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WHEN: Tuesday, November 14, 2006
9:00 a.m.–Noon

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The President

Proclamation 8073 of October 20, 2006

United Nations Day, 2006

By the President of the United States of America

A Proclamation

On October 24, 1945, the United Nations was formed to promote peace and international security, further economic and social development, protect fundamental human dignity, and recognize the equal rights of men and women. On United Nations Day, we recognize the establishment of this important organization and underscore our commitment to making the world free and secure.

The United Nations was built on the idea that nations can act together to resolve conflict, and in the more than six decades since it was formed, the United Nations has addressed significant international challenges. With 192 member countries, the United Nations works to promote freedom, expand opportunity, and reach out to those in need.

Today, as we work to combat extremism and terror with justice and dignity, the efforts of the United Nations are as vital as ever. The world needs the members of the United Nations to stand together to help the organization live up to its founding ideals, fulfill its mission, and spread hope and liberty to people around the globe. Together, we can combat terrorism, help empower the voices of moderation, fight disease, and work for a world where all people are free to determine their own destinies.

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 October 24, 2006, as United Nations Day. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of other areas under the flag of the United States to observe United Nations Day with appropriate ceremonies and activities.

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

[FR Doc. 06–8903
Filed 10–24–06; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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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 AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005 and 1007

[Docket No. AO–388–A17 and AO–366–A46; DA–05–6]

Milk in the Appalachian and Southeast Marketing Areas; Interim Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This order amends certain features of the transportation credit provisions of the Appalachian and Southeast marketing orders on an interim basis. More than the required number of producers in the Appalachian and Southeast marketing areas have approved the issuance of the interim order as amended.

DATES: *Effective Date:* December 1, 2006.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Associate Deputy Administrator, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231—Room 2971, 1400 Independence Ave., SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: *gino.tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: Specifically, this decision adopts provisions that will: (1) Establish a transportation credit mileage rate factor by using a fuel cost adjustor; (2) Increase the Appalachian order's maximum transportation credit assessment rate to $0.15 per hundredweight, and the Southeast order's maximum transportation credit assessment rate to $0.20 per hundredweight; and (3) Establish a zero diversion limit standard on loads of milk requesting transportation credits.

This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (the Act), as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(a) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees.

For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During January 2006, the time of hearing, there were 3,055 dairy farmers pooled on the Appalachian order (Order 5). For the Southeast order (Order 7), 3,367 dairy farmers were pooled on the order. Of these, 2,889 dairy farmers in Order 5 (or 95) percent and 3,218 dairy farmers in Order 7 (or 96 percent) were considered small businesses.

During January 2006, there were a total of 37 plants associated with the Appalachian order (22 fully regulated plants, 11 partially regulated plants, 2 producer-handler plants and 2 exempt plants). A total of 51 plants were associated with the Southeast order (31 fully regulated plants, 9 partially regulated plants and 12 exempt plants). The number of plants meeting the small business criteria under the Appalachian and Southeast orders were 9 (or 24 percent) and 18 (or 35 percent), respectively.

The adoption of the proposed amendments will establish a mileage rate factor using a fuel cost adjustor for the transportation credit balancing funds for the Appalachian and Southeast orders. The proposed mileage rate factor will be calculated monthly and adjusted monthly based on current diesel fuel prices as reported by the Department of Energy. Currently, the transportation credit provisions of the Appalachian and Southeast marketing orders provide a mileage rate factor of 0.35 cents per hundredweight (cwt) per mile.

The adoption of the proposed amendments will increase the maximum rates of the transportation credit assessments for the Appalachian and Southeast orders. Specifically, the maximum transportation credit assessment rate for the Appalachian order will be increased by 5.5 cents per cwt, from the current 9.5 cents per cwt to 15 cents per cwt. The maximum transportation credit assessment rate for the Southeast order will be increased by

10 cents per cwt, from the current 10 cents per cwt to 20 cents per cwt.

The increase in the maximum transportation credit assessment rates is intended to minimize the proration and depletion of each order's transportation credit balancing fund when supplemental milk is needed to service the fluid needs of both marketing areas. The increases in the maximum rates of assessment for the Appalachian and Southeast orders adopted in this rule are necessary because of escalating fuel costs coupled with the continued decline in milk production in the southeastern region of the United States.

This Interim Final Rule also adopts the elimination of the ability for diversions on loads of milk requesting transportation credit payments.

Adoption of the proposed amendments will be applied to all Appalachian and Southeast orders' participants (producers and handlers), which consist of both large and small businesses. Since the proposed amendments will be subject to all the orders' producers and handlers regardless of their size the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these adopted amendments will have no impact on reporting, recordkeeping, or other compliance requirements because they will remain identical to the current requirements. No new forms are proposed and no additional reporting requirements will be necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior Documents in This Proceeding

Notice of Hearing: Issued December 22, 2005; published December 28, 2005 (70 FR 76718).

Tentative Partial Decision: Issued September 1, 2006; published September 13, 2006 (71 FR 54118).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Appalachian and Southeast marketing orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Appalachian and Southeast marketing orders:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the orders regulating the handling of milk in the Appalachian and Southeast orders.

Upon the basis of the evidence introduced at such hearing and the record thereof it found that:

(1) The Appalachian and Southeast orders, as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Appalachian and Southeast orders, as hereby amended on an interim basis, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary and in the public interest to make these interim amendments to the Appalachian and Southeast orders effective December 1, 2006. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing areas.

The interim amendments to this order are known to handlers. The tentative partial decision containing the proposed amendments to this order was issued on September 1, 2006.

The changes that result from these interim amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim order amendments effective on December 1, 2006.

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the Appalachian and Southeast orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders as hereby amended;

(3) The issuance of the interim orders amending the Appalachian and Southeast orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas.

List of Subjects in 7 CFR Parts 1005 and 1007

Milk marketing orders.

Orders Relative to Handling

■ *It is therefore ordered,* that on and after the effective date hereof, the handling of milk in the Appalachian and Southeast marketing areas shall be in conformity and in compliance with the terms and conditions of the orders, as amended, and as hereby further amended on an interim basis, as follows:

■ 1. The authority citation for 7 CFR parts 1005 and 1007 read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

■ 1A. Section 1005.13 is amended by revising paragraphs (d)(3) and (d)(4) to read as follows:

§ 1005.13 Producer milk.

* * * * *

(d) * * *

(3) The total quantity of milk diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and

40 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 40 percent during the months of December and March through June, of the producer milk physically received at such plant(or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c) and excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested.

* * * * *

■ 2. Section 1005.81 is revised to read as follows:

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.15 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period, after adjusting the transportation credits disbursed during the prior June-January period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June-January period. In the event that during any month of the June-January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

■ 3. Section 1005.82 is amended by revising paragraphs (d)(2)(ii) and (d)(3)(iv) to read as follows:

§ 1005.82 Payments from the transportation credit balancing fund.

* * * * *

(d) * * *

(2) * * *

(ii) Multiply the number of miles so determined by the mileage rate for the month computed pursuant to § 1005.83(a)(6).

* * * * *

(3) * * *

(iv) Multiply the remaining miles so computed by the mileage rate for the month computed pursuant to § 1005.83(a)(6).

* * * * *

■ 4. Add a new § 1005.83 to read as follows:

§ 1005.83 Mileage rate for the transportation credit balancing fund.

(a) The market administrator shall compute a mileage rate each month as follows:

(1) Compute the simple average rounded down to three decimal places for the most recent 4 four weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(2) From the result in paragraph (a)(1) in this section subtract $1.42 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to $1.91;

(5) Divide the result in paragraph (a)(4) of this section by 480;

(6) Round the result in paragraph (a)(5) of this section down to five decimal places to compute the mileage rate.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the mileage rate pursuant to paragraph (a) of this section for the following month.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

■ 5. Section 1007.13 is amended by revising paragraphs (d)(3) and (d)(4) to read as follows:

§ 1007.13 Producer milk.

* * * * *

(d) * * *

(3) The total quantity of milk diverted during the month by a cooperative association shall not exceed 33 percent during the months of July through December, and 50 percent during the months of January through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month; excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 33 percent during the months of July through December, or 50 percent during the months of January through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c) and excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested.

* * * * *

■ 6. Section 1007.81 is revised to read as follows:

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by $0.20 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits

disbursed during the prior June–January period, after adjusting the transportation credits disbursed during the prior June-January period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June-January period. In the event that during any month of the June-January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would had been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the mileage rate pursuant to paragraph (a) of this section for the following month.

■ 7. Section 1007.82 is amended by revising paragraphs (d)(2)(ii) and (d)(3)(iv) to read as follows:

§ 1007.82 Payments from the transportation credit balancing fund.

* * * * *

(d) * * *

(2) * * *

(ii) Multiply the number of miles so determined by the mileage rate for the month computed pursuant to § 1007.83(a)(6).

* * * * *

(3) * * *

(iv) Multiply the remaining miles so computed by the mileage rate for the month computed pursuant to § 1007.83(a)(6).

* * * * *

■ 8. Add a new § 1007.83 to read as follows:

§ 1007.83 Mileage rate for the transportation credit balancing fund.

(a) The market administrator shall compute the mileage rate each month as follows:

(1) Compute the simple average rounded down to three decimal places for the most recent 4 weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(2) From the result in paragraph (a)(1) in this section subtract $1.42 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to $1.91;

(5) Divide the result in paragraph (a)(4) of this section by 480;

(6) Round the result in paragraph (a)(5) of this section down to five decimal places to compute the MRF.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the mileage rate pursuant to paragraph (a) of this section for the following month.

Dated: October 19, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–17819 Filed 10–24–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21779; Directorate Identifier 2002–NM–349–AD; Amendment 39–14790; AD 2006–21–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10 Series Airplanes; DC–9–20 Series Airplanes; DC–9–30 Series Airplanes; DC–9–40 Series Airplanes; and DC–9–50 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain McDonnell Douglas transport category airplanes. That AD currently requires, among other things, revision of an existing program of structural inspections. This new AD requires implementation of a program of structural inspections of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. This AD results from a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. We are issuing this AD to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

DATES: This AD becomes effective November 29, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 29, 2006.

The incorporation of a certain other publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 24, 1996 (61 FR 31009, June 19, 1996).

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

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

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 supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996). The existing AD applies to all McDonnell Douglas Model DC–9–10, –20, –30, –40, –50, and C–9 (military) series airplanes. (Since the issuance of that AD, the FAA has revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.) That supplemental NPRM was published in the **Federal Register** on March 7, 2006 (71 FR 11328). That supplemental NPRM proposed to require implementation of a program of structural inspections of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal.

Comments

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

Conclusion

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

Costs of Compliance

There are about 710 McDonnell Douglas transport category airplanes worldwide of the affected design. This AD will affect about 477 airplanes of U.S. registry, or 26 U.S. airline operators.

The recurring inspection costs, as required by AD 96–13–03, take 362 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the currently required actions is $11,223,810, or $23,530 per airplane, per inspection cycle.

The incorporation of the revised procedures in this AD action will require approximately 20 additional work hours per operator to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost to the 26 affected U.S. operators to incorporate these revised procedures into the SID program is estimated to be $33,800, or $1,300 per operator.

Additionally, the number of required work hours for each inspection (and the Supplemental Inspection Document (SID) program), as indicated above, is presented as if the accomplishment of those actions were to be conducted as ''stand alone'' actions. However, in actual practice, these actions for the most part will be accomplished coincidently or in combination with normally scheduled airplane inspections and other maintenance program tasks. Further, any costs associated with special airplane scheduling are expected to be minimal.

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 removing amendment 39–9671 (61 FR 31009, June 19, 1996) and by adding the following new airworthiness directive (AD):

2006–21–06 McDonnell Douglas: Amendment 39–14790. Docket No. FAA–2005–21779; Directorate Identifier 2002–NM–349–AD.

Effective Date

(a) This AD becomes effective November 29, 2006.

Affected ADs

(b) This AD supersedes AD 96–13–03.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; DC–9–21 airplanes; DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; DC–9–41 airplanes; and DC–9–51 airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. We are issuing this AD to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

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.

Requirements of AD 96–13–03

Revision of the FAA-Approved Maintenance Inspection Program

(f) Within 6 months after July 24, 1996 (the effective date of AD 96–13–03), replace the FAA-approved maintenance inspection program with a revision that provides for inspection(s) of the principal structural elements (PSEs) defined in McDonnell Douglas Report No. L26–008, ''DC–9 Supplemental Inspection Document (SID),'' Section 2 of Volume I of McDonnell Douglas Report No. L26–008, ''DC–9 Supplemental Inspection Document (SID),'' Revision 4, dated July 1993, in accordance with Section 2 of Volume III–95, dated September 1995, of the SID.

Note 1: Operators should note that certain visual inspections of fleet leader operator sampling PSE's that were previously specified in earlier revisions of Volume III of the SID are no longer specified in Volume III–95 of the SID.

(1) Prior to reaching the threshold (N_{th}), but no earlier than one-half of the threshold ($\frac{1}{2}N_{th}$), specified for all PSE's listed in Volume III–95, dated September 1995, of the SID, inspect each PSE sample in accordance with the non-destructive inspection (NDI) procedures set forth in Section 2 of Volume II, Revision 4, dated July 1993. Thereafter, repeat the inspection for that PSE at intervals not to exceed ΔNDI/2 of the NDI procedure that is specified in Volume III–95, dated September 1995, of the SID, until the requirements of paragraph (i) of this AD are accomplished.

(2) The NDI techniques set forth in Section 2 of Volume II, Revision 4, dated July 1993, of the SID provide acceptable methods for accomplishing the inspections required by this paragraph.

(3) All inspection results (negative or positive) must be reported to Boeing, in accordance with the instructions contained in Section 2 of Volume III–95, dated September 1995, of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 2: Volume II of the SID, dated July 1993, is comprised of the following:

TABLE 1

Volume designation	Revision level shown on volume
Volume II—10/20	4
Volume II—20/30	5
Volume II—40	4
Volume II—50	4

Note 3: NDI inspections accomplished in accordance with the following Volume II of the SID provide acceptable methods for accomplishing the inspections required by this paragraph:

TABLE 2

Volume designation	Revision level	Date of revision
Volume II—10/20	4	July 1993.
Volume II—10–20	3	April 1991.
Volume II—10/20	2	April 1990.
Volume II—10/20	1	June 1989.
Volume II—20	Original	November 1987.
Volume II—20/30	5	July 1993.
Volume II—20/30	4	April 1991.
Volume II—20/30	3	April 1990.
Volume II—20/30	2	June 1989.
Volume II—20/30	1	November 1987.
Volume II—40	4	July 1993.
Volume II—40	3	April 1991.
Volume II—40	2	April 1990.
Volume II—40	1	June 1989.
Volume II—40	Original	November 1987.
Volume II—50	4	July 1993.
Volume II—50	3	April 1991.
Volume II—50	2	April 1990.
Volume II—50	1	June 1989.
Volume II—50	Original	November 1987.

(g) Any cracked structure detected during the inspections required by paragraph (f) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), Transport Airplane Directorate, FAA.

Note 4: Requests for approval of any PSE repair that would affect the FAA-approved maintenance inspection program that is required by this AD should include a damage tolerance assessment for that PSE.

New Requirements of This AD

Revision of the Maintenance Inspection Program

(h) Within 12 months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for inspection(s) of the PSEs, in accordance with Boeing Report L26–008, ''DC–9 All Series, Supplemental Inspection Document (SID),'' Volume I, Revision 6, dated November 2002. Unless otherwise specified, all further references in this AD to the ''SID'' are to Revision 6, dated November 2002.

Non-Destructive Inspections (NDIs)

(i) For all PSEs listed in Section 2 of Volume I of the SID, perform an NDI for fatigue cracking of each PSE in accordance with the NDI procedures specified in Section 2 of Volume II, Revision 6, dated November 2004, of the SID, at the times specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD, as applicable.

