. In many service areas, the OPO owns or is affiliated with one of the tissue banks. In nearly all service areas, OPOs have arrangements with all tissue banks that have agreements with the hospitals in their service area. Based on our experience, we would expect that fewer than 5 percent of tissue banks (15 tissue banks) that do not have arrangements with an OPO would request an arrangement.

If an OPO and tissue bank elected to have a written agreement, we would expect that the cost to the OPO of preparing the written agreement and making any changes negotiated with the tissue bank would be similar to the costs of preparing and making changes to a written agreement between an OPO and a hospital (that is, a one-time cost to the OPO of $400 for preparing an agreement, and an additional cost of $100 to make changes). However, unlike hospital agreements that could be standardized, we would assume that OPO/tissue bank agreements would be individualized, since it is unlikely that more than one tissue bank in an OPO's service area would request an arrangement. Therefore, the total cost of preparing each agreement and making changes would be $500, and the cost of preparing agreements with 15 tissue banks would be $7,500.

For several reasons, we do not believe the requirement to have a QAPI program will have a significant impact on a large number of OPOs. First, most OPOs have a QAPI-type program (although not all programs are sufficiently comprehensive to meet the requirements of the proposed regulation). Second, AOPO is actively encouraging all OPOs to expand and improve their programs; in fact, AOPO recently added the development of a quality improvement program to their requirements for AOPO accreditation, although the new requirements will be phased in over 3 years. Third, in November 2001, AOPO surveyed OPOs to assess its programs and found that 43 percent of the 35 OPOs that responded had designated a staff person whose primary job responsibility was coordinating and monitoring quality improvement. We have reason to believe this percentage would be much higher if the survey were performed today. Since AOPO conducted their survey, the majority of the OPO community has embraced continuous quality improvement and taken steps to integrate quality improvement into their core business structure.

Additionally, there are numerous low-cost or no-cost resources available to OPOs to develop QAPI programs, including the Breakthrough Collaborative, assistance from CMS OPO Coordinators, and the AOPO Quality Council. While we know that some OPOs will be impacted by the new QAPI requirement, we do not expect the impact to be significant because, at this time, all OPOs appear to be working toward developing a comprehensive QAPI program.

We believe it is likely that approximately 20 percent of the 58 OPOs (12 OPOs) would need ½ of a full-time equivalent (FTE) position to bring their QAPI programs into compliance with the requirement, and 15 percent (9 OPOs) would need 1 FTE. An OPO would be likely to use an experienced individual from its hospital development or procurement staff, and we estimate that the individual would be paid approximately $56,000 annually. Thus, the cost to each of the 12 OPOs that would need to add ½ of an FTE would be approximately $28,000 per year, and the cost to each of the 9 OPOs that would need to add a full FTE would be $56,000 per year, for a total cost of $840,000.

In addition, the new requirement for QAPI will require an OPO to perform death record reviews at least monthly in every Medicare and Medicaid hospital in its service area that has a Level I or Level II trauma center or 150 or more beds, a ventilator, and an intensive care unit (unless the hospital has a waiver to work with another OPO), with the exception of rehabilitation or psychiatric hospitals. Based on our experience, all OPOs routinely perform death record reviews in hospitals they consider to have significant donor potential, but an OPO's definition of ''significant donor potential'' may not encompass as many hospitals as the requirement in this final rule. To the extent that it does not, the OPO might need to increase staff hours to perform the additional death record reviews. We estimate that approximately 20 percent of OPOs (12 OPOs) may need to add ½ of an FTE in order to expand the number of hospitals in which it performs death record reviews or the number of hours needed to perform the death record reviews at least monthly. It is likely the death record reviews would be performed by RNs earning approximately $56,000 per year, thus the cost to an OPO of adding ½ of an FTE to perform death record reviews would be approximately $28,000. The total economic impact for all 12 OPOs would be $336,000.

The final rule requires that an OPO's QAPI program include a written policy to address adverse events. We estimate that about 90 percent of OPOs (53 OPOs) would need to develop a written adverse event policy and that development of the policy would require 8 staff hours. We expect that the policy would be developed by professional staff, including procurement coordinators, medical directors, and OPO directors. We estimated an annual salary of $56,000 (approximately $27 per hour) for a procurement coordinator, $175,000 (approximately $60 per hour) for a medical director, and $105,000 (approximately $50 per hour) for an OPO director, and we averaged the three hourly rates to arrive at a cost of $54 per staff hour to develop an adverse event policy. Therefore, the cost to one OPO of developing an adverse event policy would be $432 for 8 hours of work. The total cost to all 53 OPOs that would need to develop such policies would be $22,896.

The condition for requesting consent will have little impact on OPOs. We believe all OPOs have policies for obtaining informed consent and provide training to their staffs in the informed consent process. Under the new conditions, some OPOs may have to broaden their informed consent policies, but there will be little resultant economic impact.

The final rule would require OPOs to have written protocols for donor evaluation and management and organ placement and recovery that meet current standards of practice and are designed to maximize organ quality and optimize the number of donors and the number of organs recovered and transplanted per donor. Based on our experience, all OPOs have written protocols for donor evaluation and management and organ placement and recovery. The OPTN also has model protocols OPOs can follow for evaluation and management of potential donors. Some OPOs might need to update or change their protocols somewhat to meet the proposed requirements, but we believe the cost to individual OPOs would be negligible.

The condition for donor evaluation and management and organ placement and recovery requires the medical director from the OPO to be responsible for ensuring that the OPO has written protocols for donor evaluation and management and for ensuring the implementation of the protocols for each donor. Costs related to hiring or increasing the hours of a medical director are discussed as part of the human resources condition.

This condition also requires OPOs to establish protocols in collaboration with transplant programs that define the roles and responsibilities of the OPO and the transplant program. It appears that all OPOs have some type of agreement or arrangement with the transplant centers in their service areas, but often these agreements or arrangements are informal in nature. Based on our experience, we expect that developing a protocol with a transplant center as required under the final rule would take approximately 10 hours. There are approximately 824 transplant programs in the U.S.; therefore, each of the 58 OPOs has approximately 14 transplant programs in its service area. If it took an OPO medical director 10 hours to develop a protocol with a transplant center and the medical director earned a salary of $175,000 annually (approximately $84 per hour), it would cost an OPO $840 for development of a single protocol and a total of $11,760 to develop 14 protocols. (We assume that each protocol would be individualized.) If we assume that 70 percent of the 58 OPOs (41 OPOs) needed to develop protocols, the total economic impact would be $482,160.

We foresee little economic impact from the proposed requirements in the condition for organ preparation and transport. We believe nearly all OPOs follow appropriate standards of practice for testing and tissue typing of organs. Developing and following a protocol for packaging, labeling, handling and shipping of organs can be done at very little added cost. For example, the cost of additional supplies for labeling inner and outer packaging of organs with the donor blood type would be negligible.

Our estimates of the economic impact on OPOs to meet the requirements in this final rule are as follows.

- $1,246 to make service area information available.
- $21,807 to develop bylaws for OPO boards.
- $525,033 annually for medical director salaries.
- $636,432 annually for additional staff to meet human resources requirements.
- $75,000 initial cost for staff training.
- $6,058 to develop bylaws for OPO directors and other management staff.
- $12,621 to develop credentialing records for recovery staff.
- $13,398 annually to report data.
- $23,200 to develop hospital agreements.
- $290,000 to make changes to hospital agreements.
- $26,250 for designated requestor training.
- $7,500 to develop arrangements with tissue banks.
- $840,000 annually for QAPI staff.
- $336,000 annually to perform death record reviews.
- $22,896 to develop an adverse event policy.
- $482,160 to develop protocols with transplant centers.
- $18,071 annual cost for competition (includes fringe benefits).

Fringe benefit costs have been added to the annual cost for competition, if fringe benefit costs were added to the remaining items at a rate of 30.8 percent of total compensation we need to add in $1,477,510. We have added fringe benefit costs in response to comments that salary costs are not realistic when fringe benefits are omitted.

Summary of Direct Cost

The first-year economic impact of implementing the requirements in this final rule would be $4,815,182, and the average first-year cost to each of the 58 OPOs would be $83,000. This figure includes the fringe benefits for all of the staff hours that were calculated.

Benefits

The primary economic impact of this final rule would lie with its potential to increase organ donation. However, it is difficult to predict precisely what that impact will be. In 1998, the year in which the hospital conditions of participation went into effect, organ donation increased by nearly 6 percent. During the first year of the Organ Donation Breakthrough Collaborative (2003–2004), organ donation increased by nearly 11 percent, and rates continue to increase. A 6 percent increase was seen in 2005, and the first quarter of 2006 shows a 3 percent increase. We believe that the Breakthrough Collaborative has been the driving force behind the most recent increases in organ donation. Further, the Collaborative has helped achieve some of the goals envisioned by this rule. Thus, we estimate that future growth in organ donations as a result of this rule will be lower than immediate past experience.

Absent the impact of this rule, the number of organ donors is expected to remain stable in 2006. We estimate that by increasing OPOs' efficiency and adherence to continuous quality improvement measures, the provisions of this final rule could increase the number of organ donors by an additional 1 to 3 percent per year, resulting in up to 180 additional donors in the regulation's first year. Based on 2000 data for the average number of organs transplanted per donor (2.87), a

1 to 3 percent increase would result in approximately 172 to 517 additional transplants in the first year after implementation of the regulation.

Transplants are performed both to save lives and to improve the quality of recipients' lives. For end-stage renal disease patients, dialysis is an alternative to transplantation for extended periods of time. Nevertheless, physical health while on dialysis is significantly impaired, and dialysis imposes major stresses and substantial inconveniences in carrying out normal activities. Therefore, while for most patients, kidney transplantation is not necessary for survival, it significantly improves the quality of the transplant recipient's life. For all other organs, a transplant is, in most cases, necessary for survival.

Of the 17,219 transplants from deceased donors performed in 2000, slightly less than half (46.7 percent) were kidney transplants. If this regulation results in up to 571 additional transplants in the first year, 241 lives (46.7 percent of 517 transplants) could be vastly improved by kidney transplants and 276 lives (53.3 percent of 517) could be both vastly improved and prolonged by transplantation of other major organs.

The following reasoning was used to construct an estimate of the benefits of this final rule. It is common, in cost benefit analysis, to use a concept termed ''value of a statistical life'' (VSL) to estimate in monetary terms the benefits from lives saved. Estimates of this value can be derived from information on the preferences of individuals for reduction in the risk of death, and their willingness to pay for those reductions. For purposes of our cost benefit analysis, we have used a VSL of $5,000,000. Applying this VSL, the social benefit from 276 non-renal transplants would be $1,380,000,000.

Since private payers generally base their payments on Medicare payment rates, and since Medicare is the primary payor for the majority of transplants, the discussion of costs of increased transplants will use Medicare payment estimates. It is estimated that Medicare will pay for 55.3 percent of all transplants occurring in 2006 based on historical data. A 1 to 3 percent increase in transplants would result in 95 to 286 additional Medicare transplants. Based on a median increase of 2 percent, this would result in 161 additional kidney transplants and 163 additional transplants of other organs nationally.

Kidney transplantation costs are offset by reductions in other medical costs over time, primarily dialysis costs. The 2003 average per person per year primary payor cost for dialysis patients was $63,723 while the cost for end-stage renal disease patients with a functioning kidney graft was $15,357 (United States Renal Data System (USRDS): 2005 Annual Data Report: Atlas of End-Stage Renal Disease in the United States pages 674 and 680). During the year of kidney transplantation, the 2003 average per person per year primary payor cost was $95,567 according to the USRDS. Therefore, during the first two years of kidney transplantation, the potential net health care cost savings would be $16,522 per patient with annual savings of $48,366 thereafter. The projected 2007 cost savings for the 2 percent increase in kidney transplants is $13 million annually.

Below, based on Milliman projections, are the 5-year estimated national costs resulting from a 2 percent increase in organ transplants. The chart does not include heart-lung, kidney-pancreas, and other multi-organ transplants, since complete data are not available for these transplants. We believe the figures below underestimate the economic impact of an increase in the number of transplants by approximately 6 percent because multi-organ transplants are not included.

We expect that the increase in organ transplants will be sustained over the years so that every year this rule is in effect, it would result in an increase of up to 517 (or more) additional transplants being performed every year. It is difficult to project the total cost savings that will result from this rule, but we do expect to see some significant cost saving benefits.

In order to estimate the costs of providing transplantation and to supplement the CMS payment data, we turned to the 2006 projections of Milliman USA Consultants and Actuaries (authored by Nickolas J. Ortner, and peer reviewed by Richared H. Hauboldt). In their report table 2 shows the ''Estimated U.S. Average 2006 First-Year Charges Per Transplant'' broken out according to the type of organ transplanted, including the estimated charges for the transplant and the outpatient immunosuppressant medication during the initial year. The estimated charges for the actual transplantation are broken into 3 categories: procurement, hospital, and physician. In order to compare the Milliman figures to what Medicare actually pays out, we compared 2004 CMS claims data for procurement to the 2006 figures developed by Milliman. We found that in 2004 Medicare paid between 31 and 72 percent of the estimated 2006 Milliman charges for procurement. To allow for some inflation and to be sure we are not underestimating the costs, we are not applying a factor between 31 to 72 percent, but are estimating that in 2006 Medicare would pay 80 percent of the 2006 Milliman estimated charges for each of the additional transplants resulting from this rule. The estimated first year total transplant costs of the 324 additional transplants (a 2 percent increase) resulting from this rule is $87,066,414. Since the table below was based on 2006 data, the figure of $85,125,338 was adjusted for inflation to obtain a 2007 projection for the estimated total first year transplant costs.

ESTIMATED FIRST YEAR TRANSPLANT COSTS

Total transplant year costs	Milliman	Cases	Total
Heart	399,595	44	17,582,180
Liver	352,874	91	32,229,159
Lung	262,645	19	4,902,707
Pancreas	266,433	9	2,309,086
Kidney	174,910	161	28,102,207
Total	291,291	.....	85,125,338

Note: The table above is derived from the 2006 Milliman estimates using a factor of 0.8. These costs include procurement, hospital, physician, follow-up, immunosuppressive medications, and evaluation costs.

Transplant patients incur certain health care costs in the years following transplantation. The Milliman data includes projections for the immunosuppressant charges during the first year of transplantation (which are included in the estimated first year figures above). Milliman does not estimate transplant related charges after the first year following the transplant ''due to a lack of data and a lack of general interest in these values.'' Milliman drug charges are calculated at 100 percent of 2006 average wholesale prices. In keeping with section 303(c) of the Medicare Modernization Act, Medicare pays for drugs at a lower rate of 106 percent of the average sales price. Therefore, we adjusted the Milliman figures to arrive at a dollar figure that reflects the estimated annual amount Medicare would actually pay for immunosuppressant therapy after the first year of transplantation.

ON-GOING ESTIMATED ANNUAL IMMUNOSUPPRESSIVE DRUG COSTS*

	Milliman	Cases	Total
Heart	15,675	44	689,700
Liver	16,074	91	1,468,092
Lung	16,245	19	303,240
Pancreas	18,753	9	162,526
Kidney	15,390	161	2,472,660
Total			3,631,055

*For a 2 percent increase in the number of transplanted patients.

We are projecting 5-year costs of the additional transplants resulting from this rule by adding the first year costs and the immunosuppressant therapy costs for years 2 through 5 as shown on the table below. The cost for the immunosuppressant medication associated with a 2 percent increase in organ transplantation is estimated to be $3,631,055 annually starting with the second year after transplantation.

ESTIMATED 5-YEAR COSTS FOR A 2 PERCENT INCREASE IN TRANSPLANTS

	2007	2008	2009	2010	2011	Total
Inflation	1.02	1.04	1.03	1.03	1.03	
Transplant Costs	87,066,414	90,438,902	93,515,336	96,439,428	99,623,603	467,083,683
Follow-Up Therapy For:						
2007 Patients		3,857,708	3,988,934	4,113,662	4,249,485	16,209,789
2008 Patients			3,988,934	4,113,662	4,249,485	12,352,081
2009 Patients				4,113,662	4,249,485	8,363,147
2010 Patients					4,249,485	4,249,485
Total	87,066,414	94,296,610	101,493,204	108,780,415	116,621,542	508,258,184

In our earlier discussion, we outlined the potential costs savings of the additional 2 percent median increase in kidney transplants that would be realized from the cost savings of dialysis. Other benefits of organ transplants include:

- Increase in years of life gained.
- Improvements in quality of life, particularly for chronic kidney disease patients.
- Resumption of work/volunteerism/productivity for some patients.
- An increase in the number of taxpayers (patients who return to work).
- An increase in access to dialysis as more patients receive kidney transplants.
- In addition, we have calculated a benefit resulting from this rule in terms of life years saved in the amount of up to $1.38 billion that is not included in this cost analysis.

The table below shows the estimated costs savings from the kidney transplant patients who would no longer need dialysis.

ESTIMATED COST SAVINGS—RENAL

	2007	2008	2009	2010	2011	Total
Renal Savings For New Kidney Transplants	80,976	84,113	86,974	89,694	92,655	
New Kidney Transplants	161	161	161	161	161	
2007 Patients	13,010,200	13,514,145	13,973,852	14,410,795	14,886,601	
2008 Patients		13,514,145	13,973,852	14,410,795	14,886,601	
2009 Patients			13,973,852	14,410,795	14,886,601	
2010 Patients				14,410,795	14,886,601	
2011 Patients					14,886,601	
Total Savings	13,010,200	27,028,291	41,921,556	57,643,179	74,433,005	214,036,230

The tables below show the estimated costs savings from the non-renal transplant patients who would no longer need end-of-life care. We developed this table based upon data from the SRTR databank.