(1) For airplanes that have less than three-quarters of the fatigue life threshold ($\frac{3}{4}N_{th}$) as of the effective date of the AD: Perform an NDI for fatigue cracking no earlier than one-half of the threshold ($\frac{1}{2}N_{th}$) but prior to reaching three-quarters of the threshold ($\frac{3}{4}N_{th}$), or within 60 months after the effective date of this AD, whichever occurs later. Inspect again prior to reaching the threshold (N_{th}) or ΔNDI/2, whichever occurs later, but no earlier than ($\frac{3}{4}N_{th}$). Thereafter, after passing the threshold (N_{th}), repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

(2) For airplanes that have reached or exceeded three-quarters of the fatigue life threshold ($\frac{3}{4}N_{th}$), but less than the threshold (N_{th}), as of the effective date of the AD: Perform an NDI prior to reaching the threshold (N_{th}), or within 18 months after the effective date of this AD, whichever occurs later. Thereafter, after passing the threshold (N_{th}), repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

(3) For airplanes that have reached or exceeded the fatigue life threshold (N_{th}) as of the effective date of the AD: Perform an NDI within 18 months after the effective date of this AD. Thereafter, repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

Note 5: Volume II of the SID, dated November 2004, comprises the following:

TABLE 3

Volume designation	Revision level shown on volume
Volume II—10/20	6
Volume II—20/30	7
Volume II—40	6
Volume II—50	6

Discrepant Findings

(j) If any discrepancy (e.g., a PSE cannot be inspected as specified in Volume II of the SID or does not match rework, repair, or modification description in Volume I of the SID) is detected during any inspection required by paragraph (i) of this AD, accomplish the action specified in paragraph (j)(1) or (j)(2) of this AD, as applicable.

(1) If a discrepancy is detected during any inspection performed prior to $\frac{3}{4}N_{th}$ or N_{th}: The area of the PSE affected by the discrepancy must be inspected prior to N_{th} or within 18 months of the discovery of the discrepancy, whichever is later, in accordance with a method approved by the Manager, Los Angeles ACO, FAA.

(2) If a discrepancy is detected during any inspection performed after N_{th}: The area of the PSE affected by the discrepancy must be inspected prior to the accumulation of an additional ΔNDI/2, measured from the last non-discrepant inspection finding, or within 18 months of the discovery of the

discrepancy, whichever occurs later, in accordance with a method approved by the Manager of the Los Angeles ACO.

Reporting Requirements

(k) All negative, positive, or discrepant (discrepant finding examples are described in paragraph (j) of this AD) findings of the inspections accomplished under paragraph (i) of this AD must be reported to Boeing, at the times specified in, and in accordance with the instructions contained in, Section 4 of Volume I, Revision 6, of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Corrective Actions

(l) Any cracked structure of a PSE detected during any inspection required by paragraph (i) of this AD must be repaired before further flight in accordance with a method approved by the Manager, Los Angles ACO, or by using a method approved in accordance with procedures specified in paragraph (p) of this AD. Accomplish follow-on actions described in paragraphs (l)(1), (l)(2), and (l)(3) of this AD, at the times specified.

(1) Within 18 months after repair, perform a damage tolerance assessment (DTA) that defines the threshold for inspection of the repair and submit the assessment for approval.

(2) Before reaching 75% of the repair threshold as determined in paragraph (l)(1) of this AD, submit the inspection methods and repetitive inspection intervals for the repair for approval.

(3) Before the repair threshold, as determined in paragraph (l)(1) of this AD, incorporate the inspection method and repetitive inspection intervals into the FAA-approved structural maintenance or inspection program for the airplane.

Note 6: For the purposes of this AD, we anticipate that submissions of the DTA of the repair, if acceptable, should be approved within six months after submission.

Note 7: Advisory Circular AC 25.1529–1, ''Instructions for Continued Airworthiness of Structural Repairs on Transport Airplanes,'' dated August 1, 1991, is considered to be additional guidance concerning the approval of repairs to PSEs.

Inspection for Transferred Airplanes

(m) Before any airplane that has exceeded the fatigue life threshold (N_{th}) can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established per paragraph (m)(1) or (m)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD, the inspection of each PSE must be accomplished by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment date for that PSE inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed in accordance with the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD, the inspection of each PSE required by this AD must be accomplished either prior to adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the Manager, Los Angeles ACO. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule.

Inspections Accomplished Before the Effective Date of This AD

(n) Inspections accomplished prior to the effective date of this AD in accordance with Boeing Report No. L26–008, ''DC–9 All Series Supplemental Inspection Document (SID),'' Volume I, Revision 6, dated November 2002, are acceptable for compliance with the requirements of paragraph (i) of this AD.

Acceptable for Compliance

(o) Boeing Report MDC 91K0263, ''DC–9/MD–80 Aging Aircraft Repair Assessment Program Document,'' Revision 1, dated October 2000, provides inspection/replacement programs for certain repairs to the fuselage pressure shell. These repairs and inspection/replacement programs are considered acceptable for compliance with the requirements of paragraphs (i), (l), and (m) of this AD for repairs subject to that document.

Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for alternative inspection procedures per AD 87–14–07 R1, amendment 39–6019; AD 94–03–01, amendment 39–8807; and AD 96–13–03; are acceptable for compliance with the actions required by paragraph (f) of this AD for inspections performed before the requirements of paragraph (i) are accomplished.

(5) AMOCs approved previously for repairs per AD 87–14–07 R1, AD 94–03–01, and AD 96–13–03; are acceptable for compliance with the requirements of paragraph (l) of this AD.

Material Incorporated by Reference

(q) You must use McDonnell Douglas Report No. L26–008, ''DC–9 Supplemental Inspection Document (SID),'' Volume III–95, dated September 1995; and the volumes of Boeing Report L26–008, ''DC–9 All Series, Supplemental Inspection Document (SID),'' specified in Table 4 of this AD; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 4.—SUPPLEMENTAL INSPECTION DOCUMENT VOLUMES

Volume	Effective pages	Revision level	Date
Volume I—All Series	List of Effective Pages: Pages A–C	4	July 1993.
Volume I—All Series	List of Effective Pages: Pages A–D	6	November 2002.
Volume II—10/20	List of Effective Pages: Pages A–K	4	July 1993.
Volume II—10/20	List of Effective Pages: Pages A–M	6	November 2004.
Volume II—20/30	List of Effective Pages: Pages A–T	5	July 1993.
Volume II—20/30	List of Effective Pages: Pages A–X	7	November 2004.
Volume II—40	List of Effective Pages: Pages A–M	4	July 1993.
Volume II—40	List of Effective Pages: Pages A–O	6	November 2004.
Volume II—50	List of Effective Pages: Pages A–M	4	July 1993.
Volume II—50	List of Effective Pages: Pages A–O	6	November 2004.

(Where there are differences between the revision dates listed in the List of Effective Pages and the revision dates shown on the actual pages of these documents, the revision dates on the actual pages are correct, except for the following: Volume I–All Series, dated July 1993: The revision dates in the List of Effective Pages are correct for the Record of Revisions, page 13 of the Introduction, and page B of Section 2.)

(1) The incorporation by reference of the volumes of Boeing Report L26–008, ''DC–9 All Series, Supplemental Inspection Document (SID),'' specified in Table 4 of this AD, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Report No. L26–008, ''DC–9 Supplemental Inspection Document (SID),'' Volume III–95, dated September 1995, was approved previously by the Director of the Federal Register on July 24, 1996 (61 FR 31009, June 19, 1996).

(3) Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), 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 October 6, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–8731 Filed 10–24–06; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0531–200618(a); FRL–8233–8]

Approval and Promulgation of Implementation Plans; Tennessee: Memphis/Shelby County Area Second 10-Year Maintenance Plan for the Carbon Monoxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Tennessee State Implementation Plan (SIP) submitted in final form on May 17, 2006. The SIP revision provides the second 10-year maintenance plan for the Memphis/Shelby County Carbon Monoxide (CO) Maintenance Area. The second 10-year maintenance plan includes a new motor vehicle emission budget (MVEB) for CO for the year 2017. EPA is approving this SIP revision, including the new 2017 MVEB for CO, because it satisfies the requirement of the Clean Air Act (CAA) for the second 10-year maintenance plan for the Memphis/Shelby County Area.

In addition, in this rulemaking, EPA is providing information on its transportation conformity adequacy determination for the new MVEB for the year 2017 that is contained in the second 10-year CO maintenance plan for the Memphis/Shelby County Area.

DATES: This rule is effective on December 26, 2006 without further notice, unless EPA receives adverse comments by November 24, 2006. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2006–0531, by one of the following methods:

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

2. *E-mail: louis.egide@epa.gov,* or *benjamin.Lynorae@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* ''EPA–R04–OAR–2006–0531'', Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Egide Louis, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.: ''EPA–R04–OAR–2006–0531''. 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 through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.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 either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Egide Louis of the Regulatory Development Section or Ms. Lynorae Benjamin of the Air Quality Modeling and Transportation Section at the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Dr. Louis's telephone number is (404) 562–9240. He can be reached also via electronic mail at *louis.egide@epa.gov.* Ms. Benjamin's telephone number is (404) 562–9040 and her electronic mail is *benjamin.lynorae@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What Is the Background for This Action?

In 1992, based on measured air quality data, the Memphis/Shelby County Area was able to demonstrate attainment with the CO National Ambient Air Quality Standard (NAAQS) due to numerous control measures implemented in the Memphis/Shelby County Area. As a result of the measured air quality data, Tennessee petitioned EPA for redesignation of this Area to attainment for CO. EPA redesignated the Memphis/Shelby County Area to attainment based on the measured air quality data and a 10-year maintenance plan submitted for the Memphis/Shelby County Area on July 26, 1994 (59 FR 37939).

The air quality maintenance plan is a requirement of the 1990 CAA amendments for nonattainment areas that come into compliance with the NAAQS and request redesignation, to assure their continued maintenance of that standard. Eight years after redesignation to attainment, section 175A(b) of the CAA requires the state to submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period (this is known as the second 10-year maintenance plan). The second 10-year maintenance plan updates the original 10-year CO maintenance plan for the next 10-year period. Thus, pursuant to the CAA section 175A(b), Tennessee was required to submit the second 10-year maintenance plan for the Memphis/Shelby County Area demonstrating that it would continue to attain the CO NAAQS in this area through at least 2014.

II. What Is EPA's Analysis of the Memphis/Shelby County Area's Second 10-Year Maintenance Plan?

On May 17, 2006, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Air Pollution Control Division, submitted a SIP revision to EPA that provided for the second 10-year maintenance plan for the Memphis/Shelby County Area as required by section 175A(b) of the CAA. This second 10-year maintenance plan for the Memphis/Shelby County Area includes a new CO emission inventory for 1990 which reflects emission controls applicable for the Memphis/Shelby County Area, and actual and projected emissions for 1990, 2002, 2007, and 2017. The SIP revision also establishes a new MVEB for CO for 2017 for the Memphis/Shelby County Area.

The emission reduction measures for CO emissions implemented in the Memphis/Shelby County Area from 1990 to 2002, and control measures that are projected to occur between 2007 and 2017 are accounted for in the 1990 emission inventory and projected emissions estimates. Tables 1 and 2 provide emissions data and projections for CO with and without the use of an inspection and maintenance (I&M) program, respectively. The on-road mobile portion of the data was calculated with MOBILE6.2. The difference between the 1990 mobile source base year emissions for this maintenance plan and the initial maintenance plan are primarily a result of a change in the mobile emissions factor model (e.g., MOBILE6.2) that was used to develop these emissions.

TABLE 1.—MEMPHIS/SHELBY CARBON MONOXIDE AREA—EMISSION INVENTORY AND PROJECTED CO EMISSIONS (1990–2017)—WITH I&M PLAN

[Tons per day]

Year	Area	Non-road mobile	On-road mobile with I&M	Point	Total
1990	10.14	100.83	893.76	22.77	1027.50
2002	7.03	115.67	615.98	14.53	753.21
2007	7.42	125.85	441.15	15.35	589.77
2017	8.08	138.84	327.88	16.56	491.36

TABLE 2.—MEMPHIS/SHELBY COUNTY CARBON MONOXIDE AREA—EMISSION INVENTORY AND PROJECTED CO EMISSIONS (1990–2017)—WITHOUT I&M PLAN

[Tons per day]

Year	Area	Non-road mobile	On-road mobile without I&M	Point	Total	Safety margin based on 1990 emissions
1990	10.14	100.83	893.76	22.77	1027.50	n/a
2002	7.03	115.67	654.37	14.53	791.60	235.90
2007	7.42	125.85	492.13	15.35	640.75	386.75
2017	8.08	138.84	383.33	16.56	546.81	480.69

The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Since 1990, the Memphis/Shelby County Area has not violated the CO standard for the 8-hour average concentration as shown by monitoring data in Table 3. The data also show a consistent downward trend in CO levels

as a result in part of the Federal Motor Vehicle Control Program. In this SIP revision, the emissions from the year 1990 are used to calculate a new attainment emissions level for the Memphis/Shelby County Area. The emissions from point, area, non-road, and mobile sources in 1990 equal 1027.50 tons per day (tpd) of CO. These emission calculations were made using the MOBILE6.2 model and the most recent version of the nonroad model. The projected emissions, with and without I&M, are lower than the attainment level of emissions, thus demonstrating continued maintenance of the CO NAAQS.

TABLE 3.—SUMMARY OF MEMPHIS/SHELBY COUNTY AREA CARBON MONOXIDE MONITORING DATA

[In parts per million]

Year	CO 8-hr NAAQS	Second highest CO 8-hr average value [1]
1990	9.0	8.8
1991	9.0	6.4
1992	9.0	8.2
1993	9.0	8.5
1994	9.0	8.0
1995	9.0	6.2
1996	9.0	6.3
1997	9.0	5.2
1998	9.0	5.4
1999	9.0	4.9
2000	9.0	4.4
2001	9.0	4.3
2002	9.0	3.5
2003	9.0	2.9

The safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin credit, or a portion thereof, can be allocated to the transportation sector, however, the total emission level must stay below the attainment level. The safety margin for CO was calculated as the difference between these amounts or, in this case, 480.69 tpd for 2017. The emissions are projected to maintain the Memphis/Shelby County Area's air quality consistent with the CO NAAQS.

Maintenance plans and other control strategy SIPs create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area's planned transportation system.

The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish and revise MVEBs in a SIP. In this SIP revision, the Memphis/Shelby County Area used MOBILE6.2 to establish a MVEB for CO for the year 2017. The State of Tennessee has chosen to allocate 95% of the safety margin (i.e., 456.66 tpd) to the transportation section. This MVEB is listed in Table 4.

TABLE 4.—MEMPHIS/SHELBY COUNTY CARBON MONOXIDE MAINTENANCE AREA MVEB WITH SAFETY MARGIN INCLUDED

	2017 Projected on-road emissions (tons per day)	Allocated safety margin	2017 MVEB with safety margin
CO	383.33	456.66	839.99

The MVEB presented in Table 4 is directly reflective of the combined on-road (or ''highway'') emissions for the Memphis/Shelby County Area for CO, plus an allocation from the available safety margin (95%). After allocation of the safety margin to the MVEB, the remaining safety margin for future allocation is 24.03 tpd. In summary, the new CO MVEB for the year 2017 is 839.99 tpd.

III. What Is EPA's Action on the Memphis/Shelby County Area's Second 10-Year Maintenance Plan?

EPA is approving Tennessee's SIP revision pertaining to the Memphis/Shelby County Area's second 10-year maintenance plan for CO. Approval of the maintenance plan for Memphis/Shelby County Area is appropriate, because the State of Tennessee has demonstrated that the plan meets the requirements of section 175A as described fully in this rulemaking. Additionally, EPA is finding adequate and approving the new 2017 MVEB, submitted by Tennessee for Memphis/Shelby County, in conjunction with its maintenance plan update. Within 24 months from the effective date of this action, the transportation partners will need to demonstrate conformity to this new MVEB pursuant to 40 CFR 93.104(e).

IV. What Is an Adequacy Determination and What Is EPA's Adequacy Determination for the Memphis/Shelby County Area's New MVEB for the Year 2017?

Under Section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. Under the transportation conformity rule, at 40 CFR part 93, projected emissions from transportation plans and programs must be equal to or less than MVEBs for the area. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

Until MVEBs in a SIP submittal are approved by EPA, they cannot be used for transportation conformity purposes unless EPA makes an affirmative finding that the MVEBs contained therein are ''adequate.'' Once EPA affirmatively finds the submitted MVEBs adequate for transportation conformity purposes, those MVEBs can be used by the State and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP even though the approval of the SIP revision containing those MVEBs has not yet been finalized. EPA's substantive criteria for determining ''adequacy'' of MVEBs in submitted SIPs are set out in EPA's Transportation Conformity Rule at 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's

adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

Memphis/Shelby County Area's second 10-year maintenance plan submission contained a new MVEB for the year 2017. The availability of the SIP submission with the 2017 MVEB was announced for public comment on EPA's adequacy Web page on June 6, 2006, at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*. The adequacy comment period for this MVEB closed on July 6, 2006. No requests for the submittal or adverse comments were received during EPA's Adequacy Public Comment Period.

Through this rulemaking, EPA is finding adequate this 2017 MVEB for use to determine transportation conformity because this MVEB meets the adequacy criteria contained in the Transportation Conformity Rule. The 2017 MVEB for CO for the Memphis/Shelby County Area is 839.99 tpd.

V. Final Action

EPA is approving the aforementioned changes to the SIP. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial 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 December 26, 2006 without further notice unless the Agency receives adverse comments by November 24, 2006.

If 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. 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 December 26, 2006 and no further action will be taken on the proposed rule.

VI. 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 affects the status of a geographical area, does not impose any new requirements on sources or allow a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 CAA. 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 CAA. 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. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 26, 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, Carbon monoxide, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: October 6, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 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 RR—Tennessee

■ 2. Section 52.2220(e) is amended by adding a new entry at the end of the table for ''Carbon Monoxide Second 10–Year Maintenance Plan for the Memphis/Shelby County Area'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
* *	* *	*	*	*
Carbon Monoxide Second 10-Year Maintenance Plan for the Memphis/Shelby County Area.	Memphis/Shelby	5/10/2006	10/25/2006 [Insert first page of publication].	

[FR Doc. E6–17854 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0022; FRL–8233–9]

RIN 2050–AG33

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors (Amendment)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is amending the effective date of the standard for particulate matter for new cement kilns that burn hazardous waste. EPA promulgated this standard as part of the national emission standards for hazardous air pollutants (NESHAP) for hazardous waste combustors that were issued on October 12, 2005, under section 112 of the Clean Air Act. EPA agreed to reconsider the standard and proposed to change it on March 23, 2006 (71 FR 14665). This amendment suspends the obligation of new cement kilns to comply with the particulate matter standard until EPA takes final action on this proposal. This amendment does not affect other standards applicable to new or existing hazardous waste burning cement kilns.

DATES: The final rule is effective on October 25, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0022. All documents in the docket are listed on *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the HQ EPA Docket Center, Docket ID No. EPA–HQ–OAR–2004–0022, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC 20004 (See note below). This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The HQ EPA Docket Center telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. A reasonable fee may be charged for copying docket materials.

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

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Frank Behan at (703) 308–8476, or *behan.frank@epa.gov*, Office of Solid Waste (MC: 5302P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC. 20460.

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

Category	NAICS code	SIC code	Examples of regulated entities
Industry	327310	3241	Cement manufacturing, clinker production.
Federal government			Not affected.
State/local/tribal government			Not affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria in 40 CFR 63.1200. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (www). In addition to being available in the docket, an electronic copy of today's final rule will also be available on the www at *http://www.epa.gov/hwcmact.*

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of today's amendment to the NESHAP for hazardous waste combustors is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Organization of This Document. The information presented in this preamble is organized as follows:

I. Summary of Final Rule
II. Background
III. Basis for Amended Effective Date
IV. Good Cause Findings
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act of 1995
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review

I. Summary of Final Rule

EPA is issuing a final rule to amend the effective date of the standard for particulate matter for new cement kilns that burn hazardous waste. The effect of this action is to suspend the obligation of new cement kilns to comply with the particulate matter standard that was issued on October 12, 2005 (70 FR 59402), under section 112 of the CAA, and set forth in § 63.1220(b)(7)(i). EPA is codifying this amendment by amending §§ 63.1206(a)(1)(ii)(B) and 63.1220(b)(7)(i).

Under this amended rule, cement kilns that were constructed or reconstructed after April 20, 2004, are temporarily relieved of the obligation to comply with the replacement particulate matter standard of 0.0023 gr/dscf, corrected to 7 percent oxygen, under § 63.1220(b)(7)(i).[1] However, such sources instead must comply with a particulate matter standard of 0.15 kg/Mg dry feed, which was the standard applicable to new cement kilns prior to the promulgation of the replacement standard (*i.e.*, the standard set forth in § 63.1220(b)(7)(i) as promulgated in the October, 2005 rule). This action does not affect any other standards applicable to new (or existing) cement kilns. It also does not affect the standards for other hazardous waste combustor source categories.

This amendment of the effective date shall take effect immediately upon publication in the **Federal Register**, and will remain in effect until EPA takes final action on the proposal to revise the particulate matter standard under § 63.1220(b)(7)(i). After EPA takes final action on the particulate matter standard, a cement kiln constructed or reconstructed after April 20, 2004, will be subject to the particulate matter standard set forth in § 63.1220(b)(7)(i).

II. Background

The final maximum achievable control technology (MACT) standards for hazardous waste combustors, implementing section 112(d) of the Clean Air Act, were published on October 12, 2005 (70 FR 59402). They are codified at 40 CFR part 63, subpart EEE. These standards include limits for particulate matter, which is a surrogate for certain hazardous air pollutant (HAP) metals. The particulate matter standard for new hazardous waste burning cement kilns is 0.0023 gr/dscf.[2]

Following promulgation of the hazardous waste combustor final rule, the Administrator received petitions for reconsideration of this standard pursuant to section 307(d)(7)(B) of the CAA from Ash Grove Cement Company (AGCC) and the Cement Kiln Recycling Coalition (CKRC).[3] Under this section of the CAA, the Administrator shall initiate reconsideration proceedings if the petitioner can show that it was impracticable to raise an objection to a rule within the public comment period or that the grounds for the objection arose after the public comment period.

Petitioners AGCC and CKRC requested that EPA reconsider the particulate matter standard for new cement kilns. They stated that the final standard of 0.0023 gr/dscf was not properly noticed and was derived using unrepresentative test data from the Ash Grove Cement Chanute (AGCC Chanute) plant, resulting in an unachievable standard. To support their position, the petitioners provided additional performance data from the AGCC Chanute plant, the cement kiln whose performance was the basis for the standard. On March 23, 2006, we published a proposed rule granting reconsideration of the particulate matter standard for new cement kilns and proposed a revised standard. See 71 FR 14665. In the proposal we agreed that there was legitimate confusion regarding whether we would base the new source standard on emissions data from the Ash Grove Cement Chanute plant, and that also, there was no practical opportunity for commenters to address this issue during the public comment period. We also stated that ''it appears that the promulgated new source standard for particulate matter for cement kilns is overly stringent in that it does not fully reflect the variability of the best performing source over time (the ''emission control that is achieved in practice,'' using the language of section 112(d)(3))''. 71 FR at 14668. Therefore, we proposed a revised particulate matter standard for new cement kilns of 0.0069 gr/dscf. Eleven public comment letters were submitted in response to the proposal, including a request to extend the comment period by two weeks that was granted in a subsequent notice on April 13, 2006 (71 FR 19155).

Pursuant to section 307(d)(7)(B) of the CAA, EPA also issued an administrative stay of the 0.0023 gr/dscf standard on March 23, 2006 (71 FR 14655). The administrative stay was in effect for three months, the maximum allowable under this section of the CAA, from March 23, 2006 to June 23, 2006. The administrative stay was based on our initial determination that the petitions for reconsideration (for the particulate matter standard for new cement kilns) appear to have merit and that there is a potential environmental detriment associated with requiring immediate compliance with the current standard of 0.0023 gr/dscf (71 FR at 14655).

III. Basis for Amended Effective Date

Although we proposed to revise the particulate matter standard for new cement kilns to 0.0069 gr/dscf from 0.0023 gr/dscf in response to the petitions for reconsideration, the

[1] In this notice all concentration-based standards with units of gr/dscf are corrected to 7% oxygen.

[2] The particulate matter standard is used as a surrogate to control five HAP metals including antimony, cobalt, manganese, nickel, and selenium. In addition, the particulate matter standard is a surrogate control for all non-mercury HAP metals in the raw materials and auxiliary fuels. 69 FR at 21221.

[3] AGCC's petition for reconsideration is docket item EPA–HQ–OAR–2004–0022–0516 and the petition of CKRC is docket item EPA–HQ–OAR–2004–0022–0520.

October 12, 2005 final rule provides that the promulgated particulate matter standard of 0.0023 gr/dscf takes effect upon publication. Without today's amendment of this provision, all cement kilns that were constructed or reconstructed after April 20, 2004, would have been required to comply immediately with the 0.0023 gr/dscf emission standard. While there are no cement kilns operating that were constructed or reconstructed after April 20, 2004 (and thus already complying with the 0.0023 gr/dscf standard) currently, there are a number of cement plants that are in various stages of constructing new, lower emitting and more energy-efficient kilns to replace older cement kilns. Comments submitted by these cement companies affirm that the promulgated particulate matter standard of 0.0023 gr/dscf, if left in effect during the reconsideration proceedings, could adversely affect the construction of these new kilns. As discussed in Section IV below, we have found that such delays, if they were to occur, would result in adverse environmental and energy impacts (*e.g.*, increased emissions of particulate matter and increased consumption of fossil fuels such as coal). Therefore, we conclude it is appropriate to amend the effective date of the particulate matter standard for new cement kilns until we conclude the reconsideration proceedings.

We are mindful that there would be no need to amend the effective date of the new source particulate matter standard for cement kilns if it seemed likely that we would affirm the promulgated standard of 0.0023 gr/dscf at the conclusion of the reconsideration process. Based on a preliminary, non-cursory evaluation of public comments submitted in response to the proposed rule to revise the particulate matter standard, we continue to believe that a MACT floor level of 0.0023 gr/dscf is not representative of the performance of any single best performing cement kiln source in our emissions data base, properly taking normal operating variability into account. Therefore, while not a final determination, our preliminary review of public comments provided during the reconsideration proceedings has not persuaded us that a revision of the particulate matter standard for new cement kilns is unnecessary. We will, of course, consider objectively all information submitted during the reconsideration process and make a final determination in the near future as to the need to revise this standard.

Our preliminary view is that an emissions standard of 0.0023 gr/dscf for particulate matter is not an appropriate standard for new cement kilns either as a MACT floor or as a beyond-the-floor standard.[4] First, a level of 0.0023 gr/dscf does not appear to be an achievable MACT floor level based on available particulate matter emissions data from the AGCC Chanute plant, the cement kiln on whose performance that standard was based. Available performance data for AGCC Chanute include emissions data from 2001–2002 (the basis of the promulgated MACT floor of 0.0023 gr/dscf) and additional emissions data from 2003–2005 submitted by petitioner AGCC during reconsideration proceedings (the basis for identifying another cement plant as the single best performing source in the reconsideration proposed rule that led EPA to propose a MACT floor of 0.0069 gr/dscf). As discussed below, it is our view that these emissions data show that the AGCC Chanute source does not routinely achieve a standard of 0.0023 gr/dscf. In fact, our review of the AGCC Chanute data led us to identify another cement plant as the single best performing source in the March 23, 2006 reconsideration proposed rule.

One commenter to the March 23, 2006 proposed rule stated that the emissions data of AGCC Chanute from 2003–2005 reflect unnecessary bag leakage and ineffective maintenance, and, therefore, the test data submitted during reconsideration proceedings for AGCC Chanute should not be accepted as representative of routine performance. The commenter also states that a standard of 0.0023 gr/dscf would be readily achievable by AGCC Chanute (and other cement kilns) through, among other things, an effective preventative maintenance program that includes the use of bag leak detection systems to identify and correct bag leaks when they first occur.[5] However, the commenter provides no evidence that an ineffective preventative maintenance program is responsible for the variability seen in the additional emissions data from 2003–2005 as compared to the 2001–2002 data. Without a basis to exclude the data, we tentatively believe these additional data must not be excluded from the MACT floor analysis because they reflect the normal variability of the source over time. As discussed in the reconsideration proposed rule, if these data are considered, then AGCC Chanute's performance clearly shows that an emission level of 0.0023 gr/dscf is not an appropriate MACT floor for new cement kilns because it does not fully reflect the source's emission variability (71 FR at 14669). We also tentatively reject the commenter's argument that AGCC Chanute could routinely achieve a MACT floor of 0.0023 gr/dscf if its baghouse (fabric filter) were better maintained by monitoring emissions with a bag leak detection system. The argument suggests that AGCC Chanute could have maintained the performance achieved in 2001–2002 through improved monitoring and a better preventative maintenance program. We disagree that the commenter's argument is even relevant when identifying a MACT floor because whether AGCC Chanute could operate better (achieve lower emissions over time) with different equipment, such as a bag leak detection system, is a beyond-the-floor issue. As the commenter acknowledges, AGCC Chanute is not equipped with a bag leak detection system. For purposes of a MACT floor, we must identify the single best performing source and identify an emission level that reflects ''the emission control that is achieved in practice by the best controlled source.'' Section 112(d)(3). Therefore, a MACT floor of 0.0023 gr/dscf for particulate matter would not be justifiable based on theoretical performance of a differently-equipped AGCC Chanute plant.

Second, a level of 0.0023 gr/dscf does not appear to be an achievable MACT floor level based on available particulate matter emissions data from any other cement kiln source in our emissions data base. As presented in the support document to the reconsideration proposed rule, we are not in possession of any emissions data from a cement kiln achieving this level, accounting for normal performance variability.[6]

Finally, an emissions standard of 0.0023 gr/dscf for particulate matter is not likely an appropriate beyond-the-floor standard for new cement kilns. In

[4] See the notice of proposed rulemaking for a discussion of how we selected representative data for each source so that the single best performing source could be identified and how we calculated the MACT floor levels for particulate matter. 69 FR at 21223–233 (April 20, 2004). The proposed rule also describes how emissions variability was accounted for, including the use of a ''universal variability factor'' that was used only for the particulate matter standard to address long-term variability in particulate matter emissions of sources using fabric filters. See also 70 FR at 59436–450. In developing MACT standards, we must also consider beyond-the-floor control options that are more stringent than the floor level taking into consideration not only emission performance but also the cost of achieving the emission reductions, any health and environmental impacts, and energy requirements. CAA section 112(d)(2).

[5] See docket item EPA–HQ–OAR–2004–0022–0542.01, page 2.

[6] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Reconsideration of the New Source Particulate Matter Standards for Cement Kilns,'' March 2006, Table 4.

the reconsideration proposal, we evaluated a beyond-the-floor standard of 0.0035 gr/dscf and proposed that such a standard would not be justified.[7] This analysis was based on improved baghouse performance that evaluates improved bag material and a lower gas to cloth ratio. We also reached that conclusion in the final rule whereby we rejected adopting a beyond-the-floor standard of 0.0012 gr/dscf.[8] While we are not able to quantify the costs here (because the MACT floor level has yet to be determined), the previous analyses indicate that a beyond-the-floor standard of 0.0023 gr/dscf is not likely to be warranted. We will, of course, make a final determination as to the appropriateness of a beyond-the-floor standard for new cement kilns during the reconsideration process in the near future.

IV. Good Cause Findings

Section 553(b) of the Administrative Procedure Act (APA) (which applies to this action pursuant to the final sentence of CAA section 307(d)(1)) provides that, when any agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. Similarly, under section 553(d) of the APA, an agency may find that there is good cause to make the rule effective upon publication in the **Federal Register**.

We have determined that there is good cause for making today's amendment final without prior proposal and opportunity for public comment for several reasons. First, this amendment removes potential impediments to significant environmental and energy savings by allowing continued construction of new cement kilns that burn hazardous waste. As noted in the petitions for reconsideration of AGCC and CKRC, at least three companies are in various stages of constructing new, lower emitting and more energy-efficient kilns to replace older cement kilns.[9] Declarations made by representatives of these companies are that the companies could choose not to burn hazardous waste at these kilns and instead comply with the more lenient standards for particulate matter applicable to non-waste burning kilns, should the current particulate matter standard of 0.0023 gr/dscf be included in a permit.[10] Using the AGCC's Foreman plant as an example, we estimate that emissions of particulate matter would increase by approximately 77 tons per year at the Foreman plant should AGCC decide to abandon plans to burn hazardous waste at the new preheater/precalciner kiln.[11] Continental Cement Company and Keystone Cement Company also are planning to construct new cement kilns. If all three companies abandoned plans to build the new lower-emitting cement kilns, then particulate matter emissions would potentially increase by over 200 tons per year.