END-OF-LIFE SAVINGS

	2007	2008	2009	2010	2011	Total
End of Life Savings for:						
2007 Patients	12,854,904					
2008 Patients		13,352,834				
2009 Patients			13,807,053			
2010 Patients				14,238,781		
2011 Patients					14,708,907	
Total Savings	12,854,904	13,352,834	13,807,053	14,238,781	14,708,907	68,962,479

The final step in our 5-year cost estimate requires that we subtract the estimated cost savings from the costs of transplantation shown above and add in the estimated costs of implementing the processes required by this rule. The table below reflects a projected 2 percent increase in transplants and shows this calculation.

TOTAL NET COSTS YEAR

	2007	2008	2009	2010	2011	Total
Costs of Additional Transplants*	61,201,310	53,915,485	45,764,594	36,898,456	27,479,629	225,259,476
Costs of Complying with Final Rule	4,815,182	3,887,394	4,081,764	4,285,852	4,500,144	21,570,336
Totals	66,016,492	57,802,879	49,846,358	41,184,308	31,979,773	246,829,812

*Includes both renal and non-renal transplants.
*Includes savings from dialysis and end-of-life care costs.

The total estimated impact of this rule, assuming a 2 percent increase in organ transplants, is $66 million in the first year and $247 million over 5 years. Assuming that Medicare transplants comprise 55.3 percent of all transplants, the estimated impact of this rule on the Medicare program is $37 million in the first year and $136 million over 5 years.

Formal Uncertainty Analysis

As discussed elsewhere in this preamble, our best estimate of the impact of this final rule is a benefit of more than $1 billion each year, based on the number of lives we expect would be saved and the decrease in dialysis-associated costs by increasing organ donation and transplantation due to increased OPO performance.

There are uncertainties associated with many of the projected costs of this final rule. Many of the processes required by this final rule have been put into place by OPOs in varying degrees. Current events, as well as the publication of the proposed OPO conditions for coverage, highlighted the need to make improvements in the organ procurement and distribution process. OPOs have implemented processes over the last year in response, and it is difficult to assess how close current OPO practices have come to the requirements in this final rule. We have estimated the additional human resources necessary to meet these requirements based on data we received from the OPO coordinators and our assessment of reasonable amounts of time required to complete tasks. There is, however, uncertainty as to whether OPOs will implement efficiencies that allow these requirements to be met by existing staff or a by a smaller increase in full-time equivalents than we predicted. We projected the cost of developing and updating agreements with hospitals and arrangements with tissue banks. We are uncertain as to whether OPOs would use templates for these documents that could serve to reduce the costs.

This final rule implements a new competition process. We have predicted and calculated the associated costs of this competition process based on our estimation of the number of OPOs that would: be de-certified; be qualified to compete; and choose to compete for a service area. We used historical OPO data to devise a reasonable estimate of the number of OPOs falling into each category. Although we utilized the information currently available to us to make this prediction, there is some uncertainty as to how many OPOs will actually compete. Further, the OPOs have flexibility to decide how many resources each would expend on the competition process, so there is some uncertainty as to the cost of competition.

We calculated the costs of a one-time increase in the number of transplanted organs that we predict would result from the implementation of this rule. Over the last few years, there have been significant increases in the number of procured organs due primarily to the effort of the Breakthrough Collaborative described earlier in this preamble. Due to these recent notable improvements in organ donation rates, we are cautiously predicting a further increase of up to 3 percent. There is uncertainty as to what percent increase in transplanted organs can be expected. While this rule is expected to have a positive effect, there are a number of other factors that could affect the donation rate such as the population demographics over the years, natural disasters, technological advances, and donation initiatives that may effect organ donation. There could also be incremental increases in the number of organs procured over the next several years that we did not predict.

We have calculated the costs associated with this rule using the data and information we currently have available to formulate a reasonable burden statement. There are uncertainties that may impact the costs; however, we have performed an analysis of the predicted costs and described the associated uncertainties.

In accordance with the provisions of Executive Order 12866, this regulation

was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

42 CFR Part 486

Health professionals, Medicare, Organ procurement, X-rays.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ 1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1138(b), 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320b-8(b), 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

§ 413.200 [Amended]

■ 2. Section 413.200(f) is amended by removing the phrase ''part 485, subpart D'' and by adding ''part 486, subpart G'' in its place.

§ 413.202 [Amended]

■ 3. Section 413.202 is amended by removing the phrase ''as defined in § 435.302 of this chapter'' and by adding ''as defined in § 486.302 of this chapter'' in its place.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

■ 1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 441.13 [Amended]

■ 2. Section 441.13(c) is amended by removing the reference ''part 485, subpart D'' and adding ''part 486 subpart G'' in its place.

PART 486—CONDITIONS FOR COVERAGE OF SPECIALIZED SERVICES FURNISHED BY SUPPLIERS

■ 1. The authority citation for part 486 is revised to read as follows:

Authority: Secs. 1102, 1138, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320b-8, and 1395hh) and section 371 of the Public Health Service Act (42 U.S.C 273).

■ 2. Section 486.1 is amended by revising paragraph (a) to read as follows:

§ 486.1 Basis and scope.

(a) *Statutory basis.* This part is based on the following sections of the Act:

1102 and 1138(b), 1871 of the Social Security Act, section 371(b) of the Public Health Service Act—for coverage of organ procurement services.

1861(p)—for coverage of outpatient physical therapy services furnished by physical therapists in independent practice.

1861(s) (3), (15), and (17)—for coverage of portable X-ray services.

* * * * *

■ 3. Part 486 is amended by revising subpart G to read as follows:

Subpart G—Requirements for Certification and Designation and Conditions for Coverage: Organ Procurement Organizations

Sec.

486.301 Basis and scope.
486.302 Definitions.

Requirements for Certification and Designation

486.303 Requirements for certification.
486.304 Requirements for designation.
486.306 OPO service area size designation and documentation requirements.
486.308 Designation of one OPO for each service area.
486.309 Re-certification from August 1, 2006 through July 31, 2010.
486.310 Changes in control or ownership or service area.

Re-certification and De-certification

486.312 De-certification.
486.314 Appeals.
486.316 Re-certification and competition processes.

Organ Procurement Organization Outcome Requirements

486.318 Condition: Outcome measures.

Organ Procurement Organization Process Performance Measures

486.320 Condition: Participation in Organ Procurement and Transplantation Network.
486.322 Condition: Relationships with hospitals, critical access hospitals, and tissue banks.
486.324 Condition: Administration and governing body.
486.326 Condition: Human resources.
486.328 Condition: Reporting of data.
486.330 Condition: Information management.
486.342 Condition: Requesting consent.
486.344 Condition: Evaluation and management of potential donors and organ placement and recovery.
486.346 Condition: Organ preparation and transport.
486.348 Condition: Quality assessment and performance improvement (QAPI).

Subpart G—Requirements for Certification and Designation and Conditions for Coverage: Organ Procurement Organizations

§ 486.301 Basis and scope.

(a) *Statutory basis.* (1) Section 1138(b) of the Act sets forth the requirements that an organ procurement organization (OPO) must meet to have its organ procurement services to hospitals covered under Medicare and Medicaid. These include certification as a ''qualified'' OPO and designation as the OPO for a particular service area.

(2) Section 371(b) of the Public Health Service Act sets forth the requirements for certification and the functions that a qualified OPO is expected to perform.

(3) Section 1102 of the Act authorizes the Secretary of Health and Human Services to make and publish rules and regulations necessary to the efficient administration of the functions that are assigned to the Secretary under the Act.

(4) Section 1871 of the Act authorizes the Secretary to prescribe regulations as may be necessary to carry out the administration of the Medicare program under title XVIII.

(b) *Scope.* This subpart sets forth—

(1) The conditions and requirements that an OPO must meet;

(2) The procedures for certification and designation of OPOs; and

(3) The terms of the agreement with CMS and the basis for and the effect of de-certification.

(4) The requirements for an OPO to be re-certified.

§ 486.302 Definitions.

As used in this subpart, the following definitions apply:

Adverse event means an untoward, undesirable, and usually unanticipated event that causes death or serious injury or the risk thereof. As applied to OPOs,

adverse events include but are not limited to transmission of disease from a donor to a recipient, avoidable loss of a medically suitable potential donor for whom consent for donation has been obtained, or delivery to a transplant center of the wrong organ or an organ whose blood type does not match the blood type of the intended recipient.

Agreement cycle refers to the time period of at least 4 years when an agreement is in effect between CMS and an OPO.

Certification means a CMS determination that an OPO meets the requirements for certification at § 486.303.

Death record review means an assessment of the medical chart of a deceased patient to evaluate potential for organ donation.

Decertification means a CMS determination that an OPO no longer meets the requirements for certification at § 486.303.

Designated requestor or effective requestor is an individual (generally employed by a hospital), who is trained to handle or participate in the donation consent process. The designated requestor may request consent for donation from the family of a potential donor or from the individual(s) responsible for making the donation decision in circumstances permitted under State law, provide information about donation to the family or decision-maker(s), or provide support to or collaborate with the OPO in the donation consent process.

Designation means CMS assignment of a geographic service area to an OPO. Once an OPO is certified and assigned a geographic service area, organ procurement costs of the OPO are eligible for Medicare and Medicaid payment under section 1138(b)(1)(F) of the Act.

Donation service area (DSA) means a geographical area of sufficient size to ensure maximum effectiveness in the procurement and equitable distribution of organs and that either includes an entire metropolitan statistical area or does not include any part of such an area and that meets the standards of this subpart.

Donor means a deceased individual from whom at least one vascularized organ (heart, liver, lung, kidney, pancreas, or intestine) is recovered for the purpose of transplantation.

Donor after cardiac death (DCD) means an individual who donates after his or her heart has irreversibly stopped beating. A donor after cardiac death may be termed a non-heartbeating or asystolic donor.

Donor document is any documented indication of an individual's choice in regard to donation that meets the requirements of the governing state law.

Eligible death for organ donation means the death of a patient 70 years old or younger, who ultimately is legally declared brain dead according to hospital policy independent of family decision regarding donation or availability of next-of-kin, independent of medical examiner or coroner involvement in the case, and independent of local acceptance criteria or transplant center practice, who exhibits none of the following:

(1) Active infections (specific diagnoses).

(i) Bacterial:

(A) Tuberculosis.

(B) Gangrenous bowel or perforated bowel and/or intra-abdominal sepsis.

(ii) Viral:

(A) HIV infection by serologic or molecular detection.

(B) Rabies.

(C) Reactive Hepatitis B Surface Antigen.

(D) Retroviral infections including HTLV I/II.

(E) Viral Encephalitis or Meningitis.

(F) Active Herpes simplex, varicella zoster, or cytomegalovirus viremia or pneumonia.

(G) Acute Epstein Barr Virus (mononucleosis).

(H) West Nile Virus infection.

(I) Severe acute respiratory syndrome (SARS).

(iii) Fungal:

(A) Active infection with Cryptococcus, Aspergillus, Histoplasma, Coccidioides.

(B) Active candidemia or invasive yeast infection.

(iv) Parasites: active infection with Trypanosoma cruzi (Chagas'), Leishmania, Strongyloides, or Malaria (Plasmodium sp.).

(v) Prion: Creutzfeldt-Jacob Disease.

(2) General:

(i) Aplastic Anemia.

(ii) Agranulocytosis.

(iii) Extreme Immaturity (<500 grams or gestational age of <32 weeks).

(iv) Current malignant neoplasms except non-melanoma skin cancers such as basal cell and squamous cell cancer and primary CNS tumors without evident metastatic disease.

(v) Previous malignant neoplasms with current evident metastatic disease.

(vi) A history of melanoma.

(vii) Hematologic malignancies: Leukemia, Hodgkin's Disease, Lymphoma, Multiple Myeloma.

(viii) Multi-system organ failure (MSOF) due to overwhelming sepsis or MSOF without sepsis defined as 3 or more systems in simultaneous failure for a period of 24 hours or more without response to treatment or resuscitation.

(ix) Active Fungal, Parasitic, viral, or Bacterial Meningitis or encephalitis.

(3) The number of eligible deaths is the denominator for the donation rate outcome performance measure as described at § 486.318(a)(1).

Eligible donor means any donor that meets the eligible death criteria. The number of eligible donors is the numerator of the donation rate outcome performance measure.

Entire metropolitan statistical area means a metropolitan statistical area (MSA), a consolidated metropolitan statistical area (CMSA), or a primary metropolitan statistical area (PMSA) listed in the State and Metropolitan Area Data Book published by the U.S. Bureau of the Census. CMS does not recognize a CMSA as a metropolitan area for the purposes of establishing a geographical area for an OPO.

Expected donation rate means the donation rate expected for an OPO based on the national experience for OPOs serving similar hospitals and donation service areas. This rate is adjusted for the following hospital characteristics: Level I or Level II trauma center, Metropolitan Statistical Area size, CMS Case Mix Index, total bed size, number of intensive care unit (ICU) beds, primary service, presence of a neurosurgery unit, and hospital control/ownership.

Observed donation rate is the number of donors meeting the eligibility criteria per 100 deaths.

Open area means an OPO service area for which CMS has notified the public that it is accepting applications for designation.

Organ means a human kidney, liver, heart, lung, pancreas, or intestine (or multivisceral organs when transplanted at the same time as an intestine).

Organ procurement organization (OPO) means an organization that performs or coordinates the procurement, preservation, and transport of organs and maintains a system for locating prospective recipients for available organs.

Re-certification cycle means the 4-year cycle during which an OPO is certified.

Standard criteria donor (SCD) means a donor that meets the eligibility criteria for an eligible donor and does not meet the criteria to be a donor after cardiac death or expanded criteria donor.

Transplant hospital means a hospital that provides organ transplants and other medical and surgical specialty services required for the care of transplant patients. There may be one or

more types of organ transplant centers operating within the same transplant hospital.

Urgent need occurs when an OPO's noncompliance with one or more conditions for coverage has caused, or is likely to cause, serious injury, harm, impairment, or death to a potential or actual donor or an organ recipient.

Requirements for Certification and Designation

§ 486.303 Requirements for certification.

In order to be certified as a qualified organ procurement organization, an organ procurement organization must:

(a) Have received a grant under 42 U.S.C. 273(a) or have been certified or re-certified by the Secretary within the previous 4 years as being a qualified OPO.

(b) Be a non-profit entity that is exempt from Federal income taxation under section 501 of the Internal Revenue Code of 1986.

(c) Have accounting and other fiscal procedures necessary to assure the fiscal stability of the organization, including procedures to obtain payment for kidneys and non-renal organs provided to transplant hospitals.

(d) Have an agreement with CMS, as the Secretary's designated representative, to be reimbursed under title XVIII for the procurement of kidneys.

(e) Have been re-certified as an OPO under the Medicare program from January 1, 2002 through December 31, 2005.

(f) Have procedures to obtain payment for non-renal organs provided to transplant centers.

(g) Agree to enter into an agreement with any hospital or critical access hospital in the OPO's service area, including a transplant hospital that requests an agreement.

(h) Meet the conditions for coverage for organ procurement organizations, which include both outcome and process performance measures.

(i) Meet the provisions of titles XI, XVIII, and XIX of the Act, section 371(b) of the Public Health Services Act, and any other applicable Federal regulations.

§ 486.304 Requirements for designation.

(a) Designation is a condition for payment. Payment may be made under the Medicare and Medicaid programs for organ procurement costs attributable to payments made to an OPO by a hospital only if the OPO has been designated by CMS as an OPO.

(b) An OPO must be certified as a qualified OPO by CMS under 42 U.S.C. 273(b) and § 486.303 to be eligible for designation.

(c) An OPO must enter into an agreement with CMS in order for the organ procurement costs attributable to the OPO to be reimbursed under Medicare and Medicaid.

§ 486.306 OPO service area size designation and documentation requirements.

(a) *General documentation requirement.* An OPO must make available to CMS documentation verifying that the OPO meets the requirements of paragraphs (b) through (d) of this section at the time of application and throughout the period of its designation.

(b) *Service area designation.* The defined service area either includes an entire metropolitan statistical area or a New England county metropolitan statistical area as specified by the Director of the Office of Management and Budget or does not include any part of such an area.

(c) *Service area location and characteristics.* An OPO must define and document a proposed service area's location through the following information:

(1) The names of counties (or parishes in Louisiana) served or, if the service area includes an entire State, the name of the State.

(2) Geographic boundaries of the service area.

(3) The number and the names of all hospitals and critical access hospitals in the service area that have both a ventilator and an operating room.

§ 486.308 Designation of one OPO for each service area.

(a) CMS designates only one OPO per service area. A service area is open for competition when the OPO for the service area is de-certified and all administrative appeals under § 486.314 are exhausted.

(b) Designation periods—

(1) *General.* An OPO is normally designated for a 4-year agreement cycle. The period may be shorter, for example, if an OPO has voluntarily terminated its agreement with CMS and CMS selects a successor OPO for the balance of the 4-year agreement cycle. In rare situations, a designation period may be longer, for example, a designation may be extended if additional time is needed to select a successor OPO to an OPO that has been de-certified.

(2) *Re-Certification.* Re-certification must occur not more frequently than once every 4 years.

(c) Unless CMS has granted a hospital a waiver under paragraphs (d) through (f) of this section, the hospital must enter into an agreement only with the OPO designated to serve the area in which the hospital is located.