There also may be environmental detriment if the amendment is not issued because the companies building new cement kilns could experience construction and permitting delays. This detriment would result because the existing higher-emitting and less efficient cement kilns would (assuming delay) continue to operate for a longer period of time (i.e., operation of the new cement kilns replacing the older kilns would be postponed). We estimate that emissions of particulate matter would increase by approximately 60 tons at the Foreman plant should AGCC experience a 1-year delay in initiating operation of their new preheater/precalciner kiln.[12] Delays at Continental Cement Company and Keystone Cement Company would result in annual increases in particulate matter emissions of 27 tons and 30 tons, respectively. Thus, if all three companies experienced a one-year delay in building the new lower-emitting cement kilns, then particulate matter emissions would increase by approximately 117 tons.

We also find that amending the rule's effective date yields substantial energy savings. A typical wet process cement kiln requires approximately 5–6 million Btu of energy to make one ton of clinker product, while the more thermally-efficient preheater/precalciner kilns require 3 million Btu of energy. One wet process cement kiln annually producing 500,000 tons of clinker would consume approximately 105,000 tons of coal (assumes that all energy is derived from coal). However, a more thermally-efficient preheater/precalciner kiln would require 57,000 tons of coal per year, which equates to an annual energy savings of nearly 50,000 tons of coal per kiln as compared to a wet process kiln. Thus, a delay in the start-up of the new kilns or outright abandonment of its construction would result in the increased use of several hundred thousand tons of coal per year.

It is also important to note that while this amendment temporarily relieves newly constructed or reconstructed cement kilns of the obligation to comply with the replacement standard of 0.0023 gr/dscf, there are no cement kilns currently in operation that are subject to the replacement standard. That is, there are no new cement kilns that are currently complying with the replacement standard of 0.0023 gr/dscf for particulate matter, and thus no kilns that will actually emit particulate matter at higher levels. Thus, although the less stringent particulate matter standard that was applicable to new cement kilns prior to the promulgation of the replacement standards will be in effect as a result of today's amendment, this will not lead to an actual increase in particulate matter emissions.

We also note that the issue of the rule's effective date has essentially already been subject to robust public comment through the grant of reconsideration and proposal to amend the rule. Thus, this is not a situation where the public is presented with a final rule without having opportunity to address the issues involved in the action.

Finally, we note that we expect this amendment to be in effect for only a short time. We estimate that the amendment will remain in effect for less than 1-year while the rulemaking to revise the particulate matter standard for new cement kilns is concluded. We intend to take final action on

[7] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Reconsideration of the New Source Particulate Matter Standards for Cement Kilns,'' March 2006, Section 4.1.2.

[8] USEPA, ''Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards,'' September 2005, Section 11.3.4.

[9] For example, AGCC is replacing its three older wet process cement kilns at its Foreman, Arkansas plant with a new preheater/precalciner kiln. See docket item EPA-HQ-OAR–2004–0022–0523, page 3. Information related to plans of Continental Cement Company and Keystone Cement Company to build new cement kilns can be found in docket item EPA–HQ–OAR–2004–0022–0521, Appendices F and G, respectively.

[10] Declarations made by representatives of AGCC, Continental Cement Company, and Keystone Cement Company are available in the docket. See docket item EPA-HQ-OAR–2004–0022–0521, Appendices F, G, and H.

[11] For purposes of this estimate, it was assumed that the new preheater/precalciner kiln would be designed to 0.0034 gr/dscf, which is the design level for the standard that we proposed for new hazardous waste burning cement kilns on March 23, 2006 (71 FR 14665). The particulate matter standard for new cement kilns that do not burn hazardous waste is 0.15 kg/Mg dry feed, which equates to approximately 0.04 gr/dscf, corrected to 7% oxygen, for a preheater/precalciner kiln. Section 63.1343(b)(1).

[12] We estimate emissions of particulate matter from Ash Grove Cement's three wet process kilns at 85 tons per year. See USEPA, ''Technical Support Document for HWC MACT Replacement Standards, Volume V: Emissions Estimates and Engineering Costs,'' September 2005, Appendix C. For purposes of this estimation, we assumed that the new preheater/precalciner kiln would be designed to 0.0034 gr/dscf, which is the design level for the standard that we proposed for new hazardous waste burning cement kilns on March 23, 2006.

reconsideration of the particulate matter standard for new cement kilns as expeditiously as possible. When that work is completed, the kilns currently under construction will be responsible for meeting the standard in the revised rule prior to commencing operation. We do not anticipate that any of those new kilns will ever operate subject to the previous replacement standard.

Given the possibility of environmental detriment, the lack of environmental prejudice, the previous opportunity for public comment on the issues involved, and the likely short duration of this amendment, we find that there is good cause to amend the rule's effective date under 5 U.S.C. 553(b)(B) without prior notice or opportunity to comment. We also find, for the same reasons, that good cause exists under APA section 553(d)(3) to make this amendment effective upon publication in the **Federal Register** rather than 30 days later.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. Consequently, this action was not submitted to the Office of Management and Budget for review under EO 12866.

B. Paperwork Reduction Act

The information collection requirements in the final rule (70 FR 59402, October 12, 2005) were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and assigned OMB control number 2050–0171. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1773.08) and a copy may be obtained from Susan Auby by mail at Office of Environmental Information Collection Strategies Division (ME–2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded from the Internet at *http://www.epa.gov/icr.*

Today's action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because there is no additional burden on the industry as a result of the final rule amendments, the ICR has not been revised.

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

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

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in cement manufacturing as defined by NAIC code 327310 with less than 750 employees (for the entire corporation); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in the field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any new, more stringent requirements on new source, small cement manufacturing entities.

D. Unfunded Mandates Reform Act of 1995

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

EPA has determined that the final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. Furthermore, section 202 does not apply to rules for which EPA invokes an exemption under section 553(b)(1)(B) of the Administrative Procedure Act, as is being done in this action. Thus, today's action is not subject to sections 202 and 205 of the UMRA. EPA has also determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments. Thus, the final rule amendments are not

subject to the requirements of section 203 of the UMRA no new enforceable duty on any State, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. This action contains no requirements that are more stringent than in the October 2005 final rule. Thus, Executive Order 13175 does not apply to this rule.

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

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

Today's final rule is not subject to E.O. 13045 because it does not meet either of these criteria. The rule simply amends the effective date of a standard while EPA takes final action on the proposed rule (71 FR 14665 (March 23, 2006)).

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

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

I. National Technology Transfer and Advancement Act

As noted in the proposed rule (69 FR 21198), Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As discussed in Section IV above, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of October 25, 2006. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subject in 40 CFR Part 63

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

Dated: October 19, 2006.

Stephen L. Johnson,

Administrator.

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

PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

■ 2. Section 63.1206 is amended by revising paragraph (a)(1)(ii)(B)(*1*) and adding new paragraph (a)(1)(ii)(B)(*3*) to read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

(a) * * *

(1) * * *

(ii) * * *

(B) * * * (*1*) If you commenced construction or reconstruction of your hazardous waste combustor after April 20, 2004, you must comply with the new source emission standards under §§ 63.1219, 63.1220, and 63.1221 and the other requirements of this subpart by the later of October 12, 2005 or the date the source starts operations, except as provided by paragraphs (a)(1)(ii)(B)(*2*) and (a)(1)(ii)(B)(*3*) of this section. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 20, 2004, and a source's compliance date, are not considered to be reconstruction costs.

* * * * *

(3) *Temporary particulate matter standard under § 63.1220 for new*

cement kilns. You are not required to comply with the particulate matter standard specified under § 63.1220(b)(7)(i) until EPA takes final action with regard to the particulate matter standard pursuant to reconsideration proceedings. If you start up a new or reconstructed hazardous waste burning cement kiln as defined by this subpart, you must not emit particulate matter in excess of 0.15 kg/Mg dry feed, as determined according to the requirements under § 63.1204(b)(7)(i) through (iii).

* * * * *

■ 3. Section 63.1220 is amended by revising paragraph (b)(7)(i) to read as follows:

§ 63.1220 What are the replacement standards for hazardous waste burning cement kilns?

* * * * *

(b) * * *

(7) * * *

(i) Except as provided by § 63.1206(a)(1)(ii)(B)(*3*) and paragraph (b)(7)(iii) of this section, particulate matter emissions in excess of 0.0023 gr/dscf corrected to 7 percent oxygen.

* * * * *

[FR Doc. E6–17897 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 29

[Docket No. OST–2005–22602]

RIN 2105–AD46

Debarment and Suspension (Nonprocurement) Requirements

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

ACTION: Final rule.

SUMMARY: This rule amends the Department of Transportation's regulations implementing the governmentwide nonprocurement debarment and suspension requirements. Specifically, this rule adopts the optional lower tier coverage prohibiting excluded persons from participating in subcontracts at tiers lower than the first tier below a covered nonprocurement transaction.

DATES: *Effective Date:* This final rule is in effect November 24, 2006.

FOR FURTHER INFORMATION CONTACT: Ellen Shields, Office of the Senior Procurement Executive, Office of Administration (M–61), (202) 366–4268, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve previously filed comments online through the Document Management System (DMS) at *http://dmses.dot.gov.* The DMS is available 24 hours each day, 365 days each year. Electronic retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

On November 26, 2003, the Department of Transportation (DOT), along with twenty-nine other agencies, published its final rule implementing changes to the governmentwide debarment and suspension common rule (68 FR 66533). These regulations were intended to resolve unnecessary technical differences between the procurement and nonprocurement systems, revise the existing governmentwide debarment and suspension regulations in a plain language style and format, and make other improvements consistent with the purpose of the debarment and suspension system. One of the changes made to the regulations included limiting the mandatory down-tier application of an exclusion to only the first procurement level. Under the previous governmentwide regulations, all executive agencies applied suspensions and debarments to all procurement levels. However, in the revised governmentwide regulations, each agency was given the option of applying an exclusion to levels below the first procurement level. This final rule adopts the optional lower tier coverage to make the debarment and suspension regulations applicable to levels below the first procurement level. Many of the DOT programs involve billions of dollars in grants that are obligated to construction projects by States, localities and other recipients. For instance, on August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59. This Act authorizes funding for highways, highway safety, and public transportation totaling $244.1 billion over five years (2005–2009) and is the largest surface transportation investment in our Nation's history. Of this $244.1 billion, a substantial portion of these funds will be used by States and other grantees to procure construction contracts. These construction contracts could involve multiple subcontracts that would be vulnerable to misconduct and poor performance if suspended or debarred contractors are allowed to participate in these transactions.

Discussion of Comments

On October 5, 2005, the Office of the Secretary (OST) in the DOT published a notice of proposed rulemaking (NRPM) and requested comment on whether the DOT should adopt the lower tier coverage. In response to the NPRM, OST received two comments. These comments were submitted by the American Road and Transportation Builders Association (ARTBA) and the Wisconsin Department of Transportation (WisDOT).

ARTBA commented that the transportation construction industry has a well-deserved reputation of being comprised of highly ethical firms. However, despite this reputation, some firms betray the integrity of the whole. In these situations, ARTBA acknowledged that suspension or debarment may be appropriate. Additionally, ARTBA commented on the importance of maintaining the contractor's due process rights. ARTBA stated that the basis of due process is that everyone is deemed innocent until proven guilty and that due process is not served if contractors are suspended or debarred before being afforded an opportunity to be heard. ARTBA noted that debarment and suspension cannot be taken lightly because of the interruption in the firm's ability to work and, as such, the DOT needs to ensure that the debarment and suspension process is fair.

The DOT agrees with ARTBA that the transportation construction industry does indeed have a well-deserved reputation of being comprised of highly ethical firms. However, as ARTBA acknowledges, there are some firms within the industry that betray this reputation. The participation of these irresponsible firms and individuals in the transportation program could result in millions of dollars being wasted due to fraud. These are funds that could be used on construct more transportation projects. Also, the DOT agrees with

ARTBA on the importance of maintaining the contractor's due process rights. The debarment and suspension regulations promulgated in 2003 set out detailed procedures that must be followed whenever the Department initiates a suspension or debarment action. These procedures include both notice and an opportunity to be heard.

WisDOT commented that the language was not user friendly and suggested that the DOT adopt a definition of procurement as well as revise the proposed language by essentially substituting the word ''nonprocurement'' with ''procurement.'' The current regulations are based on a governmentwide common rule that was adopted by numerous agencies and were drafted to be more consistent with the debarment and suspension rules in the Federal Acquisition Regulation (FAR). Thus, the DOT is hesitant to make any changes that may deviate from the consistency these rules are intended to create among Executive Branch agencies as well as the FAR. However, the DOT notes this suggestion and will work with the Office of Management and Budget, which is the lead agency on the governmentwide common rule, in this endeavor.

The DOT feels that the language should be adopted as proposed in the NPRM. First, the alternate language proposed by WisDOT would apply to procurement transactions at the first procurement level. These types of transactions have unique rules already established in section 29.220(b) of 49 CFR. Second, the language proposed by the NPRM makes it clear that the provision applies to contracts awarded by contractors under a nonprocurement transaction. Thus, the DOT is adopting the language proposed in the NPRM.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The DOT has determined preliminarily that this action is not a significant regulatory action within the meaning of Executive Order 12866 and is not significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal, since it would bring the DOT's regulations concerning the effect of a debarment and suspension back in line with the regulations that were in effect prior to November 26, 2003. These changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the DOT has evaluated the effects of this action on small entities and has determined that the action would not have a significant economic impact on a substantial number of small entities. This action brings the DOT's regulations concerning the effect of a debarment and suspension back in line with the regulations that were in effect prior to November 26, 2003 by excluding persons who have been debarred or suspended from participating in transactions beneath the first procurement level under a non-procurement transaction. For these reasons, the DOT certifies that this action does not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). This final rule provides for the exclusion of debarred or suspended persons from participating in transactions beneath the first procurement level under a non-procurement transaction, therefore, this action is not considered an unfunded mandate.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the DOT has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The DOT has also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

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.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The DOT has determined that this rule does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this action does not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the United Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 29

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Issued on: October 6, 2006.

Maria Cino,

Acting Secretary of Transportation.

■ In consideration of the foregoing, the DOT proposes to amend, title 49, Code of Federal Regulations, part 29, as set forth below:

PART 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

■ 1. The authority citation for part 29 continues to read as follows:

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 31 U.S.C. 6101 note); E.O. 11738 3 CFR, 173 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235).

■ 2. In § 29.220, add paragraph (c) to read as follows:

§ 29.220 Are any procurement transactions included as covered transactions?

* * * * *

(c) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by the DOT under a nonprocurement transaction that is expected to equal or exceed $25,000. [See optional lower tier coverage shown in the diagram in the appendix to this part.]

§ 29.520 [Amended]

■ 3. In § 29.520, in paragraph (d), remove the references: ''United States Coast Guard [DOT–USCG]'' and ''Research and Special Programs [DOT–RSPA]'' and insert the references ''Research and Innovative Technology Administration [RITA]'' and ''Pipeline and Hazardous Materials Safety Administration [DOT–PHMSA]'' in their place, respectively.

[FR Doc. 06–8657 Filed 10–24–06; 8:45 am]

BILLING CODE 4910–9X–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 101906D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processor Vessels Using Hook-and-line Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 directed fishing allowance (DFA) of Pacific cod specified for catcher processor vessels using hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 21, 2006, until 2400 hrs, A.l.t., December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 Pacific cod DFA specified for catcher processor vessels using hook-and-line gear in the BSAI is 70,619 metric tons as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006) and the adjustment on March 14, 2006 (71 FR 13777, March 17, 2006).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2006 Pacific cod DFA specified for catcher processor vessels using hook-and-line gear in the BSAI has been reached. Therefore, the Regional Administrator is prohibiting directed fishing for Pacific cod by catcher processor vessels using hook-and-line gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher processor vessels using hook-and-line gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 19, 2006.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 19, 2006.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–8873 Filed 10–20–06; 1:09 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 206
Wednesday, October 25, 2006

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25822; Airspace Docket No. 06–AWP–16]

RIN 2120–AA66

Proposed Revision of Class D Airspace; Mesa, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This action proposes to revise Class D airspace at Mesa, AZ, Falcon Field Airport. The airspace would be modified to accommodate general aviation pilots transitioning the Phoenix area as described in the forthcoming proposed Phoenix Class B airspace redesign. Revising the Falcon Field airspace will provide a wider corridor for general aviation pilots to transition north and south beneath the proposed Phoenix Class B airspace and remain west of the Falcon Field Airport Class D airspace.

DATES: Comments must be received on or before December 11, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–25822; Airspace Docket No. 06–AWP–16, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Francie Hope, Airspace Specialist, Western Terminal Service Area, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 725–6502.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2006–25822 and Airspace Docket No. 06–AWP–16) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowlege receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2006–25822 and Airspace Docket No. 06–AWP–16.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov.* or the Federal Register's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Terminal Service Area, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Phoenix Class B airspace is in the process of being redesigned. Assuming establishment of the redesign, the eastern boundaries of Class B will change, resulting in an airspace area designated with a floor of 2,700 feet Mean Sea Level (MSL) between six nautical miles and approximately 9.19 nautical miles east of Phoenix VORTAC.

Currently, the Mesa Falcon Field Class D airspace is within a 4.3 nautical mile radius of the Mesa Falcon Field Airport ARP (Airport Reference Point) from the surface to less than 3,400 feet MSL. Class B airspace with a floor of 3,000 feet MSL is captured between the visual reference points of Dobson Road and Gilbert Road, excluding the Mesa Falcon Field Class D airspace. Beneath this airspace area is a suggested VFR flyway utilized by general aviation pilots to traverse the Phoenix area at 2,500 feet MSL.

In the proposed Class B airspace redesign, much of the 3,000 feet MSL airspace floor with change to 2,700 feet MSL. In order to provide the widest possible corridor of airspace of general aviation use under 2,700 feet MSL, it is proposed that a western boundary of Mesa Falcon Field Class D airspace be designated at Gilbert Road.

In addition to this available airspace below 2,700 feet MSL, the proposed suggested VFR flyway utilized by general aviation will be moved east of Gilbert Road over Mesa Falcon Field Class D airspace at 3,500 feet MSL, which will be below the Class B floor of 4,000 feet MSL, thus providing a designated suggested VFR flyway as well as more transition area for general aviation below the 2,700 feet MSL Class B airspace.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to revise the Class D airspace area. Utilizing a 6-nautical-mile Distance Measuring Equipment (DME) arc from the Phoenix VORTAC eastward to Gilbert Road, the proposed Class B airspace, in association with this proposed Class D airspace area revision, would provide a similar general aviation airspace transition area between approximately 3.17 and 5 nautical miles wide beneath its floor of 2,700 feet MSL. This area encompasses a small portion of the Mesa Falcon Field Airport Class D airspace area.

In order to accommodate general aviation transitioning north and south below the proposed Class B airspace, and provide an eastern visual boundary and the widest possible corridor of VFR airspace under 2,700 feet MSL between the 6-nautical-mile DME arc and Gilbert Road, it is proposed to revise the Class D airspace to extend only as far west as Gilbert Road; thus allowing aircraft to remain below Class B airspace and outside and to the west of Class D airspace during its hours of operation.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in this Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP AZ D Mesa, AZ [Revised]

Mesa, Falcon Field, AZ
(Lat. 33°27′39″ N, long. 111°43′42″ W)

That airspace extending upward from the surface to but not including 3,400 feet MSL beginning at lat. 33°24′38″ N, long. 111°47′23″ W; then north to lat. 33°30′40″ N, long. 111°47′23″ W; then northeast, southeast, and southwest along a 4.3-mile radius of Falcon Field Airport, to lat. 33°24′38″ N, long. 111°47′23″ W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on October 10, 2006.

Leonard A. Mobley,

Acting Director, Western Terminal Operations.

[FR Doc. 06–8848 Filed 10–24–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–26040; Airspace Docket 06–ASO–13]

Proposed Establishment of Class E Airspace; Williamsburg, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Williamsburg, KY. Area Navigation (RNAV) Global Positioning system (GPS) Standard Instrument Approach procedures (SIAPs) Runway (RWY) 02 and RWY 36 have been developed for Williamsburg—Whitley County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAPs and for Instrument Flight Rules (IFR) operations at Williamsburg—Whitley County Airport. The operating status of the airport will change from Visual Flight rules (VFR) to include IFR operations concurrent with the publication of the SIAPs.

DATES: Comments must be received on or before November 24, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–26040; Airspace Docket 06–ASO–13, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 101 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those3 comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–26040/ Airspace Docket No. 06–ASO–13.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation regulations (14 CFR part 71) to establish Class E airspace at Williamsburg, KY. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, dated September 16, 2006, and effective September 16, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, 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 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 16, 2006, and effective September 16, 2006 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5—Williamsburg, KY [NEW]

Williamsburg—Whitley County Airport, KY
(Lat. 36°47′42″ N, long. 84°11′158″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-radius of Williamsburg—Whitley County Airport.

* * * * *

Issued in College Park, Georgia, on October 6, 2006.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 06–8847 Filed 10–24–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2006–26139; Notice No. 06–17]

Age 60 Aviation Rulemaking Committee; Request for Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments.

SUMMARY: In November 2006, the International Civil Aviation Organization (ICAO) will adopt an amendment to increase the ''upper age limit'' for airline pilots up to age 65 provided another crewmember pilot is under age 60. On September 27, 2006, Administrator Blakey established an Aviation Rulemaking Committee (ARC) on the Age 60 issue. One of its tasks is to recommend whether the United States should adopt the new ICAO standard. The FAA and the ARC are requesting comments from the public about whether the FAA should adopt the ICAO standard and any issues surrounding adopting or not adopting the standard.

DATES: Send your comments on or before November 15, 2006.

ADDRESSES: You may send comments [identified by Docket Number FAA–2006-26139] using any of the following methods:

- *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 20590–0001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read comments received, go to *http://dms.dot.gov* at any time or to 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.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Tilton, Federal Air Surgeon, Office of Aerospace Medicine, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: 202–267–3537.

SUPPLEMENTARY INFORMATION:

Comments Invited. The FAA invites interested persons to participate in this request for comments by submitting written comments, data, or views. The most helpful comments clearly explain

the reason for any position, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Background

Section 121.383(c) of Title 14 of the United States Code (the Age 60 Rule) prohibits any air carrier from using the services of any person as a pilot, and prohibits any person from serving as a pilot, on an airplane engaged in operations under part 121 if that person has reached his or her 60th birthday. The FAA adopted the Age 60 Rule in 1959. Part 121 covers operations of large commercial passenger aircraft, smaller propeller aircraft with 10 or more passenger seats, and common carriage operations of all-cargo aircraft with a payload capacity of 7500 pounds.

In November 2006, the International Civil Aviation Organization (ICAO) will adopt Amendment 167 to increase the ''upper age limit'' for airline pilots up to age 65 provided another crewmember pilot is under age 60. The Age 60 ARC provides a forum for the U.S. aviation community to discuss the new ICAO standard, make recommendations as to whether the United States should adopt that standard, and determine what actions would be necessary if FAA were to change the regulation to meet the new ICAO standard. As part of the ARC's review and recommendation, it and the FAA are soliciting comments from the public on whether the FAA should adopt the ICAO standard and any issues surrounding adopting or not adopting the standard.

Issued in Washington, DC, on October 19, 2006.

James R. Fraser,

Acting Federal Air Surgeon.

[FR Doc. E6–17851 Filed 10–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101 and 170

[Docket No. 2002P–0122] (formerly 02P–0122)

Conventional Foods Being Marketed as ''Functional Foods''; Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing on the regulation of certain conventional foods that companies are marketing as ''functional foods.'' The purpose of the hearing is for the agency to share its current regulatory framework and rationale regarding the safety evaluation and labeling of these foods, and to solicit information and comments from interested persons on how FDA should regulate these foods under the agency's existing legal authority.

DATES: The public hearing will be held on Tuesday, December 5, 2006, from 9 a.m. to 4:30 p.m. Persons who wish to request an opportunity to make an oral presentation must submit a notice of participation by November 14, 2006. All other persons must submit a notice of participation by November 28, 2006. Persons who request an opportunity to make an oral presentation also must submit either the full text of the oral presentation, or a comprehensive outline or summary of the oral presentation, by November 28, 2006. Written or electronic comments (i.e., submissions other than notices of participation and the text, comprehensive outline, or summary of an oral presentation) may be submitted until January 5, 2007. The administrative record of the hearing will remain open until January 5, 2007.

ADDRESSES: The public hearing will be held at Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., Harvey W. Wiley Auditorium, College Park, MD 20740 (Metro stop: College Park on the Green Line).

Submit electronic notices of participation to *http://www.cfsan.fda.gov/~comm/register.html.* Submit written notices of participation and the written full text, comprehensive outline, or summary of any oral presentation to Isabelle Howes, U.S. Department of Agriculture Graduate School, 600 Maryland Ave., SW., suite 270 Washington, DC 20024–2520. To submit a notice of participation orally, or to submit a notice of participation or the full text, comprehensive outline or summary of the oral presentation by e-mail or by fax, see **FOR FURTHER INFORMATION CONTACT**.

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

Instructions: All submissions and comments received must include the agency name and docket number found in brackets in the heading of this document. All submissions and comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Request for Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Transcripts of the hearing will be available for review at the Division of Dockets Management and on the Internet at *http://www.fda.gov/ohrms/dockets/default.htm*, approximately 30 days after the hearing.

FOR FURTHER INFORMATION CONTACT:

To submit a notice of participation orally, by fax, or by e-mail: Isabelle Howes, U.S. Department of Agriculture Graduate School, 202–314–4713, FAX: 202–479–6801, or e-mail: *isabelle_howes@grad.usda.gov.*

For all other questions about the meeting, to request onsite parking, or if you need special accommodations due to a disability: Juanita Yates, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1714, e-mail: *Juanita.Yates@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

FDA is responsible for ensuring that all foods in the American food supply (other than meat products, poultry

products, and egg products that are regulated by the U.S. Department of Agriculture) are safe, secure, sanitary, wholesome, and properly labeled.

Section 201(f) of the Federal Food, Drug, and Cosmetic Act (FFDCA or the act) (21 U.S.C. 321(f)) defines food to mean: (1) Articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article. The act also defines several specific types of food and substances that are added to food, including: ''raw agricultural commodity'' (section 201(r) (21 U.S.C. 321(r))), ''food additive'' (section 201(s) (21 U.S.C. 321(s))), ''color additive'' (section 201(t) (21 U.S.C. 321(t))), ''infant formula'' (section 201(z) (21 U.S.C. 321(z))), ''dietary supplement'' (section 201(ff) (21 U.S.C. 321(ff))), and ''processed food'' (section 201(gg) (21 U.S.C. 321(gg))).

The act does not define the term ''conventional food.'' However, the act defines a dietary supplement, in part, as a product that is ''not represented for use as a conventional food'' (see section 201(ff)(2)(B) (21 U.S.C. 321(ff)(2)(B))). Products such as beverages, baked goods, cheeses, milk products, cereal, grain products, pasta, fats and oils, vegetable spreads, snack foods, candy, soups, and infant formula are examples of conventional foods. The act includes provisions that relate to certain types of conventional food, such as requirements for infant formula in section 412 of the act (21 U.S.C. 350a).

In recent years, the food industry has developed and marketed foods that it refers to as ''functional foods.'' Although there is no formal definition of what the industry means by ''functional food,'' on March 24, 2005, the Institute of Food Technologists (IFT) issued a report entitled ''Functional Foods: Opportunities and Challenges'' (Ref. 1) (the IFT report) in which ''functional foods'' are defined as ''foods and food components that provide a health benefit beyond basic nutrition (for the intended population). * * * These substances provide essential nutrients often beyond quantities necessary for normal maintenance, growth, and development, and/or other biologically active components that impart health benefits or desirable physiological effects.'' Examples of functional foods cited in the report include ''conventional foods; fortified, enriched or enhanced foods; and dietary supplements.''

Currently, FDA has neither a definition nor a specific regulatory rubric for foods being marketed as ''functional foods.'' We regulate conventional foods being marketed as ''functional foods'' under the same regulatory framework as other conventional foods. Although we are confident that the existing provisions of the act are adequate to ensure that conventional foods being marketed as ''functional foods'' are safe and lawful, we believe that it would be in the best interest of public health to begin a dialog with industry, consumers, and other stakeholders regarding the regulation of these products. Therefore, in this document we announce a public hearing to afford consumers, industry, and other interested parties the opportunity to provide focused comments on approaches to the regulation of conventional foods being marketed as ''functional foods.'' As background relevant to the hearing, we describe key provisions of the act regarding the safety and labeling of conventional foods.

For the purpose of this hearing, we are not considering dietary supplements to be encompassed by the term ''functional foods.'' Dietary supplements have their own detailed regulatory framework prescribed by Congress in the Dietary Supplement Health and Education Act of 1994 (DSHEA) (Public Law 103–417, 108 Stat. L. 4325), which amended the FFDCA to define ''dietary supplement'' and to set forth requirements for the safety and labeling of dietary supplements. DSHEA specifically excludes from the definition of dietary supplement any product that is ''represented for use as a conventional food or as a sole item of a meal or the diet'' (Section 201(ff)(2)(B) of the act (21 U.S.C. 321(ff)(2)(B)). However, because some labeling provisions of the act with respect to dietary supplements are relevant to the issues and questions that are part of the scope of this hearing, in this document we describe some labeling provisions of the act with respect to dietary supplements.

B. Statutory and Regulatory Framework for the Safety of Food Ingredients

In 1958, Congress enacted the Food Additives Amendment (the 1958 amendment) to the act (Public Law 85–929, 72 Stat. L. 1784). The basic thrust of the 1958 amendment was to require ''the processor who wants to add a new and unproven additive to accept the responsibility of * * * first proving it to be safe for ingestion by human beings'' (S. Rept. 2422, 85th Cong., 2d Sess.). The 1958 amendment defined the terms ''food additive'' (section 201(s) of the act (21 U.S.C. 321(s))) and ''unsafe food additive'' (section 409(a) of the act (21 U.S.C. 348(a))), established a premarket approval process for food additives (section 409(b) through (g) (21 U.S.C. 348(b) through (g)), and amended the food adulteration provisions of the act to deem adulterated any food that is, or bears or contains, any food additive that is unsafe within the meaning of section 409 (section 402(a)(2)(C) of the act (21 U.S.C. 342(a)(2)(C))).

Recognizing that the safety of a food additive cannot be established with absolute certainty and that safety is dependent on dietary intake and other conditions of use, Congress stated that ''safety'' under the 1958 amendment means a reasonable certainty that no harm will result from the intended use of an additive (S. Rept. 2422, 85th Cong., 2d Sess.). We have incorporated this safety standard into our regulation defining the terms ''safe'' and ''safety'' (21 CFR 170.3(i)). If we find an additive to be safe, based ordinarily on data submitted by the manufacturer to the agency in a food additive petition, we issue a regulation specifying the conditions under which the additive may be safely used in food.

Many substances intentionally added to food do not require a formal premarket review by FDA to assure their safety, either because their safety has been established by a long history of use in food or by virtue of the nature of the substances, their customary or projected conditions of use, and the information generally available to scientists about the substances. In enacting the 1958 amendment, Congress addressed this category of substances by adopting, in section 201(s) of the act (21 U.S.C. 321(s)), a two-step definition of ''food additive.'' The first step broadly includes any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food. The second step, however, excludes from the definition of ''food additive'' substances that are generally recognized, among experts qualified by scientific training and experience to evaluate their safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or through experience based on common use in food) to be safe under the conditions of their intended use. Substances that are exempted from the food additive definition under this second step are referred to as ''GRAS'' (generally recognized as safe). The safety standard for a GRAS substance is the same as the safety standard for a food additive, i.e., reasonable certainty of no harm under the substance's intended conditions of use (21 CFR 170.30(i)). However, for the use of a

substance to be GRAS, it must not only be safe but, unlike for an approved food additive, there must also be general recognition of its safety among qualified experts.

We have established regulations governing the food additive petition process (21 CFR 171.1). We also have established regulations (21 CFR 170.35(c)) governing a voluntary process whereby an interested person may petition us to affirm, through rulemaking, that a use of a food substance is GRAS. However, more recently we have proposed to eliminate the voluntary GRAS affirmation petition process and replace it with a voluntary notification procedure in which we respond to a notifier by letter rather than conduct rulemaking to affirm GRAS status (62 FR 18937, April 17, 1997 (the GRAS proposal)). As announced in the GRAS proposal, we are accepting GRAS notices during the interim between the proposed rule and any final rule that publishes based on the proposed rule. A summary of notices filed under the rubric of the GRAS proposal, with links to our letters responding to those notices, is available on the Internet (see *http://www.cfsan.fda.gov/~rdb/opa-gras.html*).