(d) If CMS changes the OPO designated for an area, hospitals located in that area must enter into agreements with the newly designated OPO or submit a request for a waiver in accordance with paragraph (e) of this section within 30 days of notice of the change in designation.

(e) A hospital may request and CMS may grant a waiver permitting the hospital to have an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located. To qualify for a waiver, the hospital must submit data to CMS establishing that—

(1) The waiver is expected to increase organ donations; and

(2) The waiver will ensure equitable treatment of patients listed for transplants within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement.

(f) In making a determination on waiver requests, CMS considers—

(1) Cost effectiveness;

(2) Improvements in quality;

(3) Changes in a hospital's designated OPO due to changes in the definitions of metropolitan statistical areas, if applicable; and

(4) The length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO.

(g) A hospital may continue to operate under its existing agreement with an out-of-area OPO while CMS is processing the waiver request. If a waiver request is denied, a hospital must enter into an agreement with the designated OPO within 30 days of notification of the final determination.

§ 486.309 Re-certification from August 1, 2006 through July 31, 2010.

An OPO will be considered to be re-certified for the period of August 1, 2006 through July 31, 2010 if an OPO met the standards to be a qualified OPO within a 4-year period ending December 31, 2001 and has an agreement with the Secretary that is scheduled to terminate on July 31, 2006. Agreements based on the August 1, 2006 through July 31, 2010 re-certification cycle will end on January 31, 2011.

§ 486.310 Changes in control or ownership or service area.

(a) *OPO requirements.*

(1) A designated OPO considering a change in control (see § 413.17(b)(3)) or

ownership or in its service area must notify CMS before putting it into effect. This notification is required to ensure that the OPO, if changed, will continue to satisfy Medicare and Medicaid requirements. The merger of one OPO into another or the consolidation of one OPO with another is considered a change in control or ownership.

(2) A designated OPO considering a change in its service area must obtain prior CMS approval. In the case of a service area change that results from a change of control or ownership due to merger or consolidation, the OPOs must resubmit the information required in an application for designation. The OPO must provide information specific to the board structure of the new organization, as well as operating budgets, financial information, and other written documentation CMS determines to be necessary for designation.

(b) *CMS requirements.*

(1) If CMS finds that the OPO has changed to such an extent that it no longer satisfies the requirements for OPO designation, CMS may de-certify the OPO and declare the OPO's service area to be an open area. An OPO may appeal such a de-certification as set forth in § 486.314. The OPO's service area is not opened for competition until the conclusion of the administrative appeals process.

(2) If CMS finds that the changed OPO continues to satisfy the requirements for OPO designation, the period of designation of the changed OPO is the remaining portion of the 4-year term of the OPO that was reorganized. If more than one designated OPO is involved in the reorganization, the remaining designation term is the longest of the remaining periods unless CMS determines that a shorter period is in the best interest of the Medicare and Medicaid programs. The changed OPO must continue to meet the requirements for certification at § 486.303 throughout the remaining period.

Re-Certification and De-Certification

§ 486.312 De-certification.

(a) *Voluntary termination of agreement.* If an OPO wishes to terminate its agreement, the OPO must send CMS written notice of its intention to terminate its agreement and the proposed effective date. CMS may approve the proposed date, set a different date no later than 6 months after the proposed effective date, or set a date less than 6 months after the proposed effective date if it determines that a different date would not disrupt services to the service area. If CMS determines that a designated OPO has ceased to furnish organ procurement services to its service area, the cessation of services is deemed to constitute a voluntary termination by the OPO, effective on a date determined by CMS. CMS will de-certify the OPO as of the effective date of the voluntary termination.

(b) *Involuntary termination of agreement.* During the term of the agreement, CMS may terminate an agreement with an OPO if the OPO no longer meets the requirements for certification at § 486.303. CMS may also terminate an agreement immediately in cases of urgent need, such as the discovery of unsound medical practices. CMS will de-certify the OPO as of the effective date of the involuntary termination.

(c) *Non-renewal of agreement.* CMS will not voluntarily renew its agreement with an OPO if the OPO fails to meet the requirements for certification at § 486.318, based on findings from the most recent re-certification cycle, or the other requirements for certification at § 486.303. CMS will de-certify the OPO as of the ending date of the agreement.

(d) *Notice to OPO.* Except in cases of urgent need, CMS gives written notice of de-certification to an OPO at least 90 days before the effective date of the de-certification. In cases of urgent need, CMS gives written notice of de-certification to an OPO at least 3 calendar days prior to the effective date of the de-certification. The notice of de-certification states the reasons for de-certification and the effective date.

(e) *Public notice.* Once CMS approves the date for a voluntary termination, the OPO must provide prompt public notice of the date of de-certification and such other information as CMS may require through publication in local newspapers in the service area. In the case of involuntary termination or non-renewal of an agreement, CMS provides public notice of the date of de-certification through publication in local newspapers in the service area. No payment under titles XVIII or XIX of the Act will be made with respect to organ procurement costs attributable to the OPO on or after the effective date of de-certification.

§ 486.314 Appeals.

If an OPO's de-certification is due to involuntary termination or non-renewal of its agreement with CMS, the OPO may appeal the de-certification on substantive and procedural grounds.

(a) *Notice of initial determination.* CMS mails notice to the OPO of an initial de-certification determination. The notice contains the reasons for the determination, the effect of the determination, and the OPO's right to seek reconsideration.

(b) *Reconsideration.* (1) Filing request. If the OPO is dissatisfied with the de-certification determination, it has 15 business days from receipt of the notice of de-certification to seek reconsideration from CMS. The request for reconsideration must state the issues or findings of fact with which the OPO disagrees and the reasons for disagreement.

(2) An OPO must seek reconsideration before it is entitled to seek a hearing before a hearing officer. If an OPO does not request reconsideration or its request is not made timely, the OPO has no right to further administrative review.

(3) *Reconsideration determination.* CMS makes a written reconsidered determination within 10 business days of receipt of the request for reconsideration, affirming, reversing, or modifying the initial determination and the findings on which it was based. CMS augments the administrative record to include any additional materials submitted by the OPO, and a copy of the reconsideration decision and sends the supplemented administrative record to the CMS hearing officer.

(c) *Request for hearing.* An OPO dissatisfied with the CMS reconsideration decision, must file a request for a hearing before a CMS hearing officer within 40 business days of receipt of the notice of the reconsideration determination. If an OPO does not request a hearing or its request is not received timely, the OPO has no right to further administrative review.

(d) *Administrative record.* The hearing officer sends the administrative record to both parties within 10 business days of receipt of the request for a hearing.

(1) The administrative record consists of, but is not limited to, the following:

(i) Factual findings from the survey(s) on the OPO conditions for coverage.

(ii) Data from the outcome measures.

(iii) Rankings of OPOs based on the outcome data.

(iv) Correspondence between CMS and the affected OPO.

(2) The administrative record will not include any privileged information.

(e) *Pre-Hearing conference.* At any time before the hearing, the CMS hearing officer may call a pre-hearing conference if he or she believes that a conference would more clearly define the issues. At the pre-hearing conference, the hearing officer may establish the briefing schedule, sets the hearing date, and addresses other

administrative matters. The hearing officer will issue an order reflecting the results of the pre-hearing conference.

(f) *Date of hearing.* The hearing officer sets a date for the hearing that is no more than 60 calendar days following the receipt of the request for a hearing.

(g) *Conduct of hearing.* (1) The hearing is open to both parties, CMS and the OPO.

(2) The hearing officer inquires fully into all the matters at issue and receives in evidence the testimony of witnesses and any documents that are relevant and material.

(3) The hearing officer provides the parties with an opportunity to enter an objection to the inclusion of any document. The hearing officer will consider the objection and will rule on the document's admissibility.

(4) The hearing officer decides the order in which the evidence and the arguments of the parties are presented and the conduct of the hearing.

(5) The hearing officer rules on the admissibility of evidence and may admit evidence that would be inadmissible under rules applicable to court procedures.

(6) The hearing officer rules on motions and other procedural items.

(7) The hearing officer regulates the course of the hearing and conduct of counsel.

(8) The hearing officer may examine witnesses.

(9) The hearing officer takes any action authorized by the rules in this subpart.

(h) Parties' rights. CMS and the OPO may:

(1) Appear by counsel or other authorized representative, in all hearing proceedings.

(2) Participate in any pre-hearing conference held by the hearing officer.

(3) Agree to stipulations as to facts which will be made a part of the record.

(4) Make opening statements at the hearing.

(5) Present relevant evidence on the issues at the hearing.

(6) Present witnesses, who then must be available for cross-examination, and cross-examine witnesses presented by the other party.

(7) Present oral arguments at the hearing.

(i) Hearing officer's decision. The hearing officer renders a decision on the appeal of the notice of de-certification within 20 business days of the hearing.

(1) *Reversal of de-certification.* If the hearing officer reverses CMS' determination to de-certify an OPO in a case involving the involuntary termination of the OPO's agreement, CMS will not terminate the OPO's agreement and will not de-certify the OPO.

(2) *De-certification is upheld.* If the de-certification determination is upheld by the hearing officer, the OPO is de-certified and it has no further administrative appeal rights.

(j) *Extension of agreement.* If there is insufficient time prior to expiration of an agreement with CMS to allow for competition of the service area and, if necessary, transition of the service area to a successor OPO, CMS may choose to extend the OPO's agreement with CMS.

(k) *Effects of de-certification.* Medicare and Medicaid payments may not be made for organ procurement services the OPO furnishes on or after the effective date of de-certification. CMS will then open the de-certified OPO's service area for competition as set forth in § 486.316(c).

§ 486.316 Re-certification and competition processes.

(a) *Re-Certification of OPOs.* An OPO is re-certified for an additional 4 years and its service area is not opened for competition when the OPO:

(1) Meets all 3 outcome measure requirements at § 486.318; and

(2) Has been shown by survey to be in compliance with the requirements for certification at § 486.303, including the conditions for coverage at § 486.320 through § 486.348.

(b) *De-certification and competition.* If an OPO does not meet all 3 outcome measures as described in paragraph (a)(1) of this section or the requirements described in paragraph (a)(2) of this section, the OPO is de-certified. If the OPO does not appeal or the OPO appeals and the reconsideration official and CMS hearing officer uphold the de-certification, the OPO's service area is opened for competition from other OPOs. The de-certified OPO is not permitted to compete for its open area or any other open area. An OPO competing for an open service area must submit information and data that describe the barriers in its service area, how they affected organ donation, what steps the OPO took to overcome them, and the results.

(c) *Criteria to compete.* To compete for an open service area, an OPO must meet the criteria in paragraph (a) of this section and the following additional criteria:

(1) The OPO's performance on the donation rate outcome measure and yield outcome measure is at or above 100 percent of the mean national rate averaged over the 4 years of the re-certification cycle; and

(2) The OPO's donation rate is at least 15 percentage points higher than the donation rate of the OPO currently designated for the service area.

(3) The OPO must compete for the entire service area.

(d) *Criteria for selection.* CMS will designate an OPO for an open service area based on the following criteria:

(1) Performance on the outcome measures at § 486.318;

(2) Relative success in meeting the process performance measures and other conditions at §§ 486.320 through 486.348;

(3) Contiguity to the open service area.

(4) Success in identifying and overcoming barriers to donation within its own service area and the relevance of those barriers to barriers in the open area. An OPO competing for an open service area must submit information and data that describe the barriers in its service area, how they affected organ donation, what steps the OPO took to overcome them, and the results.

(e) *No OPO applies.* If no OPO applies to compete for a de-certified OPO's open area, CMS may select a single OPO to take over the entire open area or may adjust the service area boundaries of two or more contiguous OPOs to incorporate the open area. CMS will make its decision based on the criteria in paragraph (d) of this section.

Organ Procurement Organization Outcome Requirements

§ 486.318 Condition: Outcome measures.

(a) With the exception of OPOs operating exclusively in non-contiguous U.S. states, commonwealths, territories, or possessions, an OPO must meet all 3 of the following outcome measures:

(1) The OPO's donation rate of eligible donors as a percentage of eligible deaths is no more than 1.5 standard deviations below the mean national donation rate of eligible donors as a percentage of eligible deaths, averaged over the 4 years of the re-certification cycle. Both the numerator and denominator of an individual OPO's donation rate ratio are adjusted by adding a 1 for each donation after cardiac death donor and each donor over the age of 70;

(2) The observed donation rate is not significantly lower than the expected donation rate for 18 or more months of the 36 months of data used for re-certification, as calculated by the SRTR;

(3) At least 2 out of the 3 following yield measures are no more than 1 standard deviation below the national mean, averaged over the 4 years of the re-certification cycle:

(i) The number of organs transplanted per standard criteria donor, including pancreata used for islet cell transplantation;

(ii) The number of organs transplanted per expanded criteria donor, including pancreata used for islet cell transplantation; and

(iii) The number of organs used for research per donor, including pancreata used for islet cell research.

(b) For OPOs operating exclusively in non-contiguous U.S. states, commonwealths, territories, and possessions, the OPO outcome measures are as follows:

(1) The OPO's donation rate of eligible donors as a percentage of eligible deaths is no more than 1.5 standard deviations below the mean national donation rate of eligible donors as a percentage of eligible deaths, averaged over the 4 years of the re-certification cycle. Both the numerator and denominator of an individual OPO's donation rate ratio are adjusted by adding a 1 for each donation after cardiac death donor and each donor over the age of 70;

(2) The observed donation rate is not significantly lower than the expected donation rate for 18 or more months of the 36 months of data used for re-certification, as calculated by the SRTR;

(3) At least 2 out of the 3 following are no more than 1 standard deviation below the national mean:

(i) The number of kidneys transplanted per standard criteria donor;

(ii) The number of kidneys transplanted per expanded criteria donor; and

(iii) The number of organs used for research per donor, including pancreata recovered for islet cell transplantation.

(c) Data for the outcome measures.

(1) An OPO's performance on the outcome measures is based on 36 months of data, beginning with January 1 of the first full year of the re-certification cycle and ending 36 months later on December 31, 7 months prior to the end of the re-certification cycle.

(2) If an OPO takes over another OPO's service area on a date later than January 1 of the first full year of the re-certification cycle so that 36 months of data are not available to evaluate the OPO's performance in its new service area, we will not hold the OPO accountable for its performance in the new area until the end of the following re-certification cycle when 36 months of data are available.

Organ Procurement Organization Process Performance Measures

§ 486.320 Condition: Participation in Organ Procurement and Transplantation Network.

After being designated, an OPO must become a member of, participate in, and abide by the rules and requirements of the OPTN established and operated in accordance with section 372 of the Public Health Service Act (42 U.S.C. 274). The term ''rules and requirements of the OPTN'' means those rules and requirements approved by the Secretary. No OPO is considered out of compliance with section 1138(b)(1)(D) of the Act or this section until the Secretary approves a determination that the OPO failed to comply with the rules and requirements of the OPTN. The Secretary may impose sanctions under section 1138 only after such non-compliance has been determined in this manner.

§ 486.322 Condition: Relationships with hospitals, critical access hospitals, and tissue banks.

(a) *Standard:* Hospital agreements. An OPO must have a written agreement with 95 percent of the Medicare and Medicaid participating hospitals and critical access hospitals in its service area that have both a ventilator and an operating room and have not been granted a waiver by CMS to work with another OPO. The agreement must describe the responsibilities of both the OPO and hospital or critical access hospital in regard to donation after cardiac death (if the OPO has a protocol for donation after cardiac death) and the requirements for hospitals at § 482.45 or § 485.643. The agreement must specify the meaning of the terms ''timely referral'' and ''imminent death.''

(b) *Standard:* Designated requestor training for hospital staff. The OPO must offer to provide designated requestor training on at least an annual basis for hospital and critical access hospital staff.

(c) *Standard:* Cooperation with tissue banks.

(1) The OPO must have arrangements to cooperate with tissue banks that have agreements with hospitals and critical access hospitals with which the OPO has agreements. The OPO must cooperate in the following activities, as may be appropriate, to ensure that all usable tissues are obtained from potential donors:

(i) Screening and referral of potential tissue donors.

(ii) Obtaining informed consent from families of potential tissue donors.

(iii) Retrieval, processing, preservation, storage, and distribution of tissues.

(iv) Providing designated requestor training.

(2) An OPO is not required to have an arrangement with a tissue bank that is unwilling to have an arrangement with the OPO.

§ 486.324 Condition: Administration and governing body.

(a) While an OPO may have more than one board, the OPO must have an advisory board that has both the authority described in paragraph (b) of this section and the following membership:

(1) Members who represent hospital administrators, either intensive care or emergency room personnel, tissue banks, and voluntary health associations in the OPO's service area.

(2) Individuals who represent the public residing in the OPO's service area.

(3) A physician with knowledge, experience, or skill in the field of human histocompatibility, or an individual with a doctorate degree in a biological science and with knowledge, experience, or skills in the field of human histocompatibility.

(4) A neurosurgeon or other physician with knowledge or skills in the neurosciences.

(5) A transplant surgeon representing each transplant hospital in the service area with which the OPO has arrangements to coordinate its activities. The transplant surgeon must have practicing privileges and perform transplants in the transplant hospital represented.

(6) An organ donor family member.

(b) The OPO board described in paragraph (a) of this section has the authority to recommend policies for the following:

(1) Procurement of organs.

(2) Effective agreements to identify potential organ donors with a substantial majority of hospitals in its service area that have facilities for organ donation.

(3) Systematic efforts, including professional education, to acquire all useable organs from potential donors.

(4) Arrangements for the acquisition and preservation of donated organs and provision of quality standards for the acquisition of organs that are consistent with the standards adopted by the OPTN, including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immunodeficiency syndrome (AIDS).