We have developed a number of guidance documents relevant to evaluating the safety of food ingredients, such as recommendations relating to chemical and toxicological considerations. These are available at *http://www.cfsan.fda.gov/~dms/opa-guid.html*.

C. Statutory and Regulatory Framework for the Labeling of Food

1. Provisions regarding false or misleading labeling

Under section 403(a)(1) of the act (21 U.S.C. 343(a)(1)), a food is misbranded if its labeling is false or misleading in any particular. Under section 201(n) of the act (21 U.S.C. 321(n)), in determining whether the labeling of an article is misleading, ''there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling thereof or under such conditions of use as are customary or usual.''

Sections 403(a)(1) and 201(n) of the act (21 U.S.C. 343(a) and 321(n)) broadly apply to the labeling of all foods, in addition to any specific labeling requirements established by or under authority of the act for certain foods or for certain statements on foods. In the absence of specific statutory or regulatory requirements for statements in the labeling of a food, we apply the standards of sections 403(a)(1) and 201(n) of the act (21 U.S.C. 343(a)(1) and 321(n)) to determine if the food is misbranded.

2. Provisions for health claims and nutrient content claims

Section 403(r) of the act (21 U.S.C. 343(r)) lays out the statutory framework for the use of labeling claims that characterize the relationship of a substance in food to a disease or health-related condition (''health claims,'' defined in section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B)), or that characterize the level of a nutrient in a food (''nutrient content claims,'' defined in section 403(r)(1)(A) of the act (21 U.S.C. 343(r)(1)(A))). We have established regulations implementing section 403(r) of the act (21 U.S.C. 343(r)) with respect to health claims (21 CFR 101.14 and subpart E) and with respect to nutrient content claims (21 CFR 101.13 and subpart D).

The definition of ''health claim'' identifies two basic elements for a health claim: (1) A substance (e.g, a nutrient); and (2) a disease or health-related condition (see section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B)) and 21 CFR 101.14(a)(1)). In determining whether a particular claim is a health claim, we evaluate, in part, whether the claim is about a substance in food (see 21 CFR 101.14(a)(2)) and whether the claim is about reducing risk for a disease or health-related condition (see *Whitaker* v. *Thompson*, 353 F.3d 947 (D.C. Cir.), cert. denied, 125 S. Ct. 310 (2004)).

There are three ways by which we exercise our oversight in determining which health claims may be used in the labeling of conventional foods and dietary supplements. First, the Nutrition Labeling and Education Act of 1990 (NLEA) (Public Law 101–535, 104 Stat. L. 2353), which amended the FFDCA, provides for us to issue regulations authorizing health claims for conventional foods and dietary supplements after our evaluation of the scientific evidence relative to the claim under the significant scientific agreement (SSA) standard (see section 403(r)(3)(B) of the act (21 U.S.C. 343(r)(3)(B)). Health claims authorized through this process are commonly referred to as ''SSA claims.'' Second, the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115, 111 Stat. L. 2296), amended the FFDCA to provide for health claims for conventional foods based on an authoritative statement of certain scientific bodies of the United States government or of the National Academy of Sciences (now the National Academies). Such claims may be used from 120 days after submission of a health claim notification to FDA until the agency prohibits or modifies the claim by regulation or obtains a court order determining that the statutory requirements for an authoritative statement notification health claim have not been met (see section 403(r)(3)(C)–(D) of the act (21 U.S.C. 343(r)(3)(C)–(D))). We have issued guidance on the authoritative statement notification procedure (see Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body; available at *http://www.cfsan.fda.gov/~dms/hclmguid.html*) (Ref. 2). Third, as a result of court decisions interpreting the first amendment of the U.S. Constitution, we exercise enforcement discretion with respect to certain qualified health claims (QHC) where there is credible evidence to support the proposed claim, but the strength of the scientific evidence falls below that required for FDA to issue an authorizing regulation based on significant scientific agreement (see, e.g., *Pearson* v. *Shalala*, 164 F.3d 650 (D.C. Cir. 1999)). For information on qualified health claims for which FDA has issued a letter of enforcement discretion, see *http://www.cfsan.fda.gov/~dms/qhc-sum.html*).

A ''nutrient content claim'' is a statement in food labeling that explicitly or implicitly characterizes the level of a nutrient in a food (see section 403(r)(1)(A) of the act (21 U.S.C. 343(r)(1)(A)) and 21 CFR 101.13(b)). Nutrient content claims must be authorized by regulation (see section 403(r)(2)(A)(i) and (r)(4)(A)(i) of the act (21 U.S.C. 343(r)(2)(A)(i) and (r)(4)(A)(i))), through a synonym or brand name petition process (see section 403(r)(4)(A)(ii)–(iii) of the act (21 U.S.C. 343(r)(4)(A)(ii)–(iii))), or (for conventional foods only) through an authoritative statement notification process (see section 403(r)(2)(G)–(H) of the act (21 U.S.C. 343(r)(2)(G)–(H))) before they may be used in food labeling.

3. Provisions for structure/function claims

In the DSHEA, Congress amended section 403(r) of the act (21 U.S.C. 343(r)) to authorize certain types of claims to be used in the labeling of dietary supplements without premarket review by FDA. Among the types of claims specifically authorized are statements describing the role of a nutrient or dietary ingredient intended to affect the structure or function of the body in humans and statements that characterize the documented mechanism by which a nutrient or dietary ingredient acts to maintain such structure or function. Under section 403(r)(6) of the act (21 U.S.C. 343(r)(6)), such statements (as well as two other types of claims not relevant to this notice) may be made in the labeling of a dietary supplement if the manufacturer of the dietary supplement has substantiation that such statement is truthful and not misleading, and the statement contains, prominently displayed and in boldface type, the following: ''This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.'' A statement under section 403(r)(6) (21 U.S.C. 343(r)(6)) may not claim to diagnose, mitigate, treat, cure, or prevent a specific disease or class of diseases. The manufacturer of a dietary supplement that bears such a statement must notify FDA, no later than 30 days after the first marketing of the dietary supplement with the statement, that the statement is being made. We have established in 21 CFR 101.93 regulations implementing section 403(r)(6) of the act (21 U.S.C. 343(r)(6)).

The act includes no provision analogous to section 403(r)(6) of the act (21 U.S.C. 343(r)(6)) for statements made in the labeling of conventional food. However, the provision of the act that defines ''drug'' to include articles intended to affect the structure or function of the body contains an exception for foods, which affect the structure and function of the body by virtue of providing nutrition to sustain life and health (see section 201(g)(1)(C) of the act (21 U.S.C. 321(g)(1)(C)). As discussed in section I.A of this document, ''food'' is defined in section 201(f) of the act (21 U.S.C. 321(f)). Therefore, for conventional foods we regulate claims about the effect of a substance in food on the structure or function of the body under sections 201(f), 201(g), 403(a) and 201(n) of the act, as well as case law interpreting these provisions (see, e.g., *Nutrilab* v. *Schweiker*, 713 F.2d 335 (7th Cir. 1983)).

D. Nutrition and Fortification Policy

The *Dietary Guidelines for Americans*, 2005 (Dietary Guidelines) (Ref. 3), a joint publication of the Department of Health and Human Services, FDA's parent agency, and the U.S. Department of Agriculture, forms the basis for the Federal Government's nutrition programs and policies. The Executive Summary of the *Dietary Guidelines* states: ''A basic premise of the *Dietary Guidelines* is that nutrient needs should be met primarily through consuming foods. Foods provide an array of nutrients and other compounds that may have beneficial effects on health. In certain cases, fortified foods and dietary supplements may be useful sources of one or more nutrients that otherwise might be consumed in less than recommended amounts. However, dietary supplements, while recommended in some cases, cannot replace a healthful diet.''

FDA's policy on food fortification is set forth in § 104.20 (21 CFR 104.20), which outlines the circumstances under which FDA considers fortification to be appropriate; e.g., to correct a nutritional deficiency recognized by the scientific community or to replace nutrients lost in storage, handling, or processing. Folic acid-fortified grain products and milk fortified with Vitamin D are examples of fortification under § 104.20.

E. Reports and Recommendations Regarding ''Functional Foods''

In July 2000, the General Accounting Office (GAO; now the Government Accountability Office) issued a report (the GAO report) entitled ''Improvements Needed in Overseeing the Safety of Dietary Supplements and 'Functional Foods''' (Ref. 4). The GAO report makes recommendations to the Congress (regarding statutory amendments) and to FDA (regarding the development of regulations and guidance) directed to improving Federal oversight of safety for dietary supplements and ''functional foods'' and to ensuring that these products provide the health benefits they claim. The GAO report recommends that Congress amend the act to require ''functional food'' manufacturers to meet these requirements: Advance notification to FDA regarding ingredients that companies have determined are safe; notification to FDA regarding the use of labeling claims about effects on the structure or function of the human body (structure/function claims); and disclaimers of FDA approval on product labels containing structure/function claims. The GAO report also recommends that FDA: (1) Develop and promulgate regulations or guidance for industry on the safety-related information required on labels for ''functional foods'' and (2) develop and promulgate regulations or guidance for industry on the evidence needed to support structure/function claims.

In August 2000 the Functional Foods Committee of the International Life Sciences Institute (ILSI) issued a report (the ILSI report) entitled ''Health Claims on Functional Foods—Proposals on Scientific Substantiation and Regulatory Systems'' (Ref. 5). The ILSI report emphasizes factors to consider when conducting a clinical study in support of a health claim so as to be able to appropriately use the data collected during the study. As a basis for its proposals, the ILSI report includes information, both domestic and international, regarding recent progress in the area of health claims from a regulatory perspective and regarding recent developments with ''functional foods'' from a commercial perspective.

In March 2002 the Center for Science in the Public Interest (CSPI) submitted a citizen petition making several requests concerning FDA regulation of ''functional foods'' (the CSPI petition; Docket No. 2002P–0122; formerly 02P–0122) (Ref. 6). We describe some of CSPI's requests in more detail in section III of this document.

In March 2005 the IFT issued its report entitled ''Functional Foods: Opportunities and Challenges'' (Ref. 1). We describe some of IFT's recommendations in more detail in section III of this document.

II. Purpose and Scope of the Hearing

The purpose of the hearing is for the agency to share its current regulatory framework and rationale regarding the safety evaluation and labeling of conventional foods being marketed as ''functional foods,'' and to solicit information and comments from interested persons on how FDA should regulate these foods under the agency's existing legal authority. The scope of this hearing is determined by this notice. FDA invites information and comments on the issues and questions listed in section III of this document as follows:

III. Issues and Questions for Discussion

A. Food Ingredients

- *Issue 1*: The CSPI petition requests that we require food companies to notify us regarding the use of ''novel ingredients'' prior to marketing foods

containing such ingredients. The CSPI petition does not define the term ''novel ingredients.'' For the purpose of this hearing, we are using the term ''functional food'' to mean conventional foods that are being marketed as ''functional foods,'' and we are using the term ''ingredients'' to mean ''functional food'' ingredients that may have a purported health benefit and that may be the subject of a label statement about this purported health benefit, whether or not the ingredient is new to the food supply.

Question 1a. Is there a need for a regulatory definition and a distinct regulatory approach to the evaluation of the safety of ingredients added to ''functional foods''? If yes, what would be included in this new definition and approach that is not adequately addressed under the existing definition of food additive or the provisions in the definition for GRAS substances, and what is the scientific and legal basis for your position? Under what legal authority could FDA create this new definition and distinct regulatory approach?

Question 1b. Should companies that market ingredients for addition to ''functional foods'' be required to notify us prior to introducing the ingredients into interstate commerce? If yes, what is the scientific and legal basis for your position?

• *Issue 2*: Generally, food additives have been used in conventional foods for their technical effects on the food, not for their effects on the body. Now, the interest in various uses of certain ingredients in conventional foods is due to the marketing of these conventional foods as ''functional foods'' with claims about health benefits.

Question 2a. What types of data and information would be appropriate to demonstrate that ingredients added to conventional foods being marketed as ''functional foods'' meet the safety standard of ''reasonable certainty of no harm''? What is the scientific and legal basis for your position?

Question 2b. How could we partner with interested stakeholders regarding the development of appropriate recommendations or other information regarding the safety assessment of ingredients added to ''functional foods''?

B. Food Labeling

• *Issue 3*: The CSPI petition requests that we require food companies to notify us within 30 days of marketing a conventional food bearing a structure/function claim if such food contains a ''novel ingredient,'' and to include the disclaimer currently required on dietary supplements making structure/function claims on the label and in labeling of such foods.

Question 3. If our statutory authority permits, should we require food companies to notify us within 30 days of marketing a conventional food bearing a structure/function claim and to include the disclaimer currently required on dietary supplements making structure/function claims in labeling of such foods? If yes, what is the scientific (e.g., consumer studies) basis for your position? Under what existing legal authority could FDA require notification of these claims? Under what legal authority could FDA require inclusion of such a disclaimer with these claims?

• *Issue 4*: The IFT report recommends that companies wishing to make label claims regarding the effects of ''functional foods'' or ingredients convene panels of independent experts qualified to evaluate the efficacy of the functional food component under consideration. According to IFT's recommendations, the findings of these Generally Recognized as Efficacious (GRAE) panels would be submitted to FDA under a process that is similar to the notification program that we proposed for GRAS substances. If the GRAE panel report found that the proposed label claim was supported by the available scientific evidence, the agency would have 90 days to object to the use of the notified GRAE label claim, and in the absence of such objection the label claim would be permitted at the end of the 90 days.

The act limits FDA's ability to accept this recommendation with regard to certain health claims and nutrient content claims (assuming that the recommendation applies to nutrient content claims, which is unclear because the IFT report does not specify). First, the act requires health claims and nutrient content claims for conventional foods to be submitted to FDA for review through a petition process (see section 403(r)(4)(A) of the act (21 U.S.C. 343(r)(4)(A))), unless the proposed claim is based on an authoritative statement. Second, even though claims based on an authoritative statement are submitted to FDA for review through a notification process, the act limits the ''scientific bodies'' that can be sources of such an authoritative statement to certain Government agencies and the National Academy of Sciences (now the National Academies) (see sections 403(r)(2)(G)(i) and (r)(3)(C)(i) of the act (21 U.S.C. 343(r)(2)(G)(i) and (r)(3)(C)(i))). The GRAE panels recommended in the IFT report do not qualify as scientific bodies for this purpose. FDA can and does consider the findings of outside groups that do not qualify as ''scientific bodies'' as part of the totality of publicly available scientific evidence evaluated in support of a health claim petition, however.

In an advance notice of proposed rulemaking (ANPRM) on food labeling, including health claims (68 FR 66040 at 66044; November 25, 2003 (the 2003 ANPRM on food labeling)), we previously asked for public comment on a question about whether the evaluations of non-governmental groups should be given weight in evaluating the strength of the science supporting a health claim. In that ANPRM, we asked: ''If the agency should give weight to the evaluations of these groups, how should this weight be determined?'' That question is related to IFT's recommendations regarding the agency's acceptance of the findings of GRAE panels for ''functional food'' label claims. We are asking the question below, which is similar to the question we asked in the 2003 ANPRM on food labeling, because we would like additional input on this topic.

Question 4. Within our statutory authority, how (if at all) should FDA utilize the findings of non-governmental groups, such as the IFT recommended GRAE panels, in support of health claims, nutrient content claims, and other labeling claims about the effects of a ''functional food'' or ingredient, such as structure/function claims? What is the scientific and legal basis for your position? Should FDA institute a premarket notification process for review of the scientific evidence for structure/function claims for ''functional foods'' and ingredients, as recommended by IFT? What is the scientific basis for your position? Under what existing legal authority could FDA institute a premarket notification process for review of the scientific evidence for ''functional foods'' and ingredients?

• *Issue 5*: Under *Nutrilab* v. *Schweiker* (713 F.2d 335 (7th Cir. 1983)), structure/function claims on the label or in labeling of conventional food make the product a drug if they promote the product for a structure/function effect (e.g., blocking the digestion of starch) that is unrelated to the product's ''food'' attributes of taste, aroma, and nutritive value. FDA has interpreted this court decision to limit structure/function claims for conventional foods to claims about effects that derive from the taste, aroma, or nutritive value of the food or food ingredient that is the subject of the claim. FDA's health claim regulations also require that the substance that is the subject of the claim contribute taste, aroma, nutritive value,

or a technical effect recognized in FDA's food additive regulations (21 CFR 101.14(b)(3)(i)). Because we recognize that food substances may confer health benefits through a number of processes, we have provided significant flexibility in determining whether a substance possesses nutritive value. Nutritive value is defined at 21 CFR 101.14(a)(3) as a value in sustaining human existence by such processes as promoting growth, replacing lost nutrients, or providing energy, and we have discussed this definition in many of our health claim reviews. Listings of health claims reviewed to date can be found at *http://www.cfsan.fda.gov/~dms/lab-ssa.html* (SSA claims) and *http://www.cfsan.fda.gov/~dms/qhc-sum.html* (QHCs).

The IFT report criticizes the approach of requiring that the health benefit be derived from the food's nutritive value as too restrictive to allow for claims on foods being marketed as ''functional foods.'' Instead, the IFT report recommends that FDA permit a labeling claim for a ''functional food'' if the claimed benefit is based either on nutritive value or on ''the provision of a physical or physiological effect that has been scientifically documented or for which a substantial body of evidence exists for plausibility'' (Ref. 1).

Question 5. Given the agency's interpretation of the definition of nutritive value as reflected in 21 CFR 101.14(a)(3) and our decisions on the health claims reviewed to date, does or will the agency's interpretation of *Nutrilab* v. *Schweiker* to limit structure/function claims and health claims to those that are based on nutritive value (or other food attributes such as taste and aroma) adequately allow for claims in the labeling of ''functional foods''? If no, how is the agency's approach inadequate? What is the scientific and legal basis for your position? If you favor a change in the agency's approach, do you recommend that FDA adopt the IFT report's recommendation on this issue, or some other alternative? What legal rationale would support your preferred change in approach?

- *Issue 6*: The IFT report recommends that research into ''functional foods'' be stimulated using incentives to the food industry, including market exclusivity for their bioactive food components and government research grants for the investigation of these components. There is currently no statutory provision for exclusivity of the use of a substance added to food (whether this be a food additive or a GRAS substance) or for the use of a health claim (whether a health claim has been authorized under NLEA or FDAMA or whether FDA has issued a letter of enforcement discretion for a QHC).

In the 2003 ANPRM on food labeling, we previously asked ''How can FDA more effectively develop public-sponsored research on substance/disease relationships?'' (68 FR 66040 at 66043). We are asking the question below, which is similar to the question we asked in the 2003 ANPRM on food labeling, because we would like additional input on this topic.

Question 6. Should FDA provide incentives to manufacturers to conduct further research on emerging substance/disease relationships? If yes, how? If yes, what is the scientific (e.g., consumer research) basis for your position? (For example, in the case of exclusivity, we are interested in consumer data concerning the use of a health claim on one product but not on other similar products by other manufacturers, and in how such data show that such claims are or are not misleading.) Under what existing legal authority could FDA provide such incentives?

C. Overall Framework for Foods Being Marketed as ''Functional Foods''

- *Issue 7*: The FFDCA does not recognize ''functional foods'' as a distinct category of food, either by definition or through establishing specific requirements for ''functional foods.'' The IFT report recommends that we establish, by regulation, a definition of, and labeling requirements for, ''functional foods.'' The IFT report asserts that these regulations are necessary because consumer interest in the relationship between diet and health has increased the demand for these foods. According to the IFT report, this increased consumer demand is causing the food industry to add more and larger amounts of substances to food and this competitive pressure has shifted the focus of food fortification from carefully orchestrated and closely monitored interventions for addressing specific dietary deficiencies to a focus on meeting market demands.

Question 7. Can the conventional foods being marketed (now or in the future) as ''functional foods'' be adequately addressed through the current regulations for food additives, GRAS substances, and labeling claims? If no, how are these regulations insufficient to address these products, and what is the scientific and legal basis for your position?

IV. Notice of Hearing Under 21 CFR Part 15

By delegation from the Acting Commissioner of Food and Drugs (the Acting Commissioner) (Staff Manual Guide 1420.21, section 1(b)), the Associate Commissioner for Policy and Planning finds that it is in the public interest to permit persons to present information and views at a public hearing regarding the regulation of conventional foods marketed as ''functional foods,'' and is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The presiding officer will be the Acting Commissioner or his designee. The presiding officer will be accompanied by a panel of FDA employees with relevant expertise.

Persons who wish to participate in the hearing must file a notice of participation (see **ADDRESSES**, **DATES**, **FOR FURTHER INFORMATION CONTACT**, and ''Notices of Participation'' in section V of this document). By delegation from the Acting Commissioner (Staff Manual Guide 1420.21, section 1(b)), the Associate Commissioner for Policy and Planning has determined under § 15.20(c) that advance submissions of oral presentations are necessary for the panel to formulate useful questions to be posed at the hearing under § 15.30(e), and that the submission of a comprehensive outline or summary is an acceptable alternative to the submission of the full text of the oral presentation. We request that individuals and organizations with common interests consolidate their requests for oral presentation and request time for a joint presentation through a single representative. After reviewing the notices of participation and accompanying information, we will schedule each oral presentation and notify each participant of the time allotted to the presenter and the approximate time that the presentation is scheduled to begin. If time permits, we may allow interested persons attending the hearing who did not submit a notice of participation in advance to make an oral presentation at the conclusion of the hearing. The hearing schedule will be available at the hearing. After the hearing, the schedule will be placed on file in the Division of Dockets Management (see **ADDRESSES**) under the docket number listed in brackets in the heading of this notice.

To ensure timely handling of any mailed notices of participation, presentations, or comments, any outer envelope should be clearly marked with the docket number listed in brackets in the heading of this notice along with the statement ''Conventional Foods Being Marketed as 'Functional Foods' Public Hearing.''

Under § 15.30(f), the hearing is informal, and the rules of evidence do

not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation.

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (21 CFR part 10, subpart C). Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to the procedures and limitations in § 10.206, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). The transcript will be available on the Internet at *http://www.fda.gov/ohrms/dockets/default.htm*, and orders for copies of the transcript can be placed at the meeting or through the Division of Dockets Management (see **ADDRESSES**).

Any handicapped persons requiring special accommodations to attend the hearing should direct those needs to the contact person (see **FOR FURTHER INFORMATION CONTACT**).

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of these provisions as specified in §§ 10.19 and 15.30(h). In particular, § 15.21(a) states that the notice of hearing will provide persons an opportunity to file a written notice of participation with the Division of Dockets Management within a specified period of time. If the public interest requires, e.g., if a hearing is to be conducted within a short period of time, the notice may name a specific FDA employee and telephone number to whom an oral notice of participation may be given. If the public interest requires, the notice may also provide for submitting notices of participation at the time of the hearing. In this document, the conditions for the hearing specify that notices of participation be submitted electronically to an agency Internet site, to a contact person (outside of FDA) who will accept notices of participation by mail, telephone, fax, or e-mail, or in person on the day of the hearing (as space permits). We are using these procedures for submitting notices of participation, rather than provide for the submission of notices of participation to the Division of Dockets Management, because the hearing is to be conducted within a short period of time and these procedures are more efficient. In addition, these procedures provide more flexibility to persons who wish to participate in the hearing than would be provided if participants were required to submit the notice of participation in writing to the Division of Dockets Management. By delegation from the Acting Commissioner (Staff Manual Guide 1420.21, section 1(f)(2)(i)), the Associate Commissioner for Policy and Planning finds under § 10.19 that no participant will be prejudiced, the ends of justice will thereby be served, and the action is in accordance with law if notices of participation are submitted by the procedures listed in this notice rather than to the Division of Dockets Management.

V. Notice of Participation

Pre-registration by submission of a notice of participation is necessary to ensure participation. The notice of participation may be submitted electronically or by mail (see **ADDRESSES**). The notice of participation also may be submitted orally, by fax, or by E-mail (see **FOR FURTHER INFORMATION CONTACT**). We encourage you to submit your notice of participation electronically. See **DATES** for the dates by which you must submit your notice of participation. A single copy of any notice of participation is sufficient.

The notice of participation must include your name, title, business affiliation (if applicable), address, telephone number, fax number (if available), and e-mail address (if available). If you wish to request an opportunity to make an oral presentation during the open public comment period of the hearing, your notice of participation also must include the title of your presentation, the sponsor of the oral presentation (e.g., the organization paying travel expenses or fees), if any; and the approximate amount of time requested for the presentation. Presentations will be limited to the questions and subject matter identified in section III of this document.

Under § 15.20(c), if you request an opportunity to make an oral presentation you must submit two copies of your presentation (either as the full text of the presentation, or as a comprehensive outline or summary), except that individuals may submit one copy. See **DATES** for the dates by which you must submit your presentation. See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** for information on where to send your presentation.

Registration will be accepted on a first-come, first-served basis. Individuals who request an opportunity to make an oral presentation will be notified of the scheduled time for their presentation prior to the meeting. Depending on the number of oral presentations, we may need to limit the time allotted for each oral presentation (e.g., 5 minutes each). We request that interested persons and groups having similar interests consolidate their requests for oral presentation and present them through a single representative. If you need special accommodations due to a disability, please inform us (see **FOR FURTHER INFORMATION CONTACT**). We will also accept registration onsite; however, space is limited and registration will be closed when the maximum seating capacity is reached. Individuals and organizations that do not pre-register to make an oral presentation may have the opportunity to speak if time permits.

Persons pre-registered or wishing to register onsite should check in between 8:30 and 9:00 a.m. We encourage all participants to attend the entire day. Because the meeting will be held in a Federal building, meeting participants must present photo identification and plan adequate time to pass through the security system.

VI. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments for consideration at or after the hearing in addition to, or in place of, a request for an opportunity to make an oral presentation (see **DATES**). Submit two paper copies of any written comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

1. Institute of Food Technologists, ''Functional Foods: Opportunities and Challenges,'' 2005. (Available at *http://members.ift.org/IFT/Research/IFTExpertReports/functionalfoods_report.htm*. Accessed and printed on September 25, 2006.)

2. Food and Drug Administration, ''Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body,'' 1998. (Available at *http://www.cfsan.fda.gov/~dms/hclmguid.html*)

3. Department of Health and Human Services and Department of Agriculture, Executive Summary, *Dietary Guidelines for Americans*, 2005. (Available at *http://www.healthierus.gov/dietaryguidelines*. Accessed and printed on September 25, 2006.)

4. General Accounting Office, ''Improvements Needed in Overseeing the Safety of Dietary Supplements and 'Functional Foods,''' 2000. (Available at

http://www.gao.gov/new.items/rc00156.pdf. Accessed and printed on September 25, 2006.)

5. International Life Sciences Institute, ''Health Claims on Functional Foods—Proposals on Scientific Substantiation and Regulatory Systems,'' 2000.

6. Center for Science in the Public Interest, Citizen petition 2002P–0122, Petition for Rulemaking on Functional Foods and Request to Establish an Advisory Committee, 2002.

Dated: October 19, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. 06–8895 Filed 10–20–06; 3:48 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112994–06]

RIN 1545–BF47

Guidance Under Section 7874 Regarding Expatriated Entities and Their Foreign Parents; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations under section 7874 of the Internal Revenue Code relating to the determination of whether a foreign entity shall be treated as a surrogate foreign corporation under section 7874(a)(2)(B).

DATES: The public hearing, originally scheduled for October 31, 2006, at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Kelly Banks of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at (202) 622–0392 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing that appeared in the **Federal Register** on Wednesday, August 16, 2006 (71 FR 47158), announced that a public hearing was scheduled for October 31, 2006, at 10 a.m. in the auditorium, Internal Revenue Service, New Carrollton Building, 5000 Ellin Road, Lanham, MD 20706. The subject of the public hearing is under section 7874 of the Internal Revenue Code.

The public comment period for these regulations expired on October 10, 2006. The notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Wednesday, October 18, 2006, no one has requested to speak. Therefore, the public hearing scheduled for October 31, 2006 is cancelled.

LaNita VanDyke,

Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E6–17811 Filed 10–24–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 161

[DoD–2006–OS–0039; 0790–AI04]

DLA Procedures for Eligible Purchasers of Munitions List/ Commerce Control List Items

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule identifies the Defense Logistics Agency (DLA) proposed new procedures for determining the eligibility of applicants seeking to obtain excess and surplus United States Munitions List (USML) and Commerce Control List (CCL) items from DLA. These new procedures will provide greater safeguards to protect national security interests before releasing such property into commerce. Applicants who do not meet the standards established herein will not be eligible to receive USML or CCL property.

DATES: Consideration will be given to all comments received by December 26, 2006.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Vincent, Defense Logistics Agency Criminal Investigations Activity, 8725 John J. Kingman Road, Suite 2358, Fort Belvoir, VA 22060, (703) 767–2507 or e-mail *mark.d.vincent@dla.mil.*

SUPPLEMENTARY INFORMATION: The use of the Qualified Trading Partner (QTP) is intended to limit transfers of USML/CCL to those who have been assessed and determined to have the capacity and propensity to properly handle, control, and lawfully dispose of or export USML/CCL. The process is intended to reduce risk without adversely impacting lawful commerce of these items. Use of the QTP application will reduce the likelihood that recipients present a risk to misuse the material and help ensure the applicants have the capability to properly handle such items. Implementation of QTP application criteria will improve the assessment process. Where the QTP Application needs to be done only once each 5 years, continued use of the EUC allows visibility of each transaction and the specific factors associated with just that transaction.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 161 is not a significant regulatory action. The rule does not:

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

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

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

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

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may

result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The Defense Logistics Agency (DLA) is instituting new procedures for determining the eligibility of recipients when transferred United States Munitions List (USML) and Commerce Control List (CCL) items. The purpose of these new procedures is to provide greater safeguards regarding the release of these items when released into commerce by DLA.

The procedures are intended to reduce the likelihood that USML or CCL property are transferred to individuals or organizations that may use such items to harm the U.S. or its citizens.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

Sections 161.1 and 161.5 of this proposed rule contains information collection requirements. DoD has submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Title: Defense Logistics Agency Qualified Trading Partner (QTP) Procedures for Eligible Purchasers of United States Munitions List/Commerce Control List Items (Application Process).

Type of Request: New requirement.

Estimated Annual Number of Respondents: 2,040.

Responses per Respondent: 1.

Estimated Total Annual Responses: 2,040.

Average Burden per Response: 1 hr.

Annual Burden Hours: 2,040.

Needs and Uses: The information collection is needed to ensure that disposal of excess and surplus personal property is administered in a manner consistent with U.S. laws, regulations, and policies governing exports and related transfers of technology, goods, services, and munitions, as well as with other laws, regulations, and policies relating to the disposal of such property.

Applicants will provide application information in letter format addressing the following factors:

(1) Applicant must demonstrate it operates an established business enterprise or provides certification of valid personal use.

(2) Applicant must establish it is a registered business and/or has adequate export management controls in place to preclude improper transfers of USML and CCL items.

(3) Applicant must demonstrate a history of compliance with export control laws.

(4) Applicant does not have a history of acts involving fraud, misrepresentation and deception or other serious offenses reflecting negatively on the applicants credibility and trustworthiness.

(5) Applicant does not have a history of acts involving violence, terrorist activity, corruption with respect to commercial dealings or matters pending before any adjudicative court or tribunal, violation of U.S. trade or immigration laws, or other acts contrary to U.S. National Security interests.

(6) Applicant does not have a history of insolvency and/or lack of financial capacity adequate to ensure it has the financial means to properly manage, control, and oversee the use of export controlled property transferred to it by DLA or its contractors.

(7) Applicant must demonstrate a history of cooperation and compliance with contract terms and conditions.

(8) Applicant must certify it has the legal capability and capacity to contract with the U.S. Government to trade USML items.

Upon receipt of the QTP application, the DLA Trade Security Control Assessment Office will ensure the application is complete and will conduct a Trade Security Control Assessment. A Trade Security Control Assessment is a pre-award assessment made by a U.S. Government agency verifying that the destination, end-user, and end-use of controlled DoD property conform to export license or end-use certificate requirements. The application review will involve a ''risk analysis'' process somewhat akin to the manner in which technical proposals in negotiated procurements are evaluated.

Affected Public: Individuals, Households, Business or for Profit entities, and not for Profit Institutions.

Frequency: One Time.

Respondent's Obligation: To obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, DoD Desk Officer, Room 10102, New Executive Office Building, Washington, DC 20503, with a copy to the DLA POC Mr. Mark Vincent, Defense Logistics Agency Criminal Investigations Activity, 8725 John J. Kingman Road, Suite 2358, Fort Belvoir, VA 22060, (703) 767–2507 or e-mail *mark.d.vincent@dla.mil.* Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

You may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Mr. Mark Vincent, Defense Logistics Agency Criminal Investigations Activity, 8725 John J. Kingman Road, Suite 2358, Fort Belvoir, VA 22060, (703) 767–2507 or e-mail *mark.d.vincent@dla.mil.*

Executive Order 13132, ''Federalism''

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 161

Munitions.