(5) Appropriate tissue typing of organs.

(6) A system for allocation of organs among transplant patients that is consistent with the rules and requirements of the OPTN, as defined in § 486.320 of this part.

(7) Transportation of organs to transplant hospitals.

(8) Coordination of activities with transplant hospitals in the OPO's service area.

(9) Participation in the OPTN.

(10) Arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all useable tissues are obtained from potential donors.

(11) Annual evaluation of the effectiveness of the OPO in acquiring organs.

(12) Assistance to hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors.

(c) The advisory board described in paragraph (a) of this section has no authority over any other activity of the OPO and may not serve as the OPO's governing body or board of directors. Members of the advisory board described in paragraph (a) of this section are prohibited from serving on any other OPO board.

(d) The OPO must have bylaws for each of its board(s) that address potential conflicts of interest, length of terms, and criteria for selecting and removing members. (e) A governing body must have full legal authority and responsibility for the management and provision of all OPO services and must develop and oversee implementation of policies and procedures considered necessary for the effective administration of the OPO, including fiscal operations, the OPO's quality assessment and performance improvement (QAPI) program, and services furnished under contract or arrangement, including agreements for these services. The governing body must appoint an individual to be responsible for the day-to-day operation of the OPO.

(e) A governing body must have full legal authority and responsibility for the management and provision of all OPO services and must develop and oversee implementation of policies and procedures considered necessary for the effective administration of the OPO, including fiscal operations, the OPO's quality assessment and performance improvement (QAPI) program, and services furnished under contract or arrangement, including agreements for these services. The governing body must appoint an individual to be responsible for the day-to-day operation of the OPO.

(f) The OPO must have procedures to address potential conflicts of interest for the governing body described in paragraph (d) of this section.

(g) The OPO's policies must state whether the OPO recovers organs from donors after cardiac death.

§ 486.326 Condition: Human resources.

All OPOs must have a sufficient number of qualified staff, including a director, a medical director, organ procurement coordinators, and hospital development staff to obtain all usable organs from potential donors, and to ensure that required services are provided to families of potential donors, hospitals, tissue banks, and individuals and facilities that use organs for research.

(a) *Standard: Qualifications.* (1) The OPO must ensure that all individuals who provide services and/or supervise services, including services furnished under contract or arrangement, are qualified to provide or supervise the services.

(2) The OPO must develop and implement a written policy that addresses potential conflicts of interest for the OPO's director, medical director, senior management, and procurement coordinators.

(3) The OPO must have credentialing records for physicians and other practitioners who routinely recover organs in hospitals under contract or arrangement with the OPO and ensure that all physicians and other practitioners who recover organs in hospitals with which the OPO has agreements are qualified and trained.

(b) *Standard: Staffing.*

(1) The OPO must provide sufficient coverage, either by its own staff or under contract or arrangement, to assure both that hospital referral calls are screened for donor potential and that potential donors are evaluated for medical suitability for organ and/or tissue donation in a timely manner.

(2) The OPO must have a sufficient number of qualified staff to provide information and support to potential organ donor families; request consent for donation; ensure optimal maintenance of the donor, efficient placement of organs, and adequate oversight of organ recovery; and conduct QAPI activities, such as death record reviews and hospital development.

(3) The OPO must provide a sufficient number of recovery personnel, either from its own staff or under contract or arrangement, to ensure that all usable organs are recovered in a manner that, to the extent possible, preserves them for transplantation.

(c) *Standard: Education, training, and performance evaluation.* The OPO must provide its staff with the education, training, and supervision necessary to furnish required services. Training must include but is not limited to performance expectations for staff, applicable organizational policies and procedures, and QAPI activities. OPOs must evaluate the performance of their staffs and provide training, as needed, to improve individual and overall staff performance and effectiveness.

(d) *Standard: Medical director.* The OPO's medical director is a physician licensed in at least one of the States or territories within the OPO's service area or as required by State or territory law or by the jurisdiction in which the OPO is located. The medical director is responsible for implementation of the OPO's protocols for donor evaluation and management and organ recovery and placement. The medical director is responsible for oversight of the clinical management of potential donors, including providing assistance in managing a donor case when the surgeon on call is unavailable.

§ 486.328 Condition: Reporting of data.

(a) An OPO must provide individually-identifiable, hospital-specific organ donation and transplantation data and other information to the Organ Procurement and Transplantation Network, the Scientific Registry of Transplant Recipients, and DHHS, as requested by the Secretary. The data may include, but are not limited to:

(1) Number of hospital deaths;

(2) Results of death record reviews;

(3) Number and timeliness of referral calls from hospitals;

(4) Number of eligible deaths;

(5) Data related to non-recovery of organs;

(6) Data about consents for donation;

(7) Number of eligible donors;

(8) Number of organs recovered, by type of organ; and

(9) Number of organs transplanted, by type of organ.

(b) An OPO must provide hospital-specific organ donation data annually to the transplant hospitals with which it has agreements.

(c) Data to be used for OPO re-certification purposes must be reported to the OPTN and must include data for all deaths in all hospitals and critical access hospitals in the OPO's donation service area, unless a hospital or critical access hospital has been granted a waiver to work with a different OPO.

(d) Data reported by the OPO to the OPTN must be reported within 30 days after the end of the month in which a death occurred. If an OPO determines through death record review or other means that the data it reported to the OPTN was incorrect, it must report the corrected data to the OPTN within 30 days of the end of the month in which the error is identified.

(e) For the purpose of determining the information to be collected under

paragraph (a) of this section, the following definitions apply:

(1) *Kidneys procured.* Each kidney recovered will be counted individually. En bloc kidneys recovered will count as two kidneys procured.

(2) *Kidneys transplanted.* Each kidney transplanted will be counted individually. En bloc kidney transplants will be counted as two kidneys transplanted.

(3) *Extra-renal organs procured.* Each organ recovered is counted individually.

(4) *Extra-renal organs transplanted.* Each organ or part thereof transplanted will be counted individually. For example, a single liver is counted as one organ procured and each portion that is transplanted will count as one transplant. Further, a heart and double lung transplant will be counted as three organs transplanted. A kidney/pancreas transplant will count as one kidney transplanted and one extra-renal organ transplanted.

§ 486.330 Condition: Information management.

An OPO must establish and use an electronic information management system to maintain the required medical, social and identifying information for every donor and transplant recipient and develop and follow procedures to ensure the confidentiality and security of the information.

(a) *Donor information.* The OPO must maintain a record for every donor. The record must include, at a minimum, information identifying the donor (for example, name, address, date of birth, social security number or other unique identifier, such as Medicare health insurance claim number), organs and (when applicable) tissues recovered, date of the organ recovery, donor management data, all test results, current hospital history, past medical and social history, the pronouncement of death, and consent and next-of-kin information.

(b) *Disposition of organs.* The OPO must maintain records showing the disposition of each organ recovered for the purpose of transplantation, including information identifying transplant recipients.

(c) *Data retention.* Donor and transplant recipient records must be maintained in a human readable and reproducible paper or electronic format for 7 years.

(d) *Format of records.* The OPO must maintain data in a format that can readily be transferred to a successor OPO and in the event of a transfer must provide to CMS copies of all records, data, and software necessary to ensure uninterrupted service by a successor OPO. Records and data subject to this requirement include donor and transplant recipient records and procedural manuals and other materials used in conducting OPO operations.

§ 486.342 Condition: Requesting consent.

An OPO must encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of potential donor families.

(a) An OPO must have a written protocol to ensure that, in the absence of a donor document, the individual(s) responsible for making the donation decision are informed of their options to donate organs or tissues (when the OPO is making a request for tissues) or to decline to donate. The OPO must provide to the individual(s) responsible for making the donation decision, at a minimum, the following:

(1) A list of the organs and/or tissues that may be recovered.

(2) The most likely uses for the donated organs or tissues.

(3) A description of the screening and recovery processes.

(4) Information about the organizations that will recover, process, and distribute the tissue.

(5) Information regarding access to and release of the donor's medical records.

(6) An explanation of the impact the donation process will have on burial arrangements and the appearance of the donor's body.

(7) Contact information for individual(s) with questions or concerns.

(8) A copy of the signed consent form if a donation is made.

(b) If an OPO does not request consent to donation because a potential donor consented to donation before his or her death in a manner that satisfied applicable State law requirements in the potential donor's State of residence, the OPO must provide information about the donation to the family of the potential donor, as requested.

§ 486.344 Condition: Evaluation and management of potential donors and organ placement and recovery.

The OPO must have written protocols for donor evaluation and management and organ placement and recovery that meet current standards of practice and are designed to maximize organ quality and optimize the number of donors and the number of organs recovered and transplanted per donor.

(a) *Potential donor protocol management.* (1) The medical director is responsible for ensuring that potential donor evaluation and management protocols are implemented correctly and appropriately to ensure that potential donors are thoroughly assessed for medical suitability for organ donation and clinically managed to optimize organ viability and function.

(2) The OPO must implement a system that ensures that a qualified physician or other qualified individual is available to assist in the medical management of a potential donor when the surgeon on call is unavailable.

(b) *Potential donor evaluation.* The OPO must do the following:

(1) Verify that death has been pronounced according to applicable local, State, and Federal laws.

(2) Determine whether there are conditions that may influence donor acceptance.

(3) If possible, obtain the potential donor's medical and social history.

(4) Review the potential donor's medical chart and perform a physical examination of the donor.

(5) Obtain the potential donor's vital signs and perform all pertinent tests.

(c) *Testing.* The OPO must do the following:

(1) Arrange for screening and testing of the potential donor for infectious disease according to current standards of practice, including testing for the human immunodeficiency virus.

(2) Ensure that screening and testing of the potential donor (including point-of-care testing and blood typing) are conducted by a laboratory that is certified in the appropriate specialty or subspecialty of service in accordance with part 493 of this chapter.

(3) Ensure that the potential donor's blood is typed using two separate blood samples.

(4) Document potential donor's record with all test results, including blood type, before organ recovery.

(d) *Standard: Collaboration with transplant programs.*

(1) The OPO must establish protocols in collaboration with transplant programs that define the roles and responsibilities of the OPO and the transplant program for all activities associated with the evaluation and management of potential donors, organ recovery, and organ placement, including donation after cardiac death, if the OPO has implemented a protocol for donation after cardiac death.

(2) The protocol must ensure that:

(i) The OPO is responsible for two separate determinations of the donor's blood type;

(ii) If the identify of the intended recipient is known, the OPO has a procedure to ensure that prior to organ recovery, an individual from the OPO's staff compares the blood type of the

donor with the blood type of the intended recipient, and the accuracy of the comparison is verified by a different individual;

(iii) Documentation of the donor's blood type accompanies the organ to the hospital where the transplant will take place.

(3) The established protocols must be reviewed regularly with the transplant programs to incorporate practices that have been shown to maximize organ donation and transplantation.

(e) *Documentation of recipient information.* If the intended recipient has been identified prior to recovery of an organ for transplantation, the OPO must have written documentation from the OPTN showing, at a minimum, the intended organ recipient's ranking in relation to other suitable candidates and the recipient's OPTN identification number and blood type.

(f) *Donation after cardiac death.* If an OPO recovers organs from donors after cardiac death, the OPO must have protocols that address the following:

(1) Criteria for evaluating patients for donation after cardiac death;

(2) Withdrawal of support, including the relationship between the time of consent to donation and the withdrawal of support;

(3) Use of medications and interventions not related to withdrawal of support;

(4) Involvement of family members prior to organ recovery;

(5) Criteria for declaration of death and the time period that must elapse prior to organ recovery.

(g) *Organ allocation.* The OPO must have a system to allocate donated organs among transplant patients that is consistent with the rules and requirements of the OPTN, as defined in § 486.320 of this part.

(h) *Organ placement.* The OPO must develop and implement a protocol to maximize placement of organs for transplantation.

§ 486.346 Condition: Organ preparation and transport.

(a) The OPO must arrange for testing of organs for infectious disease and tissue typing of organs according to current standards of practice. The OPO must ensure that testing and tissue typing of organs are conducted by a laboratory that is certified in the appropriate specialty or subspecialty of service in accordance with part 493 of this chapter.

(b) The OPO must send complete documentation of donor information to the transplant center with the organ, including donor evaluation, the complete record of the donor's management, documentation of consent, documentation of the pronouncement of death, and documentation for determining organ quality. Two individuals, one of whom must be an OPO employee, must verify that the documentation that accompanies an organ to a transplant center is correct.

(c) The OPO must develop and follow a written protocol for packaging, labeling, handling, and shipping organs in a manner that ensures their arrival without compromise to the quality of the organ. The protocol must include procedures to check the accuracy and integrity of labels, packaging, and contents prior to transport, including verification by two individuals, one of whom must be an OPO employee, that information listed on the labels is correct.

(d) All packaging in which an organ is transported must be marked with the identification number, specific contents, and donor's blood type.

§ 486.348 Condition: Quality assessment and performance improvement (QAPI).

The OPO must develop, implement, and maintain a comprehensive, data-driven QAPI program designed to monitor and evaluate performance of all donation services, including services provided under contract or arrangement.

(a) *Standard: Components of a QAPI program.* The OPO's QAPI program must include objective measures to evaluate and demonstrate improved performance with regard to OPO activities, such as hospital development, designated requestor training, donor management, timeliness of on-site response to hospital referrals, consent practices, organ recovery and placement, and organ packaging and transport. The OPO must take actions that result in performance improvements and track performance to ensure that improvements are sustained.

(b) *Standard: Death record reviews.* As part of its ongoing QAPI efforts, an OPO must conduct at least monthly death record reviews in every Medicare and Medicaid participating hospital in its service area that has a Level I or Level II trauma center or 150 or more beds, a ventilator, and an intensive care unit (unless the hospital has a waiver to work with another OPO), with the exception of psychiatric and rehabilitation hospitals. When missed opportunities for donation are identified, the OPO must implement actions to improve performance.

(c) *Standard: Adverse events.*

(1) An OPO must establish written policies to address, at a minimum, the process for identification, reporting, analysis, and prevention of adverse events that occur during the organ donation process.

(2) The OPO must conduct a thorough analysis of any adverse event and must use the analysis to affect changes in the OPO's policies and practices to prevent repeat incidents.

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

■ 1. The authority citation for part 498 continues to read as follows:

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

§ 498.2 [Amended]

■ 2. In § 498.2, the definition of ''supplier'' is amended by removing ''organ procurement organization (OPO),''.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 11, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: May 19, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. 06–4882 Filed 5–30–06; 8:45 am]

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Federal Register

Wednesday,
May 31, 2006

Part III

Department of Veterans Affairs

38 CFR Part 5

Matters Affecting the Receipt of Benefits; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 5

RIN 2900–AM05

Matters Affecting the Receipt of Benefits

AGENCY: Department of Veterans Affairs

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to reorganize and rewrite in plain language regulations relating to determinations involving bars to benefits, forfeiture of benefits, and renouncement of benefits. These revisions are proposed as part of VA's rewrite and reorganization of all of its compensation and pension regulations in a logical, claimant-focused, and user-friendly format. The intended effect of the proposed revisions is to assist claimants and VA personnel in locating and understanding these regulations.

DATES: Comments must be received by VA on or before July 31, 2006.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail through *www.Regulations.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AM05.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Bob White, Acting Chief, Regulations Rewrite Project (00REG2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9515.

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has established an Office of Regulation Policy and Management to provide centralized management and coordination of VA's rulemaking process. One of the major functions of this office is to oversee a Regulations Rewrite Project (the Project) to improve the clarity and consistency of existing VA regulations. The Project responds to a recommendation made in the October 2001 ''VA Claims Processing Task Force: Report to the Secretary of Veterans Affairs.'' The Task Force recommended that the compensation and pension regulations be rewritten and reorganized in order to improve VA's claims adjudication process. Therefore, the Project began its efforts by reviewing, reorganizing and redrafting the content of the regulations in 38 CFR part 3 governing the compensation and pension program of the Veterans Benefits Administration. These regulations are among the most difficult VA regulations for readers to understand and apply.

Once rewritten, the proposed regulations will be published in several portions for public review and comment. This is one such portion. It includes proposed rules regarding line of duty and willful misconduct determinations, and the effects of alcohol and drug abuse and homicide on entitlement to certain VA benefits. This subpart also contains proposed rules concerning forfeiture of benefits and renouncement of benefits. After review and consideration of public comments, final versions of these proposed regulations will ultimately be published in a new part 5 in 38 CFR.

Outline

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Overview of Proposed Subpart K Organization
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Bars to Benefits

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5.661 Willful misconduct.
5.662 Alcohol and drug abuse.
5.663 Homicide as a bar to VA benefits.

Forfeiture and Renouncement of the Right to VA Benefits

5.675 General forfeiture provisions.
5.676 Forfeiture for fraud.
5.677 Forfeiture for treasonable acts.
5.678 Forfeiture for subversive activity.
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5.680 Remission of forfeiture.
5.681 Effective dates—forfeiture.
5.682 Presidential pardon for offenses causing forfeiture.
5.683 Renouncement of benefits.

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List of Subjects in 38 CFR Part 5

Overview of New Part 5 Organization

We plan to organize the part 5 regulations so that most provisions governing a specific benefit are located in the same subpart, with general provisions pertaining to all compensation and pension benefits also grouped together. We believe this organization will allow claimants, beneficiaries, and their representatives, as well as VA personnel, to find information relating to a specific benefit more quickly than the organization provided in current part 3.

The first major subdivision would be ''Subpart A—General Provisions.'' It would include information regarding the scope of the regulations in new part 5, delegations of authority, general definitions, and general policy provisions for this part. This subpart was published as proposed on March 31, 2006. *See* 71 FR 16464.

''Subpart B—Service Requirements for Veterans'' would include information regarding a veteran's military service, including the minimum service requirement, types of service, periods of war, and service evidence requirements. This subpart was published as proposed on January 30, 2004. *See* 69 FR 4820.

''Subpart C—Adjudicative Process, General'' would inform readers about claims and benefit application filing procedures, VA's duties, rights and responsibilities of claimants and beneficiaries, general evidence requirements, and general effective dates for new awards, as well as revision of decisions and protection of VA ratings. This subpart will be published as three separate Notices of Proposed Rulemaking (NPRM)s due to its size. The first, concerning the duties of VA and the rights and responsibilities of claimants and beneficiaries, was published on May 10, 2005. *See* 70 FR 24680.

''Subpart D—Dependents and Survivors'' would inform readers how VA determines whether an individual is a dependent or a survivor for purposes of determining eligibility for VA benefits. It would also provide the evidence requirements for these determinations.

''Subpart E—Claims for Service Connection and Disability Compensation'' would define service-connected disability compensation and service connection, including direct and secondary service connection. This subpart would inform readers how VA determines service connection and entitlement to disability compensation. The subpart would also contain those provisions governing presumptions related to service connection, rating principles, and effective dates, as well as several special ratings. This subpart will be published as three separate NPRMs due to its size. The first, concerning presumptions related to service connection, was published on July 27, 2004. *See* 69 FR 44614.

''Subpart F—Nonservice-Connected Disability Pensions and Death Pensions'' would include information

regarding the three types of nonservice-connected pension: Improved Pension, Old-Law Pension, and Section 306 Pension. This subpart would also include those provisions that state how to establish entitlement to Improved Pension, and the effective dates governing each pension. This subpart will be published as two separate NPRMs due to its size. The portion concerning Old-Law Pension, Section 306 Pension, and elections of Improved Pension was published as proposed on December 27, 2004. *See* 69 FR 77578.

''Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary'' would contain regulations governing claims for dependency and indemnity compensation (DIC); death compensation; accrued benefits; benefits awarded, but unpaid at death; and various special rules that apply to the disposition of VA benefits, or proceeds of VA benefits, when a beneficiary dies. This subpart would also include related definitions, effective-date rules, and rate-of-payment rules. This subpart will be published as two separate NPRMs due to its size. The portion concerning accrued benefits, death compensation, special rules applicable upon the death of a beneficiary, and several effective date rules, was published as proposed on October 1, 2004. *See* 69 FR 59072. The portion concerning DIC benefits and general provisions relating to proof of death and service-connected cause of death was published on October 21, 2005. *See* 70 FR 61326.

''Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors'' would pertain to special and ancillary benefits available, including benefits for children with various birth defects.

''Subpart I—Benefits for Certain Filipino Veterans and Survivors'' would pertain to the various benefits available to Filipino veterans and their survivors.

''Subpart J—Burial Benefits'' would pertain to burial allowances.

''Subpart K—Matters Affecting the Receipt of Benefits'' would contain provisions regarding bars to benefits, forfeiture of benefits, and renouncement of benefits. This subpart is the subject of this document.

''Subpart L—Payments and Adjustments to Payments'' would include general rate-setting rules, several adjustment and resumption regulations, and election-of-benefit rules. Because of its size, proposed regulations in subpart L will be published in two separate NPRMs.

The final subpart, ''Subpart M—Apportionments and Payments to Fiduciaries or Incarcerated Beneficiaries,'' would include regulations governing apportionments, benefits for incarcerated beneficiaries, and guardianship.

Some of the regulations in this NPRM cross-reference other compensation and pension regulations. If those regulations have been published in this or earlier NPRMs for the Project, we cite the proposed part 5 section. We also include, in the relevant portion of the Supplementary Information, the **Federal Register** page where a proposed part 5 section published in an earlier NPRM may be found. However, where a regulation proposed in this NPRM would cross-reference a proposed part 5 regulation that has not yet been published, we cite to the current part 3 regulation that deals with the same subject matter. The current part 3 section we cite may differ from its eventual part 5 counterpart in some respects, but we believe this method will assist readers in understanding these proposed regulations where no part 5 counterpart has yet been published.

Because of its large size, proposed part 5 will be published in a number of NPRMs, such as this one. VA will not adopt any portion of part 5 as final until all of the NPRMs have been published for public comment.

In connection with this rulemaking, VA will accept comments relating to a prior rulemaking issued as a part of the Project, if the matter being commented on relates to both rulemakings.

Overview of Proposed Subpart K Organization

This NPRM pertains to those regulations governing matters affecting the receipt of benefits. These regulations would be contained in proposed Subpart K of new 38 CFR part 5. Although these regulations have been substantially restructured and rewritten for greater clarity and ease of use, most of the basic concepts contained in these proposed regulations are the same as in their existing counterparts in 38 CFR part 3. However, a few substantive differences are proposed, as are some regulations that do not have counterparts in 38 CFR part 3.

Table Comparing Current Part 3 Rules With Proposed Part 5 Rules

The following table shows the correspondence between the current regulations in part 3 and the proposed regulations contained in this NPRM:

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR section or paragraph (or ''New'')
Bars to Benefits	
5.660(a)	3.301(a)
5.660(b)	3.1(m)—first sentence.
5.660(c)	3.1(m)(1)–(3)
5.660(d)	3.1(m)—second sentence.
5.661(a)(1)	3.1(n) first sentence of introduction and (n)(1) and (2).
5.661(a)(2) and (3)	New.
5.661(b)(1)	3.1(n)(3), 3.301(a)
5.661(b)(2)	3.301(b)
5.661(c)(1)	3.301(c)(2)
5.661(c)(2)	3.301(c)(3), 3.301(d)
5.661(d)	3.302
5.661(e)	3.301(c)(1)
5.661(f)	3.1(n)—second sentence of introduction.
5.662(a)	3.301(d)
5.662(b) through (d)	New.
5.663(a)(1)	3.11
5.663(a)(2) and (3)	New.
5.663(b)	3.11
5.663(c) through (f)	New.
Forfeiture and Renouncement of the Right to VA Benefits	
5.675(a)	3.900(a)
5.675(b)	3.900(c)
5.676(a)	3.901(a)
5.676(b)(1)	3.901(d)
5.676(b)(2)	3.901(b)
5.676(b)(3)(i)	3.901(d)—last sentence.
5.676(b)(3)(ii) and (iii), (b)(4).	New (cross-reference).
5.676(b)(5)	3.669(a) and (b)(1)
5.676(c)(1)	3.669(d)(1); 3.900(b)(2)—last sentence.
5.676(c)(2)(i)	3.901(c)
5.676(c)(2)(ii) and (c)(3).	New (cross-reference).
5.676(d)	3.904(a)
5.676(e)	New (cross-reference).
5.677(a)	3.902(a)
5.677(b)(1)	3.902(d)
5.677(b)(2)	3.902(b), 3.904(b)—last sentence.
5.677(b)(3)(i)	3.902(d)—last sentence.
5.677(b)(3)(ii)	3.904(b)—last sentence.
5.677(b)(4)	New (cross-reference).
5.677(b)(5)	3.669(a) and (b)(2)
5.677(c)(1)	3.669(d)(1); 3.900(b)(2)—last sentence.
5.677(c)(2)	3.902(c); 3.904(b)
5.677(d)	3.902(e)
5.677(e)	New (cross-reference).
5.678(a)(1)	3.903(a)(2)
5.678(a)(2)	3.903(a)(1)
5.678(a)(3)	New.

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR section or paragraph (or ''New'')
5.678(a)(4)	3.903(a)(3)
5.678(a)(5)	3.903(a)(4)
5.678(b)(1)	3.903(b)(2)
5.678(b)(2)(i)	3.669(a)
5.678(b)(2)(ii)	3.669(c)—first sentence.
5.678(b)(3)(i) and (ii)	3.903(b)(1)
5.678(b)(3)(iii)	New (cross-reference).
5.678(b)(3)(iv)	3.903(b)(1), 3.904(c)—first sentence.
5.678(c)(1)	New (cross-reference).
5.678(c)(2) and (3)	3.904(c)—last sentence.
5.679(a)	3.905(a)
5.679(b)	3.905(b)
5.679(c)(1)	3.905(c)
5.679(c)(2)	3.905(c) and New.
5.679(d) and (e)	3.905(d)
5.680(a)	3.905(a)
5.680(b)	New.
5.680(c)(1) and (2)	3.901(e)
5.680(c)(3)	3.905(e)
5.681(a)(1)	3.669(a)
5.681(a)(2)	3.669(b)
5.681(b)(1)	3.500(k), 3.669(b)(1)—last sentence.
5.681(b)(2)	3.500(s)(1), 3.669(b)(2)—last sentence.
5.681(b)(3)	3.500(s)(2), 3.669(c)—last sentence.
5.682(a)	3.903(c) and New.
5.682(b) and (c)	3.669(d)(1)
5.682(d)	3.669(d)(2)
5.683(a) and 5.683(b)	3.106(a)
5.683(c)	3.106(a), 3.500(q)
5.683(d)(1)	3.106(d)
5.683(d)(2)	3.106(e)
5.683(e)(1)	3.106(b), 3.400(s)
5.683(e)(2)	3.106(c)

Readers who use this table to compare existing regulatory provisions with the proposed provisions, and who observe a substantive difference between them, should consult the text that appears later in this document for an explanation of significant changes in each regulation. Not every paragraph of every current part 3 section regarding the subject matter of this rulemaking is accounted for in the table. In some instances, other portions of the part 3 sections that are addressed in these proposed regulations will appear in subparts of part 5 that are being published separately for public comment. For example, a reader might find a reference to paragraph (a) of a part 3 section in the table, but no reference to paragraph (b) of that section because paragraph (b) will be addressed in a separate NPRM. The table also does not include provisions from part 3 regulations that will not be repeated in part 5. Such provisions are discussed specifically under the appropriate part 5 heading in this preamble. Readers are invited to comment on the proposed part 5 provisions and also on our proposals to omit those part 3 provisions from part 5.

Content of Proposed Regulations

Bars to Benefits

5.660 Line of duty.

Proposed § 5.660 is based on *line of duty* determination rules currently found in §§ 3.1(m) and 3.301(a). We propose to state in § 5.660(a) that the line-of-duty requirement does not apply to service connection under § 3.310. That section concerns service connection for disability proximately due to, or aggravated by, a service connected injury or disease. (The reference to § 3.310 will be updated in the final version of § 5.660 to reflect the part 5 equivalent to § 3.310.)

In proposed § 5.660(b), we replaced the term ''active military, naval, or air service,'' used in the § 3.1(m) definition of ''line of duty,'' with the shorter term ''active military service.'' This shorter term, ''active military service,'' will have the same meaning in part 5 as the term ''active military, naval, or air service'' does in part 3.

Current § 3.301(a) states, ''Direct service connection may be granted only when a disability or cause of death was incurred or aggravated in line of duty.'' All basic entitlement to service-connected compensation and related benefits for a disability that is either directly or presumptively service connected is authorized under 38 U.S.C. 1110, 1131. Both statutes require that the service-connected condition have been ''contracted [or aggravated] * * * in line of duty in the active military * * * service.'' The statutes establishing presumptions do not do away with the line of duty requirement. See 38 U.S.C. 1112(a), for example, which states that ''for the purposes of section 1110'' when ''any veteran who served for ninety days or more during a period of war'' suffers a listed condition, the condition ''shall be considered to have been incurred in or aggravated by such service.'' The service referred to there is the minimum 90-day period of service. Section 1112 does not state that such condition is considered incurred in line of duty for purposes of section 1110. In order to eliminate any potential for misinterpretation of the rule, we would not include the word ''direct'' in the proposed part 5 regulation.

5.661 Willful misconduct.

Proposed § 5.661 is based on current §§ 3.1(n), 3.301(a) through (d), and 3.302 pertaining to willful misconduct determinations.

Current § 3.1(n)(2) states ''Mere technical violation of police regulations or ordinances will not per se constitute willful misconduct.'' VA intends that all ordinances (e.g. police, city, or county) and police regulations be covered by this provision. We therefore propose to clarify this by inserting the word ''other'' in front of the word ''ordinances'', in § 5.661(a)(1). In addition, we have replaced the phrase ''per se'' with ''by itself''. It is a more easily understood phrase that has the same meaning. Black's Law Dictionary 1162 (7th ed. 1999).

Willful misconduct involves the legal concept of ''proximate cause.'' Current 3.1(n)(3) states that ''[w]illful misconduct will not be determinative unless it is the proximate cause of injury, disease, or death.'' Proposed § 5.661(b) retains this concept, by stating that ''[s]ervice connection may not be granted for an injury, disease, or death proximately caused by the veteran's own willful misconduct'' and that ''[d]isability pension may not be granted for any condition proximately caused by the veteran's own willful misconduct.'' However, current regulations do not define ''proximate cause.''

Two definitions of ''proximate cause'' appear in *Black's Law Dictionary.* ''1. A cause that is legally sufficient to result in liability. 2. A cause that directly produces an event and without which the event would not have occurred.'' *Black's Law Dictionary* 213 (7th ed. 1999). We believe that the second definition is most appropriate and clearest in the veterans-benefits context. Based on that definition, we propose to define''proximately caused'' in § 5.661(a)(2) consistent with the definition of ''proximate cause'' in Black's, and to make that definition applicable to all of proposed part 5.

In § 5.661(a)(3), we propose to define ''drugs'' as ''prescription or non-prescription medications and other substances (*e.g.*, glue or paint), whether obtained legally or illegally''. We are omitting the additional term ''illicitly'' that is included in current § 3.301(d) because it would be redundant if included in the revised definition. *Black's Law Dictionary* defines ''illicit'' as ''illegal or improper''. (*Black's Law Dictionary* 750 (7th ed. 1999)). ''Legally or illegally obtained'' is sufficiently broad to cover all the means of obtaining the drugs or other substances.

We propose to include the parenthetical ''(*e.g.*, glue or paint)'' after the word ''substances.'' This addition is illustrative and not intended to be an exclusive list.

The first two sentences of current § 3.301(c)(2) state that ''[t]he simple drinking of alcoholic beverage is not of itself willful misconduct. The deliberate drinking of a known poisonous substance or under conditions which would raise a presumption to that effect will be considered willful misconduct.'' We have not repeated these two sentences in proposed § 5.661(c)(1) because we believe they could be confusing to some regulation users and their inclusion would not add substantively to proposed § 5.661(c)(1). Proposed paragraph (c)(1) clearly describes the situations in which the consumption of alcohol leading to injury, disease, or death will constitute willful misconduct, *i.e.*, that drinking ''alcoholic beverages to the point of intoxication * * * [that] proximately causes injury, disease, or death'' will be considered willful misconduct. Thus, the proposed regulation encompasses the concepts expressed in current § 3.301(c)(2).

Proposed § 5.661(d) states how VA will determine whether suicide, or attempted suicide, involves willful misconduct. The proposal is based on current § 3.302 which provides VA's longstanding policy on this issue in clear and easily understandable language. Since there is no need to rewrite the current rule, we have simply incorporated the regulatory text of current § 3.302 into proposed § 5.661(d) without substantive change.

Proposed § 5.661(e) is based on adjudication rules concerning venereal disease in current § 3.301(c)(1). We propose to omit the rules in § 3.301(c)(1) concerning whether the disease was incurred in or aggravated by service. The omitted rules are consistent with the rules VA generally uses to determine whether a disease was incurred in or aggravated by service. Those rules will be addressed in Subpart E of proposed part 5 and there is no need to repeat them here.

5.662 Alcohol and drug abuse.

Proposed § 5.662 is based on rules in current § 3.301(d) and in related statutes, as interpreted by the United States Court of Appeals for the Federal Circuit (Federal Circuit). These rules are applied to determine whether VA may grant benefits for a disability or death related to the use of alcohol or drugs.

Proposed § 5.662(a) states the definitions applicable to the abuse of alcohol or drug rules. These definitions are based on concepts in current § 3.301(d).

Paragraph (b) precludes a grant of service connection for alcohol or drug abuse and for injury or disease resulting from such abuse. Section 105 of title 38, United States Code, precludes a ''line of duty'' finding for an injury resulting from ''the person's own * * * abuse of alcohol or drugs.'' Because such injury cannot be considered in line of duty, such injury cannot be service connected. In addition, 38 U.S.C. 1110 precludes payment of compensation for disability resulting from the veteran's abuse of alcohol or drugs. Moreover, current § 3.301(d) precludes a ''line of duty'' determination (and, by extension, an award of service connection) for an ''injury or disease that was a result of the abuse of alcohol or drugs.'' Proposed paragraph (b) would carry this existing policy into part 5.

Proposed § 5.662(c) codifies the holding of the Federal Circuit in *Allen* v. *Principi,* 237 F.3d 1368, 1376 (Fed. Cir. 2001). In that case, the Court held that 38 U.S.C. 1110 ''when read in light of its legislative history, does not preclude a veteran from receiving compensation for alcohol or drug-related disabilities arising secondarily from a service-connected disability, or from using alcohol or drug-related disabilities as evidence of the increased severity of a service-connected disability.''*Allen,* 237 F.3d at 1370. Rather, 38 U.S.C. 1110 ''precludes compensation only in two situations: (1) For primary alcohol abuse disabilities; and (2) for secondary disabilities (such as cirrhosis of the liver) that result from primary alcohol abuse.'' *Allen,* 237 F.3d at 1376.

Proposed § 5.662(d) codifies long-standing VA practice with respect to instances of accidental use of drugs. This proposed paragraph explains that VA will not consider the accidental use of a prescription or non-prescription drug or other substance as drug abuse. However, there is one exception. VA will consider accidental use as drug abuse if that accidental use is the result of impairment of judgment that is due to alcohol abuse, drug abuse, or the use of alcohol or drugs constituting willful misconduct under proposed § 5.661(c).

5.663 Homicide as a bar to VA benefits.

Proposed § 5.663 clarifies rules concerning VA benefit entitlement when a claimant or beneficiary kills the veteran or some other person upon whom their benefit entitlement depends. It is based on current § 3.11 and on long-standing VA practice.

Proposed § 5.663(a) contains applicable definitions, beginning with a definition of homicide. Current § 3.11, titled, ''Homicide,'' bars ''[a]ny person who has intentionally and wrongfully caused the death of another person'' from receiving certain benefits. In applying this regulation, VA has traditionally understood a wrongful killing as being a killing without excuse or justification. Therefore, we propose to define homicide as ''intentionally causing the death of a person without excuse or justification.'' We also propose to state in § 5.663(a)(1) that homicide ''includes causing the death of the person directly or aiding or abetting someone else in causing the death.'' Individuals who assist in the killing of others should not profit from their wrongful acts. *See Lofton* v. *West,* 198 F.3d 846, 850 (Fed. Cir. 1999) (holding that current § 3.11 codifies the ''slayer's rule,'' which is a common law principle that bars wrongdoers from obtaining benefits as a direct consequence of their wrongful acts).

Proposed §§ 5.663(a)(2) and (3) codify VA's current recognition, unstated in current regulations, that an ''excuse'' for killing means that the killing was accidental or that the person was insane at the time of the killing, and that ''justification'' means that there was a lawful reason for causing the death. The proposed definition of justification in § 5.663(a)(3) specifically references the well-recognized legal justification of a killing committed in self-defense or in defense of another person, which is further described in proposed paragraph (c).

In § 5.663(c), again based on long-standing VA practice, we propose to set out rules for what constitutes a killing committed in self-defense or in defense of another (*i.e.*, a homicide with ''justification''). Essentially the requirements are that the killer had reason to believe that he or she, or someone else, was in immediate danger of death or serious bodily harm from the person slain; there was no apparent way for the endangered person to escape or retreat; and the act causing the death was necessary to avoid the danger of death or serious bodily harm, *i.e.*, the killer's response was in proportion to the threat posed by the deceased.

Proposed § 5.663(d), (e), and (f) are also codifications of long-standing VA practice.

Proposed § 5.663(d) addresses the effect of criminal judicial proceedings on VA claims involving homicide. Proposed § 5.663(d)(1) provides that VA will accept a criminal conviction of homicide as binding. We believe that this is appropriate, inasmuch as a

criminal conviction requires a finding of guilt beyond a reasonable doubt, a higher standard than is applicable in civil matters such as VA claims adjudication. By the same token, because of the higher standard of proof required for criminal conviction, acquittal does not mean that a person would not be guilty of homicide for VA purposes. Therefore we provide in proposed § 5.663(d)(2) that VA will develop the evidence to determine guilt for VA purposes if the person is acquitted, or if a conviction is reversed on appeal and the person is not retried.

Proposed § 5.663(e) explains that VA will accept a court finding that a person was insane at the time of a killing. We acknowledge that jurisdictions may differ on the standard of proof required to demonstrate insanity; however, we propose to accept such a finding in the interest of administrative economy, because it is rational to defer to a judicial proceeding that is directly relevant to the matter of sanity at the time of the killing. In other cases, VA would develop evidence to determine whether the person was sane at the time of the killing, if insanity is raised as a defense.

Proposed § 5.663(f) provides rules for determining how the death of the homicide victim affects VA benefits for potential beneficiaries other than the person who committed the homicide. The basic premise behind these rules is that a person who is guilty of homicide should not profit from his or her wrongdoing, nor should that person's wrongdoing interfere with the payment of benefits to other VA claimants or beneficiaries who were innocent of involvement in the homicide. Proposed § 5.663(f) provides a general rule that VA will make payments to eligible innocent claimants or beneficiaries as if the person who committed the homicide did not exist. It then addresses five common scenarios that show how this plays out.

The first specific rule, in § 5.663(f)(2), is illustrative. Some VA benefits are only payable to a veteran's children if there is no surviving spouse. For example, 38 U.S.C. 1313(a) provides for payment of dependency and indemnity compensation to a veteran's children if the veteran is not survived by a spouse. Proposed § 5.663(f)(2) provides that in the case of a homicide of a veteran by the veteran's spouse, VA will pay benefits to the veteran's eligible children as if there was no surviving spouse. Other proposed rules provide for cases in which there is a homicide of a veteran by the veteran's child, homicide of a veteran by the veteran's parent, homicide of one claimant or beneficiary by another claimant or beneficiary, and rules for determining how homicide affects payment of accrued benefits and benefits awarded, but unpaid at death.

Forfeiture and Renouncement of the Right to VA Benefits

5.675 General forfeiture provisions.

Proposed § 5.675, based on portions of current § 3.900, contains generally applicable forfeiture-of-benefits rules.

We propose to not include current § 3.900(b)(1), which states that ''[e]xcept as provided in paragraph (b)(2) of this section, any offense committed prior to January 1, 1959, may cause a forfeiture and any forfeiture in effect prior to January 1, 1959, will continue to be a bar on and after January 1, 1959.'' Current § 3.900(b)(1) is based on section 3 of Public Law 85–857, 72 Stat. 1262. Public Law 85–857 established the forfeiture provisions applicable to veterans' benefits. Section 3 was a saving clause that continued forfeitures under laws predating Public Law 85–857 and permitted forfeitures for acts committed before the law became effective (on January 1, 1959). Stressing the provisions of the saving clause was important during the time of transition to the newly codified law; however, that is no longer necessary for the reasons stated in the following paragraph.

The rule in § 3.900(b)(1) that any offense committed prior to January 1, 1959, may cause a forfeiture is unnecessary because current statutes do not contain any time limitation on when acts leading to forfeiture were committed, whether prior to January 1, 1959, or otherwise. The rule in current § 3.900(b)(1) that any forfeiture in effect prior to January 1, 1959, will continue to be a bar on and after January 1, 1959, is also unnecessary, because it is subsumed in another rule. Current § 3.900(b)(2) provides that forfeitures found before September 2, 1959, will continue to be a bar on and after that date. We have retained that rule in proposed §§ 5.676(c)(1) and 5.677(c)(1) and 5.678(b)(3)(i). Forfeitures found before September 2, 1959, necessarily include those in effect prior to January 1, 1959.

We also propose to not include § 3.900(d), which reads: ''When the person primarily entitled has forfeited his or her rights by reason of fraud or a treasonable act determination as to the rights of any dependents of record to benefits under § 3.901(c) or § 3.902(c) may be made upon receipt of an application.'' These two provisions concern apportionment of benefits which were forfeited based on fraud or treason, respectively. Submitting such an application would now have little usefulness. As §§ 3.901(c) and 3.902(c) show, no forfeited benefits are apportionable unless the forfeiture was found before September 2, 1959, and the apportionment was authorized (granted) by VA before September 2, 1959. Since VA no longer has authority to grant such apportionments, the provision in § 3.900(d) is obsolete and no longer relevant.

5.676 Forfeiture for fraud.

Proposed § 5.676 consolidates rules for forfeiture of VA benefits for fraud currently found in §§ 3.669(a) and (b)(1), 3.900(b)(2), 3.901 and 3.904(a).

Proposed § 5.676(b)(2) would clarify that forfeiture applies to both current and future VA benefits. This is consistent with 38 U.S.C. 6103(a), which provides that forfeiture for fraud extends to ''all rights, claims, and benefits under all laws administered by the Secretary.''

Proposed § 5.676(b)(5) states the procedures for suspension of benefits for fraud and the restoration of benefits if VA ultimately decides that forfeiture is not appropriate.

In proposed § 5.676(c)(1), we have added references to the exception to the general rule that any forfeiture in effect prior to September 2, 1959, continues to be a bar to benefits on and after September 2, 1959. The exception is where there is a Presidential pardon for committing the act(s) that led to the forfeiture or where VA remits the forfeiture. This is not a substantive change.

5.677 Forfeiture for treasonable acts.

Proposed § 5.677 restates in one regulation rules for forfeiture of VA benefits for treasonable acts currently found in §§ 3.669(a) and (b)(2), 3.900(b)(2), 3.902 and 3.904(b).

Proposed § 5.677(b)(5) states the procedures for suspension of benefits for treasonable acts and the restoration of benefits if VA ultimately decides that forfeiture is not appropriate.

In proposed § 5.677(c)(1), we have added references to the exceptions to the general rule that any forfeiture in effect prior to September 2, 1959, continues to be a bar to benefits on and after September 2, 1959. The exceptions are where there is a Presidential pardon for committing the act(s) that led to the forfeiture and where VA remits the forfeiture. This is not a substantive change. *See* current § 3.100(b) (delegating authority to certain VA officials to, among other things, remit a forfeiture of benefits under 38 U.S.C. 6104, ''Forfeiture for treason'') and

§ 3.669(d) (providing for the resumption of awards after the payee's offense has been pardoned by the President).

5.678 Forfeiture for subversive activity.

Proposed § 5.678 consolidates rules for forfeiture of VA benefits for subversive activity currently found in §§ 3.669(a) and (c), 3.903, and 3.904(c).

Current § 3.903(a) defines subversive activity by referring to numerous sections of titles 10, 18, 42, and 50 of the United States Code. The proposed definition in new § 5.678(a) adds the United States Code title names and the names of the specific code sections to provide regulation users with information about the subjects of the cited sections.

Section 705 of the Veterans Benefits Act of 2003 (''the Act'') added several offenses to the list of offenses considered subversive activity. Sec. 705, Public Law 108–183, 117 Stat. 2672. The section 705 amendments apply to claims filed after the enactment of the Act (Dec. 16, 2003). *Id.* These additional offenses, and the relevant effective date information, are in proposed § 5.678(a)(3).

Under current § 3.903(b)(2) the Secretary of the Treasury notifies VA when members of the Coast Guard are convicted of subversive activity under various provisions of the Uniform Code of Military Justice. The Coast Guard is now under the jurisdiction of the Department of Homeland Security. Proposed § 5.678(b)(1) reflects this change. *See* sec. 888(b), Public Law 107–296, 116 Stat. 2249.

Proposed § 5.678(b)(2)(ii) adds ''or otherwise not convicted'' after the word ''acquitted.'' Conviction and acquittal are not the only potential outcomes of an indictment. For example, the charges might be dismissed, or a conviction reversed on appeal and the person not retried.

5.679 Forfeiture decision procedures.

Proposed § 5.679, based on current § 3.905, provides procedures VA uses when rendering a decision on forfeiture. Section 3.905 and other related regulations use the term ''declaration of forfeiture''. Throughout these forfeiture regulations in part 5, we propose to simply use the term ''forfeiture decision'', which is less technical and more easily understood.

Pursuant to 38 U.S.C. 6105(a), VA makes a decision that VA benefits provided under this part have been forfeited without further adjudication upon being notified that a beneficiary has been convicted of engaging in subversive activity. However, 38 U.S.C. 6103, which governs forfeiture for fraud, and 38 U.S.C. 6104, which governs forfeiture for treason, do not provide for forfeiture without VA first adjudicating whether a beneficiary is guilty of fraud or treason for the limited purpose of determining whether this beneficiary has forfeited the right to VA benefits.

Neither 38 U.S.C. 6103 nor 6104 provide a standard of proof to apply in these forfeiture adjudications. As noted by the Court of Appeals for Veterans Claims (CAVC) in *Trilles* v. *West,* 13 Vet. App. 314, 318 (2000), the standard VA has historically applied is proof ''beyond a reasonable doubt,'' but that standard does not appear in current VA forfeiture regulations. We propose to codify the ''beyond a reasonable doubt'' standard in § 5.679(c)(2).

5.680 Remission of forfeiture.

Proposed § 5.680, based in part on current § 3.905, provides procedures applicable to remittance of a forfeiture.

Proposed § 5.680(b) states the two bases for remission of a forfeiture: Showing that the forfeiture decision involved clear and unmistakable error (CUE), and submission of new and material evidence establishing that the forfeiture should not be continued. As the CAVC pointed out in *Trilles*, although current VA regulations ''do not expressly state the method of review of final forfeiture decisions,'' they cumulatively ''authorize revoking a forfeiture declaration because of CUE in that earlier decision declaring forfeiture or on the basis of new and material evidence.'' *Trilles*, 13 Vet. App. at 323.

We propose to require in § 5.680(b)(2) that ''[i]n accordance with the requirements noted in § 3.156(a) of this chapter, the new and material evidence must directly relate to the basis for forfeiture.'' This language is based on *Reyes* v. *Brown*, 7 Vet. App. 113, 115 (1994), where the court held that in seeking to reopen a Board of Veterans' Appeals' decision in a forfeiture case, ''the appellant would have had to produce new and material evidence bearing directly on whether she had acted in a false or fraudulent manner in her efforts to restore her DIC benefits.'' The proposed language, like the *Reyes* opinion, does not represent a gloss or change to the current requirements of § 3.156; rather, it clarifies what issue in particular is subject to a reopening based on new and material evidence.

Proposed § 5.680(c) includes rules from current § 3.901(e) concerning a special remission procedure applicable where a forfeiture for fraud was imposed before September 2, 1959.

5.681 Effective dates—forfeiture.

Proposed § 5.681 is based on current §§ 3.500(k) and (s) and 3.669(a) through (c). It provides the effective dates for the various actions associated with forfeiture. We have intentionally omitted an effective date rule found at current § 3.400(m), which reads as follows: ''(m) *Forfeiture (§§ 3.901, 3.902).* Day following date of last payment on award to payee who forfeited.'' Section 3.400(m) provides the effective dates for awards of apportioned benefits to the dependents of a beneficiary after the beneficiary forfeits his or her benefits due to fraud or treasonable acts. As noted in the discussion of proposed §§ 5.675 and 5.676, payments to dependents of benefits forfeited for fraud or treasonable acts can be made only under an apportionment decision that predates September 2, 1959. Inasmuch as there has been no authority to make a new apportionment award of benefits forfeited for fraud or treasonable acts since 1959, § 3.400(m) no longer serves a useful purpose.

5.682 Presidential pardon for offenses causing forfeiture.

Proposed § 5.682 is based on current §§ 3.669(d) and 3.903(c). It provides the effective date rules related to the restoration of forfeited benefits after a Presidential pardon of the offenses leading to forfeiture.

Current § 3.903(c) states that ''[w]here any person whose right to benefits has been [forfeited for subversive activities] is granted a pardon of the offense by the President of the United States, the right to such benefits shall be restored as of the date of such pardon, if otherwise eligible.'' Current § 3.903(c) is based on similar language concerning forfeiture for subversive activities in 38 U.S.C. 6105(a). However, the stated rule is equally applicable to forfeitures for fraud or treason. This is implicit in current § 3.669(d)(1) which, subject to certain conditions, provides for the resumption of an award of forfeited VA benefits effective the date of a Presidential pardon. Therefore proposed § 5.682(a) states as a general rule that if the President of the United States pardons the offenses that were the basis of a forfeiture of rights to VA benefits, VA will restore rights to all forfeited VA benefits effective the date of the pardon, if otherwise in order.

Current § 3.669(d)(1) speaks of ''resuming an award'' after a Presidential pardon. We propose to instead speak of resuming payment in § 5.682(b). We believe this terminology will be clearer to many regulation users.

VA intends no substantive change by the substitution of terms.

5.683 Renouncement of benefits.

Proposed § 5.683 is based on current §§ 3.106, 3.400(s), and 3.500(q). It sets out rules concerning a VA beneficiary's renouncement of VA pension, compensation, or dependency and indemnity compensation.

One change is in proposed § 5.683(c), which states that ''VA will discontinue payment of renounced benefits effective the last day of the month in which VA received the renouncement. If payments had been suspended, VA will discontinue payment of renounced benefits effective the first day of the month that follows the month for which VA last paid benefits''. The first sentence of this rule is consistent with provisions of current §§ 3.106(a) and 3.500(q). The second sentence of this rule is new.

If a beneficiary has an award that has been suspended, he or she may not have received any benefit payments for some length of time. Under normal circumstances if VA resumes a beneficiary's suspended award, those payments that are due but not yet paid would be released to the beneficiary. In the case of renouncement, however, releasing those payments to a beneficiary would be inconsistent with the expressed desire of the beneficiary to stop receiving benefits. The proposed wording for § 5.683(c) would ensure that beneficiaries who renounce their rights to receive VA benefits are not sent any additional benefit payments.

Endnote Regarding Amendatory Language

We intend to ultimately remove part 3 entirely, but we are not including amendatory language to accomplish that at this time. VA will provide public notice before removing part 3.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed amendment would not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action because it may raise novel legal or policy issues.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.104, Pension for Non-Service Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; and 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida.

List of Subjects in 38 CFR Part 5

Administrative practice and procedure, Claims, Disability benefits, Pensions, Veterans.

Approved: February 17, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 5 as proposed to be added at 69 FR 4832, January 30, 2004 by adding subpart K to reads as follows

PART 5—COMPENSATION, PENSION, BURIAL, AND RELATED BENEFITS

Subpart K—Matters Affecting the Receipt of Benefits

Bars to Benefits

Sec.

5.660 Line of duty.
5.661 Willful misconduct.
5.662 Alcohol and drug abuse.
5.663 Homicide as a bar to VA benefits.
5.664–5.674 [Reserved]

Forfeiture and Renouncement of the Right to VA Benefits

5.675 General forfeiture provisions.
5.676 Forfeiture for fraud.
5.677 Forfeiture for treasonable acts.
5.678 Forfeiture for subversive activity.
5.679 Forfeiture decision procedures.
5.680 Remission of forfeiture.
5.681 Effective dates—forfeiture.
5.682 Presidential pardon for offenses causing forfeiture.
5.683 Renouncement of benefits.
5.684–5.689 [Reserved]

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart K—Matters Affecting the Receipt of Benefits

Bars to Benefits

§ 5.660 Line of duty.

(a) *Effect of line of duty findings on claims adjudication.* Except as provided in § 3.310 of this chapter, VA may grant service connection only for an injury, disease, or cause of death that was incurred or aggravated in line of duty.

(b) *Definition of ''in line of duty.''* Except as provided in paragraph (c) of this section, an injury, disease, or cause of death was incurred or aggravated *in line of duty* when that injury, disease, or cause of death was incurred or aggravated during a period of active military service and was not the result of either of the following:

(1) The veteran's own willful misconduct; or

(2) The veteran's abuse of alcohol or drugs. *See* §§ 5.661, ''Willful misconduct,'' and 5.662, ''Alcohol and drug abuse.''

(c) *Exceptions.* Line of duty requirements are not met as to an injury, disease, or cause of death incurred or aggravated at a time that the veteran was:

(1) Avoiding duty by desertion;

(2) Absent without leave, which materially interfered with the performance of military duty;

(3) Confined under a sentence of court-martial involving an unremitted dishonorable discharge; or

(4) Confined under sentence of a civil court for a felony as determined under the laws of the jurisdiction where the veteran was convicted by such court.

(d) *Weight given service department findings.* A service department finding that injury, disease, or death occurred in line of duty will be binding on VA unless the finding is patently (clearly) inconsistent with the laws administered by VA.

(Authority: 38 U.S.C. 101(16), 105, 1110, 1131)

Cross Reference: *See also* § 3.1(y)(4) of this section (concerning whether the detention or internment of a former prisoner of war was in line of duty).

§ 5.661 Willful misconduct.

(a) *Definitions.*—(1) *Willful misconduct,* for the purposes of this part, means an act involving deliberate or intentional wrongdoing with knowledge of, or wanton and reckless disregard of, its probable consequences. A mere technical violation of police regulations or other ordinances will not by itself constitute willful misconduct.

(2) *Proximately caused,* for the purposes of this part, means that the event resulted directly from the cause and would not have occurred without that cause. For example, injury, disease, or death is proximately caused by willful misconduct if the act of willful misconduct results directly in injury, disease, or death that would not have occurred without the willful misconduct.

(3) *Drugs,* for the purposes of this part, means prescription or non-prescription medications and other substances (*e.g.*, glue or paint), whether obtained legally or illegally.

(b) *Effect of willful misconduct findings on claims adjudication.*—(1) Service connection may not be granted for a disability or death resulting from injury or disease proximately caused by the veteran's own willful misconduct and compensation may not be paid for disability due to such injury, disease, or death. This paragraph applies to service connection established under any provision of this chapter, including § 3.310 of this chapter and compensation awarded under §§ 3.358 and 3.361 of this chapter.

(2) Disability or death pension may not be granted for any condition proximately caused by the veteran's own willful misconduct.

(c) *Use of alcohol or drugs constituting willful misconduct.*—(1) *Alcohol.* (i) If a person consumes alcoholic beverages to the point of intoxication and that intoxication proximately causes injury, disease, or death, VA will consider the injury, disease, or death to have been proximately caused by willful misconduct.

(ii) Organic diseases and injuries that are proximately caused by the chronic use of alcohol as a beverage will not be considered of willful misconduct origin. However, VA may be precluded by § 5.662(b) from awarding service connection for such diseases or injuries.

(2) *Drugs.* (i) The isolated and infrequent use of drugs by itself will not be considered willful misconduct. However, the progressive and frequent use of drugs in a manner not legally prescribed and to the point of addiction will be considered willful misconduct.

(ii) If a person uses drugs in a manner not legally prescribed to the point of intoxication and that intoxication proximately causes injury, disease, or death, VA will consider the injury, disease, or death to have been proximately caused by willful misconduct.

(iii) Organic diseases that are proximately caused by the chronic use of drugs and infections coinciding with the injection of drugs will not be considered of willful misconduct origin. However, VA may be precluded by § 5.662(b) from awarding service connection for such diseases.

(iv) The use of drugs for therapeutic purposes as directed is not willful misconduct.

(v) The use of drugs or addiction to drugs proximately caused by a service-connected disability is not willful misconduct.

(d) *Suicide constituting willful misconduct.*—(1) *General.* (i) In order for suicide to constitute willful misconduct, the act of self-destruction must be intentional.

(ii) A person of unsound mind is incapable of forming an intent (mens rea, or guilty mind, which is an essential element of crime or willful misconduct).

(iii) It is a constant requirement for favorable action that the precipitating mental unsoundness be service connected.

(2) *Evidence of mental condition.* (i) Whether a person, at the time of suicide, was so unsound mentally that he or she did not realize the consequences of such an act, or was unable to resist such impulse is a question to be determined in each individual case, based on all available lay and medical evidence pertaining to his or her mental condition at the time of suicide.

(ii) The act of suicide or a bona fide attempt is considered to be evidence of mental unsoundness. Therefore, where no reasonable, adequate motive for suicide is shown by the evidence, the act will be considered to have resulted from mental unsoundness.

(iii) A reasonable, adequate motive for suicide may be established by affirmative evidence showing circumstances which could lead a rational person to self-destruction.

(3) *Evaluation of evidence.* (i) Affirmative evidence is necessary to justify reversal of service department findings of mental unsoundness where VA's criteria do not otherwise warrant contrary findings.

(ii) In all instances any reasonable doubt should be resolved favorably to support a finding of service connection (*see* § 3.102).

(e) *Venereal disease.* VA will not consider the residuals of venereal disease to be the result of willful misconduct. Whether the veteran complied with service regulations and directives for reporting the disease and undergoing treatment is immaterial after November 14, 1972, and the service department characterization of acquisition of the disease as willful misconduct or as not in line of duty will not govern.

(f) *Weight to be given to service department findings.* A service department finding that injury, disease, or death was not proximately caused by willful misconduct will be binding on VA unless it is patently (clearly) inconsistent with the facts and the laws administered by VA.

(Authority: 38 U.S.C. 105, 501, 1110, 1131, 1151, 1521)

§ 5.662 Alcohol and drug abuse.

(a) *Definitions.*—(1) *Alcohol abuse* means the consumption of alcoholic beverages over time, or excessive use at any one time, sufficient to proximately cause injury, disease, or death to the person consuming such beverages.

(2) *Drug abuse* means the intentional use of drugs for a purpose other than their medically intended use or in a manner not prescribed or directed.

(b) *Service connection for alcohol or drug abuse.* Except as provided in paragraph (c) of this section, an injury or disease incurred during active military service shall not be deemed to have been incurred in line of duty if such injury or disease was proximately caused by the abuse of alcohol or drugs.

(c) *Alcohol or drug abuse related to, or a part of, a service-connected injury or disease.*—(1) VA may grant service

connection for a disability or death proximately caused by the abuse of alcohol or drugs that is secondary to a service-connected injury or disease.

(2) VA will consider the effect of the abuse of alcohol or drugs in evaluating the severity of a service-connected disability under part 4 of this chapter if competent evidence shows that the abuse of alcohol or drugs was proximately caused by that service-connected disability.

(d) *Accidental use.* The accidental use of prescription or non-prescription drugs or other substances is not drug abuse unless the accident was due to impaired judgment caused by one or more of the following:

(1) Alcohol abuse.

(2) Drug abuse.

(3) The use of alcohol or drugs constituting willful misconduct under § 5.661(c).

(Authority: 38 U.S.C. 105(a), 501(a), 1110, 1131)

§ 5.663 Homicide as a bar to VA benefits.

(a) *Definitions.* The following definitions apply to this section:

(1) *Homicide* means intentionally causing the death of a person without excuse or justification. Homicide includes causing the death of the person directly or aiding or abetting someone else in causing the death.

(2) *Excuse* means that the death was caused by a person who was insane at the time of the act causing the death.

(3) *Justification* means that there was a lawful reason for causing the death, including acting in self-defense or in defense of another person, as provided in paragraph (c) of this section.

(b) *Homicide as a bar to VA benefits.* The general rule is that VA will not award pension, compensation, or dependency and indemnity compensation (including benefits under 38 U.S.C. 1318), or any increase in those benefits, to which the person responsible for the homicide would otherwise be entitled because of the death of the person slain.

(c) *Self defense, or defense of another.* A killing is justified as having been committed in self-defense or defense of another if the evidence establishes that the killer reasonably believed that:

(1) She or he, or another person, was in immediate danger of death or serious bodily harm from the deceased;

(2) There was no way to escape or retreat in order to avoid the danger of death or serious bodily harm; and

(3) The action causing the death was necessary to avoid the danger of death or serious bodily harm.

(d) *Effect of court of law proceeding on VA finding of homicide.*—(1) *Conviction.* VA will accept a court of law conviction of homicide as binding.

(2) In all other situations, including those in which the person was acquitted of criminal charges or in which the conviction was reversed on appeal and the person is not retried, VA will develop the necessary evidence and determine whether the person was guilty of homicide, as defined in paragraph (a)(1) of this section.

(e) *Effect of court of law proceeding on VA finding of insanity at time of killing.* VA will accept as binding a court's determination that a person was insane at the time of the killing. In other cases, if insanity is alleged, VA will develop the necessary evidence and determine whether the person was insane.

(f) *Effect of homicide on eligibility for death benefits.*—(1) *General rule.* The general rule is that VA will make payments to eligible innocent beneficiaries as if the person who committed the homicide did not exist.

(2) *Homicide of a veteran by the veteran's spouse.* In the case of a homicide of a veteran by the veteran's spouse, VA will pay benefits to the veteran's eligible children as if there were no surviving spouse.

(3) *Homicide of veteran by the veteran's child.* The following rules apply in the case of a homicide of a veteran by the veteran's child:

(i) VA will pay to the veteran's surviving spouse any additional benefits to which the spouse is entitled on account of that child, if the surviving spouse has actual or constructive custody of the child.

(ii) If the surviving spouse does not have actual or constructive custody of the child, VA will pay death benefits to the eligible surviving spouse as if the child did not exist.

(iii) VA will pay death benefits to any other child of the veteran (including apportionments of benefits based on the veteran's death) as if the child who committed the homicide did not exist.

(4) *Homicide of a veteran by the veteran's parent.* In the case of a homicide of a veteran by the veteran's parent, VA will pay benefits to which the veteran's other parent is entitled as if the parent who committed the homicide did not exist.

(5) *Homicide of one claimant or beneficiary by another claimant or beneficiary.* In the case of homicide of a VA claimant or beneficiary by another VA claimant or beneficiary, the person who committed the homicide cannot receive any increase in benefits based on the death of the victim. For example, if both beneficiaries are children of a deceased veteran, the child who committed the homicide is not entitled to any increase in benefits based on the death of the deceased child. If one of the veteran's parents is responsible for the homicide of the other parent, the parent who committed the homicide is not entitled to receive benefits, or an increase in benefits, based on being a sole surviving parent.

(6) *Homicide and accrued benefits or benefits awarded, but unpaid at death.* Accrued benefits and benefits awarded, but unpaid at death, are paid to various classes of claimants, each of which takes precedence over lower classes of beneficiaries. *See* § 5.551, ''Persons entitled to accrued benefits or benefits awarded, but unpaid at death.'' The homicide of a person who is a member of a higher priority class by a person in a lower priority class will not entitle the wrongdoer to such benefits. The homicide of one member of a class by a person in the same class will not entitle the wrongdoer to an increased share of the benefits payable to the members of that class because of the death of the person slain.

(Authority: 38 U.S.C. 501(a))

§§ 5.664—5.674 [Reserved]

Forfeiture and Renouncement of the Right to VA Benefits

§ 5.675 General forfeiture provisions.

(a) *Forfeiture does not bar benefits based on later periods of service.* Forfeiture of benefits based on one period of service does not affect entitlement to benefits based on a later period of service that begins after the commission of the offense(s) that caused the forfeiture.

(b) *Violation of hospital rules not grounds for forfeiture.* Pension or compensation benefits are not subject to forfeiture because of violation of hospital rules.

(Authority: 38 U.S.C. 501(a), 6103, 6104, 6105)

§ 5.676 Forfeiture for fraud.

(a) *Definition of fraud.* For purposes of this section, the definition of fraud in § 3.901(a) applies.

(b) *Forfeiture for fraud after September 1, 1959.*—(1) *Persons subject to forfeiture.* After September 1, 1959, forfeiture for fraud will be found only if:

(i) The person committing the fraud was not residing or domiciled in a State at the time of the commission of the fraud; or

(ii) The person committing the fraud ceased to be a resident of or domiciled in a State before expiration of the period during which criminal prosecution could be instituted; or

(iii) The fraud was committed in the Philippine Islands.

(2) *Effect of forfeiture for fraud.* Any person for whom forfeiture for fraud is found forfeits all rights to VA benefits provided under this part. The forfeiture applies to both current and future VA benefit entitlement.

(3) *Effect on dependents of forfeiture for fraud.*—(i) *Apportionment.* After September 1, 1959, VA may not apportion benefits forfeited for fraud.

(ii) *Death benefits.* See paragraph (d) of this section.

(iii) *Burial benefits. See* [regulation that will be published in a future Notice of Proposed Rulemaking] (concerning the effect of forfeiture on burial benefits).

(4) *Effective date of forfeiture.* See § 5.681 (concerning the effective date of forfeitures for fraud).

(5) *Suspension for fraud.* When a case is recommended for forfeiture for fraud in accordance with § 5.679, VA will suspend payment of benefits provided under this part. If VA ultimately decides that forfeiture for fraud is not appropriate, VA will restore payments effective the first day of the month that follows the month for which VA last paid benefits, if otherwise in order.

(c) *Forfeiture before September 2, 1959.*—(1) *Forfeitures continue to bar benefits.* Any forfeiture in effect before September 2, 1959, continues to bar benefits on and after September 2, 1959, except where there is a Presidential pardon for commission of the offense(s) leading to the forfeiture, or where VA remits the forfeiture under the provisions of § 5.680, ''Remission of forfeiture.''

(2) *Effect on dependents of forfeiture for fraud.*—(i) *Apportionment of disability compensation.* (A) *When payable.* Disability compensation a veteran forfeited for fraud may be paid to the veteran's spouse, child, or parent if the forfeiture was found before September 2, 1959, and if VA authorized the apportionment before September 2, 1959.

(B) *Amount that may be apportioned.* The total apportioned amount is the lesser of the service-connected death benefit that would be payable if the veteran were dead or the amount of disability compensation that would have been paid to the veteran but for the forfeiture.

(C) *Participation in the fraud bars apportionment.* VA may not apportion benefits forfeited for fraud to any dependent who participated in the fraud that caused the forfeiture.

(ii) *Death benefits. See* paragraph (d) of this section.

(3) *Remission. See* § 5.680(c), ''Special rules for remission of a forfeiture for fraud imposed before September 2, 1959.''

(d) *Death benefits.*—(1) *Veteran's fraud does not bar dependents' death benefits.* A veteran's forfeiture of benefits for fraud does not bar the award of death pension, death compensation, or dependency and indemnity compensation to eligible dependents.

(2) *Dependent's participation in fraud bars death benefits.* VA may not pay death benefits to any surviving dependent who participated in the fraud that caused the forfeiture of the veteran's benefits.

(e) *Presidential pardons. See* § 5.682, ''Presidential pardon for offenses causing forfeiture.''

(Authority: 38 U.S.C. 501(a), 6103)

Cross Reference: For decision procedures, *see* § 5.679, ''Forfeiture decision procedures.''

§ 5.677 Forfeiture for treasonable acts.

(a) *Definition of treasonable acts.* For purposes of this section, *treasonable acts* are acts of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies.

(b) *Forfeiture for treasonable acts after September 1, 1959.*—(1) *Persons subject to forfeiture.* After September 1, 1959, forfeiture for treasonable acts will be found only where:

(i) The person committing the treasonable act was not residing or domiciled in a State at the time of the commission of the treasonable act;

(ii) The person committing the treasonable act ceased to be a resident of or domiciled in a State before expiration of the period during which criminal prosecution could be instituted; or

(iii) The treasonable act was committed in the Philippine Islands.

(2) *Effect of a forfeiture for treasonable acts.* Any person for whom forfeiture for treasonable acts is found after September 1, 1959, forfeits all rights to VA benefits provided under this part. The forfeiture applies to both current and future VA benefit entitlement.

(3) *Effect on dependents of a forfeiture for treasonable acts.* After September 1, 1959, VA has no authority to make either of the following awards to dependents of a veteran who forfeited VA benefits for treasonable acts:

(i) An apportionment award of the forfeited benefits.

(ii) An award of VA benefits provided under this part to the veteran's dependents based on a period of the veteran's active military service that began before the date of commission of the treasonable acts.

(4) *Effective date of forfeiture. See* § 5.681 (concerning the effective date of forfeitures for treasonable acts).

(5) *Suspension for treasonable acts.* When a case is recommended for consideration of forfeiture for treasonable acts in accordance with § 5.679, VA will suspend payment of VA benefits provided under this part. If VA ultimately decides that forfeiture for treasonable acts is not appropriate, VA will restore payments effective the first day of the month that follows the month for which VA last paid benefits, if otherwise in order.

(c) *Forfeiture before September 2, 1959.*—(1) *Forfeitures continue to bar benefits.* Any forfeiture in effect before September 2, 1959, continues to bar benefits on and after September 2, 1959, except where there is a Presidential pardon for commission of the offense(s) leading to the forfeiture, or where VA remits the forfeiture under the provisions of § 5.680, ''Remission of forfeiture.''

(2) *Effect on dependents of a forfeiture for treasonable acts*—(i) *Apportionment of forfeited benefits*—(A) *When payable.* If forfeiture for treasonable acts was found before September 2, 1959, and if VA authorized the apportionment before September 2, 1959, VA may pay any part of the forfeited benefits to the dependents of the person who forfeited benefits, as follows:

(B) *Amount of compensation that may be apportioned.* If the forfeited benefit is disability compensation, the total amount payable to the veteran's spouse, children and parents is the lesser of the service-connected death benefit that would be payable if the veteran were dead or the amount of disability compensation that would have been paid to the veteran but for the forfeiture.

(C) *Amount of pension that may be apportioned.* If the forfeited benefit is pension, the total amount payable to the veteran's spouse and children is the lesser of the nonservice-connected death benefit that would be payable if the veteran were dead or the amount of pension being paid to the veteran at the time of the forfeiture.

(D) *Participation in the treasonable acts bars apportionment.* VA may not apportion benefits forfeited for treasonable acts to any dependent of a beneficiary who participated in the treasonable acts that caused the forfeiture.

(ii) *Death benefits.* VA may pay death pension, death compensation, or dependency and indemnity compensation to the eligible surviving

dependents of a veteran who forfeited VA benefits for a treasonable act if all of the following are true:

(A) The forfeiture was found before September 2, 1959;

(B) The specified death benefits were authorized before September 2, 1959; and

(C) The payee of the specified death benefits did not participate in the treasonable acts that caused the forfeiture.

(d) *Effect of a child's treasonable act on the benefits of a surviving spouse.* Treasonable acts committed by a child in the surviving spouse's custody do not affect the spouse's award of additional death benefits for that child.

(e) *Presidential pardons. See* § 5.682, ''Presidential pardon for offenses causing forfeiture.''

(Authority: 38 U.S.C. 501(a), 6103(d)(1), 6104)

Cross Reference: For forfeiture procedures, see *§ 5.679, ''Forfeiture decision procedures.''*

§ 5.678 Forfeiture for subversive activity.

(a) *Definition of subversive activity.* Subversive activity is any of the following offenses in the United States Code for which punishment is prescribed:

(1) *Title 10, ''Armed Forces'' (Uniform Code of Military Justice).*

(i) Section 894—(Art. 94, ''Mutiny or sedition'').

(ii) Section 904—(Art. 104, ''Aiding the enemy'').

(iii) Section 906—(Art. 106, ''Spies'').

(2) *Title 18, ''Crimes and Criminal Procedure.''*

(i) Section 792, ''Harboring or concealing persons.''

(ii) Section 793, ''Gathering, transmitting, or losing defense information.''

(iii) Section 794, ''Gathering or delivering defense information to aid foreign government.''

(iv) Section 798, ''Disclosure of classified information.''

(v) Section 2381, ''Treason.''

(vi) Section 2382, ''Misprision of treason.''

(vii) Section 2383, ''Rebellion or insurrection.''

(viii) Section 2384, ''Seditious conspiracy.''

(ix) Section 2385, ''Advocating overthrow of Government.''

(x) Section 2387, ''Activities affecting armed forces generally.''

(xi) Section 2388, ''Activities affecting armed forces during war.''

(xii) Section 2389, ''Recruiting for service against United States.''

(xiii) Section 2390, ''Enlistment to serve against United States.''

(xiv) Chapter 105, ''Sabotage.''

(3) *Title 18, ''Crimes and Criminal Procedure''—claims filed on and after December 16, 2003.* With respect to the forfeiture of benefits awarded on the basis of claims filed on and after December 16, 2003, the following offenses in Title 18 are also subversive activities:

(i) Section 175, ''Prohibitions with respect to biological weapons.''

(ii) Section 229, ''Prohibited activities.''

(iii) Section 831, ''Prohibited transactions involving nuclear materials.''

(iv) Section 1091, ''Genocide.''

(v) Section 2332a, ''Use of certain weapons of mass destruction.''

(vi) Section 2332b, ''Acts of terrorism transcending national boundaries.''

(4) *Title 42, The Public Health and Welfare.*

(i) Section 2272, ''Violation of specific sections.''

(ii) Section 2273, ''Violation of sections.''

(iii) Section 2274, ''Communication of Restricted Data.''

(iv) Section 2275, ''Receipt of Restricted Data.''

(v) Section 2276, ''Tampering with Restricted Data.''

(5) *Title 50, War and National Defense.* Section 783, ''Offenses.''

(b) *Indictment or conviction for subversive activity.*—(1) *Sources of notification.* The Secretary of Defense or the Secretary of Homeland Security, as applicable, notifies VA in each case in which an individual is convicted of an offense listed in paragraph (a)(1) of this section. The Attorney General notifies VA in each case in which an individual is indicted or convicted of an offense listed in paragraphs (a)(2) through (5) of this section.

(2) *Indictment*—(i) *VA action on notice of indictment.* Upon receipt of notice of the return of an indictment for subversive activity, VA will suspend payment of VA benefits provided under this part to the individual indicted pending disposition of the criminal proceedings. Payments will be suspended effective the first day of the month that follows the month for which VA last paid benefits.

(ii) *VA action on notice of acquittal.* If the person indicted for subversive activity is acquitted or otherwise not convicted, VA will restore payments effective the first day of the month that follows the month for which VA last paid benefits, if otherwise in order.

(3) *Conviction*—(i) *VA action on notice of conviction.* Upon receipt of notice that a VA beneficiary was convicted after September 1, 1959, of subversive activity, VA will make a decision on forfeiture as provided in § 5.679(c)(1).

(ii) *Benefits forfeited.* Any person convicted of subversive activity forfeits all rights to VA benefits provided under this part. The forfeiture applies to both current and future benefits.

(iii) *Effective date of forfeiture upon conviction. See* § 5.681(b)(3), ''Effective dates—forfeiture for subversive activity.''

(iv) *Effect on dependents.* VA may not award benefits provided under this part to the dependents of a veteran who was convicted of subversive activity after September 1, 1959, if the award would be based on a period of the veteran's active military service that began before the date of commission of the subversive activity.

(c) *Presidential pardons.*—(1) *Restoration of forfeited benefits. See* § 5.682, ''Presidential pardon for offenses causing forfeiture.''

(2) *Restoration of benefits for surviving dependents.* Upon application following Presidential pardon for the offenses leading to forfeiture for subversive activity, a veteran's dependents may be paid death pension, death compensation, or dependency and indemnity compensation, if otherwise eligible for that benefit.

(Authority: 38 U.S.C. 501(a), 6105)

§ 5.679 Forfeiture decision procedures.

(a) *Officials authorized to make a forfeiture decision; recommend forfeiture; or refer forfeiture cases*—(1) *Forfeiture decisions.* An official authorized under § 3.100(b) of this chapter (the Director of the C&P Service or his or her designee) shall have the authority to make a forfeiture decision.

(2) *Recommendation of forfeiture.* A Regional Counsel or, in the Manila Veterans Service Center (VSC), the Veterans Service Center Manager (VSCM) shall have authority to recommend forfeiture and submit the case to such an official.

(3) *Referral of forfeiture cases.* The following individuals may refer cases to the Regional Counsel or VSCM in Manila, as appropriate, for consideration whether to recommend the case for forfeiture: the director of a Veterans Benefits Administration service, the Chairman, Board of Veterans' Appeals, or the General Counsel.

(b) *VA obligations prior to recommending forfeiture based on fraud or treasonable acts.* Before recommending forfeiture for fraud or treasonable acts under paragraph (a) of this section, the Regional Counsel or, in Manila, Philippines, the VSCM must

provide the beneficiary or claimant with written notice that VA is proposing to make a forfeiture decision and of the right to present a defense. The notice will be sent to the person's latest address of record and will include the following information:

(1) The specific charges against the person;

(2) A detailed statement of the evidence supporting the charges (subject to regulatory limitations on disclosure of information);

(3) A citation and discussion of the applicable statute;

(4) The right to submit a statement or evidence within 60 days after the date of the notice, either to rebut the charges or explain the person's position;

(5) The right to a hearing within 60 days after the date of the notice, with representation by counsel of the person's own choosing; and

(6) Information about that fees for representation are limited in accordance with 38 U.S.C. 5904, ''Recognition of agents and attorneys generally,'' and that VA will not pay expenses incurred by a claimant, his or her counsel, or witnesses.

(c) *Standards for forfeiture.*—(1) *Forfeiture upon conviction of engaging in subversive activity.* An official authorized under § 3.100(b) of this chapter will make a decision to forfeit benefits when notified that a VA beneficiary has been convicted of an offense involving subversive activity.

(2) *Forfeiture for engaging in fraud or treasonable acts.* An official authorized under § 3.100(b) of this chapter will make a forfeiture decision when the official determines that the evidence shows beyond a reasonable doubt that a VA claimant or beneficiary has engaged in fraud as defined in § 5.576(a), or one or more treasonable acts as defined in § 5.677(a).

(d) *Administrative appeal.* An authorized VA official may file an administrative appeal of a forfeiture decision under the provisions in § 19.51 of this chapter, ''Officials authorized to file administrative appeals and time limits for filing.''

(e) *Finality of forfeiture decisions.* Forfeiture decisions are final and binding under the provisions in § 3.104(a) of this chapter (concerning the binding effect of a decision by an agency of original jurisdiction on all VA field offices); § 20.1103 of this chapter, ''Finality of determinations of the agency of original jurisdiction where appeal is not perfected;'' or § 20.1104 of this chapter, ''Finality of determinations of the agency of original jurisdiction affirmed on appeal;'' as applicable.

(Authority: 38 U.S.C. 501(a), 512(a), 6103, 6104)

§ 5.680 Remission of forfeiture.

(a) *Authority to make remission decisions. See* § 3.100(b) of this chapter (concerning the delegation of authority to make forfeiture decisions).

(b) *Standards.*—(1) *Clear and unmistakable error.* VA will remit a forfeiture upon a showing that the forfeiture decision involved clear and unmistakable error. *See* § 3.105(a) of this chapter (concerning reversal or amendment of prior decisions based on clear and unmistakable error).

(2) *New and material evidence.* VA will remit a forfeiture upon the submission of new and material evidence establishing that forfeiture should not be continued, *see* § 3.156 of this chapter, ''New and material evidence.'' In accordance with the requirements noted in § 3.156(a) of this chapter, the new and material evidence must directly relate to the basis for forfeiture.

(c) *Special rules for remission of a forfeiture for fraud imposed before September 2, 1959.*—(1) *Basis for remission.* If a forfeiture for fraud was imposed before September 2, 1959, and that forfeiture would not be imposed under the statutes and regulations in effect on and after September 2, 1959, the forfeiture will be remitted.

(2) *Effective dates*—(i) *Effective date of remission.* Remission of a forfeiture under paragraph (c)(1) of this section is effective June 30, 1972.

(ii) *Effective date of payments.* Upon receipt of an application, VA will award benefits under paragraph (c)(1) of this section effective as of the date provided by § 3.114 of this chapter, ''Change of law or Department of Veterans Affairs issue.''

(3) *Deduction of apportionment payments.* (i) *Applicability.* This paragraph applies when all of the following are true:

(A) VA remitted a forfeiture under paragraph (c)(1) of this section.

(B) During the period of time that the forfeiture was in effect, VA apportioned some or all of the forfeited benefits to the beneficiary's dependents as provided in § 5.676(c)(2).

(C) The remission results in payments being due to the beneficiary for periods during which the apportionment was being paid to the beneficiary's dependents.

(ii) *Deduction.* The payments to the beneficiary will be reduced by the amount of apportioned benefits paid to the beneficiary's dependents during the time stated in paragraph (c)(3)(i)(C).

(Authority: 38 U.S.C. 501(a), 6103(d)(2))

§ 5.681 Effective dates—forfeiture.

(a) *Suspension upon recommendation of forfeiture for fraud or treasonable acts.*—(1) *Suspension on recommendation for forfeiture.* VA will suspend payment, effective the first day of the month after the most recent month for which VA has paid benefits, upon receipt of notice from a VA Regional Counsel, or from the Veterans Service Center Manager in Manila, Philippines, when such an official recommends forfeiture for fraud or treasonable acts pursuant to § 5.679.

(2) *Restoration of payments where forfeiture for fraud or treasonable acts is not warranted.* VA will restore payments effective the first day of the month after the most recent month for which VA paid benefits, if otherwise in order, if VA decides that forfeiture is not appropriate.

(b) *Effective dates of forfeiture.*—(1) *Forfeiture for fraud.* A forfeiture of VA benefits for fraud is effective the later of the starting date of the award of the forfeited benefits or the day before the commission of the act resulting in forfeiture.

(2) *Forfeiture for treasonable acts.* A forfeiture of VA benefits for treasonable acts is effective the earlier of the date of the forfeiture decision or the first day of the month following the month for which VA last paid benefits.

(3) *Forfeiture for subversive activity.* A forfeiture of VA benefits for conviction for subversive activity is effective the later of the starting date of the award of the forfeited benefits or the day before the commission of the subversive activity for which the beneficiary was convicted.

(Authority: 38 U.S.C. 5112(a), (b)(9); 6105)

§ 5.682 Presidential pardon for offenses causing forfeiture.

(a) *Restoration of rights to VA benefits.* If the President of the United States pardons the offenses that were the basis of a forfeiture decision, VA will restore rights to all forfeited VA benefits effective the date of the pardon, if otherwise in order.

(b) *Effective date of resumption of payment of monetary benefits.* Once rights have been restored under paragraph (a) of this section, VA will resume payment of forfeited VA monetary benefits, if otherwise in order, as follows:

(1) If an application is filed within one year after the date of the pardon, VA will restore payments effective the date of the pardon.

(2) If an application is filed more than one year after the date of the pardon, VA will restore payments effective the date of receipt of the application.

(c) *Payment subject to recovery of overpayments.* Payment of VA monetary benefits following Presidential pardon of the offenses that were the basis of a forfeiture decision is subject to recovery of any existing overpayments.

(d) *Discontinuance of apportionments.* VA will discontinue any benefits apportioned to a dependent under §§ 5.676(c)(2)(i) or 5.677(c)(2)(i) effective the day before the date of the pardon.

(Authority: 38 U.S.C. 501(a), 6105(a))

§ 5.683 Renouncement of benefits.

(a) *Who may renounce a benefit.* A person entitled to receive compensation, pension, or dependency and indemnity compensation (DIC) under the laws administered by VA may renounce their right to that benefit.

(b) *How to renounce a benefit.* The renouncement of the right to receive a VA benefit must be in writing and must be signed by the beneficiary, and not by a fiduciary or by a representative. The renouncement must be for the entire benefit, not a portion of it.

(c) *Effective date of renouncement.* VA will discontinue payment of renounced benefits effective the last day of the month in which VA received the renouncement. If payments had been suspended, VA will discontinue payment of renounced benefits effective the first day of the month that follows the month for which VA last paid benefits.

(d) *Effect of renouncement of DIC on the rights of other beneficiaries.*—(1) *Effect on other beneficiaries in the same class.* The renouncement of DIC by one beneficiary does not increase the rate payable to any other DIC beneficiary in the same class. For example, the renouncement of DIC by one child will not increase the DIC rate payable to another child.

(2) *Effect of renouncement by surviving spouse on rights of children.* The renouncement of DIC by a surviving spouse does not entitle a child under the age of 18 to DIC, or increase the DIC rate payable to a child over the age of 18.

(e) *Reapplying for renounced benefits.*—(1) *General rules.*

(i) A beneficiary who renounced the right to receive a VA benefit may reapply for the same benefit at any time. VA will treat the new application as an original claim.

(ii) Except as provided otherwise in paragraph (e)(2) of this section, the effective date for the award of benefits resulting from the new application will be the date of receipt of that application.

(2) *Special rule applicable to pension and parents' DIC benefit renouncements.* If a beneficiary who has renounced pension or parents' DIC benefits files a new application for the same benefit within one year after renouncement, the application will not be treated as an original application and the benefit will be payable as if VA never received the renouncement.

(Authority: 38 U.S.C. 501(a), 5112(a), 5306)

Cross Reference: See *§ 5.83(c)(4) for procedures VA uses to discontinue payments of renounced benefits.*

§§ 5.684—5.689 [Reserved]

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Correction; comments due by 6-5-06; published 5-9-06 [FR E6-06936]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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.

S. 1165/P.L. 109–225

James Campbell National Wildlife Refuge Expansion Act of 2005 (May 25, 2006; 120 Stat. 378)

S. 1869/P.L. 109–226

Coastal Barrier Resources Reauthorization Act of 2005 (May 25, 2006; 120 Stat. 381)

H.R. 1499/P.L. 109–227

Heroes Earned Retirement Opportunities Act (May 29, 2006; 120 Stat. 385)

H.R. 5037/P.L. 109–228

Respect for America's Fallen Heroes Act (May 29, 2006; 120 Stat. 387)

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