Accordingly, 32 CFR chapter I, subchapter G is proposed to be amended by adding part 161 to read as follows:

PART 161—DLA QUALIFIED TRADING PARTNER (QTP) PROCEDURES FOR ELIGIBLE PURCHASERS OF UNITED STATES MUNITIONS LIST/COMMERCE CONTROL LIST ITEMS

Sec.
161.1 Purpose.
161.2 Scope.
161.3 Background.
161.4 Policy.
161.5 Technical requirements.
161.6 Administrative procedures.
161.7 Appeals.
161.8 Definitions.
161.9 Responsibilities.

Authority: 40 U.S.C. 101(3).

§ 161.1. Purpose.

(a) This part sets forth policies and procedures to ensure disposal of excess and surplus personal property is administered in a manner consistent with U.S. laws, regulations, and policies governing exports and related transfers of technology, goods, services, and munitions, as well as with other laws, regulations, and policies relating to the disposal of such property.

(b) This part sets forth procedures for determining the eligibility of recipients of United States Munitions List (USML) and Commerce Control List (CCL) items. These procedures are intended to provide greater safeguards and controls regarding the release of these items into commerce.

(c) The criteria for eligibility are intended to limit transfers of USML/CCL to those who have been assessed and determined to have the capacity to properly handle, control, and lawfully dispose of or export USML/CCL without adversely impacting lawful commerce in those items. This will reduce the likelihood that recipients present a risk to misuse the material and ensure they have the capability to properly handle such items. In addition, these procedures will create an application and review process to pre-qualify prospective recipients of USML/CCL.

§ 161.2. Scope.

(a) This part sets out policies and procedures for approving applications made by individuals, corporations, or other entities seeking to purchase excess/surplus personal property designated as USML items or CCL items from DLA.

(b) The use, disposition, export and re-export of this property is subject to all applicable U.S. Laws and Regulations, including but not limited to the Arms Export Control Act (22 U.S.C. 2751 *et seq.*); Export Administration Act of 1979 (50 U.S.C. App. 2401 *et seq.*) as continued under Executive Order 12924; International Traffic in Arms Regulations (ITAR) (22 CFR 120 *et seq.*); Export Administration Regulations (EAR) (15 CFR 730 *et seq.*); Foreign Assets Control Regulations (31 CFR 500 *et seq.*) and the Espionage Act (18 U.S.C. 793 *et seq.*).

§ 161.3. Background.

(a) The DLA and its Commercial Venture (CV) sales contracting partner sell surplus property formerly owned by various components of the DoD. DLA sells items through contracts awarded by the Defense Reutilization and Marketing Service (DRMS) directly to purchasers. Most of DRMS' usable property inventory, once it has undergone review by other DoD activities, other Federal agencies, and eligible donation customers, is sold by DRMS or their CV sales partner.

(b) The property sold includes USML and CCL items (dual use items—military, commercial and other strategic uses—including equipment, materials, electronics, software and technology). Trade in such items is highly regulated under various laws and regulations including the ITAR for USML items and under the EAR for CCL items. DoD's surplus inventory includes hundreds of thousands of items that may be of legitimate use to many thousands of end users. DLA's contractors and representatives do not have the resources to become personally familiar with the businesses of all the persons and entities to which USML and CCL items are sold.

§ 161.4 Policy.

(a) *End Use Certificate.* In the interest of protecting national security and ensuring the DLA is able to maintain an effective and compliant export control policy, the DLA and the DRMS require all purchasers of USML and CCL property to complete an End Use Certificate (EUC). This form requires potential purchasers to explain and certify the intended end uses of the specific property acquired in every sales transaction involving USML or CCL property.

(b) *Trade Security Controls (TSC) Assessment.* Potential purchasers must submit certain information to DLA for establishing initial eligibility to acquire USML or CCL items from DRMS and its contractors. These potential purchasers then undergo a DLA TSC assessment to establish their ability to meet the Agency's Qualified Trading Partner standards for purchasers of these items, as specified in § 161.5. A TSC assessment is a pre-award assessment of the integrity and reliability of the prospective recipient made by DLA. The TSC assessment also verifies the proposed destination and intended use of the property conforms to export license requirements. TSC assessments are conducted by the Defense Logistics Agency Criminal Investigations Activity, Trade Security Controls Assessment Office located at: 74 N. Washington Ave., Room 2–4–30, Battle Creek, MI 49017. Once the DLA gives a favorable assessment, these purchasers will be eligible to receive USML and CCL items subject to the understanding that future EUCs for specific transactions will also be reviewed to ensure compliance with export control laws. Additionally, regardless of a bidder's status, background, and assessment results, the DLA, DRMS and its sales contractor(s) reserve the right to refuse to complete any sale or transfer when the purchaser or transferee cannot affirmatively establish certain criteria. These include the intended transaction and ultimate end use of the property to be transferred is consistent with the export control laws of the United States and any third country in which the DLA/DRMS and their contractor(s) sell or transfer DoD surplus property (*i.e.*, those countries referred to as ''host nations'' under many DoD policies and agreements).

(c) In addition to establishing initial eligibility in accordance with the standards specified in these procedures, purchasers must continue to meet the criteria specified in § 161.5. The Agency may revoke a previously granted Qualified Trading Partner (QTP) status upon receipt of any information that would affect the issuance of a QTP status under these standards. In such cases, purchasers will be advised of the basis for such a determination and advised of their rights in accordance with § 161.6 and § 161.7.

(d) TSC assessments will determine whether an Applicant has been ''USML Approved;'' ''CCL only;'' or ''CCL conditionally approved.'' The same criteria are reviewed with respect to all Applicants seeking to buy regulated commodities. There are varying standards depending on the status under consideration.

(e) This part contains the criteria and procedures to be used in assessing prospective purchasers of USML/CCL property. The technical requirements are contained in § 161.5. The administrative procedures are contained in § 161.6. Applicants seeking approval as trading partners eligible to receive USML or CCL property under the eight criteria (and applicable standards) stated in § 161.5 are referred to herein as ''Applicants.'' Once a party has received a favorable assessment to acquire USML and/or CCL property, it

may be considered a ''Qualified Trading Partner.'' This designation is valid for 5 years unless terminated or revoked. There is no application or qualification fee. These procedures apply to purchasers of property sold by DRMS directly or through the DRMS contract with its CV sales partner, to persons buying from the CV sales partner.

(f) Requests for information on the DLA QTP application process should be addressed to the Defense Logistics Agency, ATTN: DLA Criminal Investigations Activity (DCIA), 8725 John J. Kingman Road, Suite 2358, Fort Belvoir, Virginia 22060–6221.

§ 161.5. Technical requirements.

(a) *Criteria.* (1) These criteria are intended to address eight specific areas of eligibility to purchase USML or CCL property. A QTP applicant receiving property from the CV contracting partner will submit a properly completed application to the CV contracting partner Government Liquidation, LLC, 15051 North Kierland Blvd., Third Floor, Scottsdale, AZ 85254–2185, Attn: Jim Cash, Operations Department, Phone (480) 609–3280. A QTP applicant receiving property directly from DLA will submit a properly completed application to the applicable Sales Contracting Officer at 74 N. Washington Ave., Battle Creek, MI 49017, Room 2–4–5, Attn: Justin Low, DRMS–NOP, Phone (269) 961–5294. The DLA TSC Assessment Office will validate the application complete and then conduct the assessment. The application review will involve a ''risk analysis'' process. The review will be an overall evaluation of the Applicant information with respect to all the criteria. Absent a clear inability to meet the eligibility requirements, such as not meeting the Item 8 ''legal capacity'' standard, or significant negative information regarding the criminal/civil history criteria (*e.g.*, recent significant export law violation), the TSC Assessment Office will conduct an overall qualitative review of all eight eligibility areas.

(2) In this procedure, even if there are no absolute disqualifiers to granting a favorable assessment, but there are several significant risk areas or areas where lack of information provided creates a risk in determining whether an Applicant will be able to successfully and safely manage export controlled materials, the TSC Assessment Office may, in its discretion, determine that QTP status should be denied.

(b) *Areas of eligibility to purchase USML or CCL property.*

(1) *Factor 1:* Applicant must demonstrate it operates an established business enterprise or provide certification of valid personal use. The Applicant can demonstrate experience or that it is an established business enterprise that engages in the sale of trade of USML or CCL items. If an Applicant seeks to buy USML and/or CCL items for its own use, it must identify the types of items it will be seeking to obtain and establish a legitimate and lawful purpose for its use of same. Since USML represents the greatest risk, an applicant who applies for and are favorably assessed to acquire USML items *i.e.*, DoD Demilitarization Code ''B'' items) will also be considered favorably assessed to acquire CCL property. Persons who do not wish to acquire USML items, but whose trade involves only CCL or unregulated items, may apply for approval to acquire only CCL (or DoD Demil Code ''Q'') property and not USML items.

(2) *Factor 2:* Applicant must establish it is a registered business and/or has adequate export management controls in place to preclude improper transfers of USML and CCL items.

(i) The Applicant must establish that it is registered with the Department of State (DoS) Directorate of Defense Trade Controls and has an established export management policy or, if DoS registration is not required for its particular business, the Applicant can establish that it has adequate controls in place to ensure compliance with export control laws. Examples of the kinds of controls and compliance programs the Agency will be looking for in this process are:

(A) An organizational structure that describes the Applicant defense trade functions and its management and control structures for implementing and tracking compliance with U.S. export controls.

(B) Applicant commitment and policies to comply with and understand the ITAR and EAR, as well as the internal controls to make this happen.

(C) Applicant ability and methodology used to identify, receive and track ITAR items and technical data.

(D) Applicant procedures for obtaining DoS approval for re-export or retransfers.

(E) Applicant procedures for screening carriers, resale customers and countries regarding restricted/prohibited exports and transfers.

(F) Applicant recordkeeping procedures.

(G) Applicant internal monitoring program regarding its compliance program.

(H) Evidence of a training program on these issues.

(ii) If an Applicants business includes trade with other than U.S. Government entities, Applicant must establish it has appropriate controls in place to ensure its transactions do not result in illegal exports or transfers. This can be accomplished by demonstrating adequate information collection, screening of transactions to ensure transfers are lawful; background checks on its purchasers; purchaser certifications, *etc.* If the Applicant is not registered with the DoS, it can still gain approval by establishing that it trades only with U.S. Government entities, or its trade occurs in the U.S. and involves only transfers to U.S. persons.

(iii) *Applicant must establish it has adequate management controls to preclude improper transfers (CCL only transferees*). Applicant must describe its trade involving CCL items and provide documentation establishing that it has effective controls in place to ensure export control compliance. This must be demonstrated by restricting its trade to domestic transactions not required to be licensed, or through an established export management program to ensure compliance with export licensing and other export control requirements.

(3) *Factor 3.* Applicant must demonstrate a history of compliance with export control laws.

(i) The Applicant (and if organized in any business format, that of any principals or officers thereof) does not have a history of violating any statutes identified in the ITAR (*see* 22 CFR 120.27) or any export control law or regulation including, but not limited to:

(A) Section 38 of the Arms Export Control Act (22 U.S.C. 2778);

(B) Section 11 of the Export Administration Act of 1979 (50 U.S.C. app. 2410);

(C) Sections 793, 794, 798 of title 18 U.S.C. (relating to espionage involving defense or classified information);

(D) Section 16 of the Trading with the Enemy Act (50 U.S.C. App.16);

(E) Section 206 of the International Emergency Economic Powers Act (relating to foreign asset controls; 50 U.S.C. 1705);

(F) Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd–1) or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd–2);

(G) Chapter 105 of title 18, United States Code (relating to sabotage)

(H) Section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(b));

(I) Sections 57, 92, 101, 1094, 222, 224, 225, or 226 of the Atomic Energy Act of 1954, 942 U.S.C. 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276;

(J) Section 601 of the National Security Act of 1947 (relating to intelligence identities protection; 50 U.S.C. 421);

(K) Section 603(b) or(c) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5113(b) and (c));

(L) Section 371 of title 18, United States Code (when it involves conspiracy to violate any of the statutes mentioned under factor 3;

(M) Any other export control, armaments transfer, or related laws of United States of any nation in which the U.S. Government generates or transfers surplus property;

(N) Convictions and settlements reflecting conspiracy, attempts, or other incomplete acts shall be considered as serious as if the underlying offense were completed. A criminal conviction, civil judgment or other settlement for an alleged violation of any of the statutes, laws and regulations identified in factor 3, will be considered conclusive proof of a violation.

(ii) When considering an Applicants qualifications under this criterion, the size and scope of the Applicant business in handling USML/CCL items shall be considered and evaluated. A single or minimal offense, or one of a non-criminal nature, may not bar qualification if found within the history of a large organization conducting significant successful trade in such articles. The same offense may, however, be disqualifying if found within the history of a firm that has completed only a few transactions involving such property, especially if the offense suggests a lack adequate controls or experience to preclude negligent occurrence of violations.

(4) *Factor 4.* Applicant does not have a history of acts involving fraud, misrepresentation and deception or other serious offenses reflecting negatively on the applicant credibility and trustworthiness. The Applicant (and if organized in any business format, that of any principals or officers) does not have a history of committing actions involving fraud, misrepresentation, falsification or destruction of records, collusive bidding or other similar offenses. A criminal conviction, civil judgment or other settlement for an alleged violation of any factors will be considered conclusive proof of a violation. The Agency plans to consider any such acts committed within the last 7 years. Due to the significant risks involved in trading USML and CCL items, offenses occurring more than 7 years ago may be considered on a case-by-case basis.

(5) *Factor 5.* Applicant does not have a history of acts involving violence, terrorist activity, corruption with respect to commercial dealings or matters pending before any adjudicative court or tribunal, violation of U.S. trade or immigration laws, or other acts contrary to U.S. national security interests.

(i) The Applicant (and if organized in any business format, that of any principals or officers) does not have a history of committing offenses of the type described in the above standard. These offenses include, but are not limited to: Violations of 18 U.S.C. Chapter 113 relating to terrorist activity; murder; assault with intent to commit murder; kidnapping; hostage taking; criminal sexual offenses; extortion; crimes against property including robbery, larceny and related offenses; sedition, treason, arson, bribery, espionage, smuggling; firearms and/or weapons violations; violations of the Racketeering, Influence and Corrupt Organizations Act (RICO) or related corruption laws, whether State or Federal in nature; offenses related to the unlawful possession, use, sale, distribution, purchase, receipt, transfer, shipping, transporting, importing exporting, dealing, or storing of an explosive device; distribution of, or possession of a controlled substance with intent to distribute, or importation thereof. A criminal conviction, civil judgment or other settlement for an alleged violation of any of the offenses identified in this paragraph will be considered conclusive proof of a violation.

(ii) Individuals who have been adjudicated mentally incompetent, involuntarily committed to a mental institution, or have other background factors evidencing the potential for harm to self or others may likewise be excluded under this standard.

(6) *Factor 6.* Applicant does not have a history of insolvency and/or lack of financial capacity adequate to ensure it has the financial means to properly manage, control, and oversee the use of export controlled property transferred to it by DLA or its contractors. Although there are no absolute standards applicable to a review of solvency and financial capacity, the Agency may review resources applicable to a consideration of an Applicants solvency or financial capability to manage the USML/CCL property transferred to it by Government sources. Regardless of any potential ability to post a bond or pay for any contemplated purchases of controlled items, DLA has an interest in ensuring the Applicants have adequate financial means to ensure the physical security of USML and CCL items transferred to them. In addition, DLA has an interest in ensuring Applicants have the resources to effectively manage, transfer, and oversee the uses of USML and CCL items released to their control. Such consideration would examine an Applicants financial capability relative to the size and scope of its business involving trade in USML or CCL items, or its personal solvency and credit worthiness in the case of individuals obtaining USML/CCL items for personal use.

(7) *Factor 7.* Applicant must demonstrate a history of cooperation and compliance with contract terms and conditions. The U.S. Government may always consider an Applicants compliance under previous government or similar contracts as a matter of establishing the Applicants responsibility to receive and perform the contract under consideration. The U.S. Government may also consider previous contract compliance when evaluating an Applicants technical capability to perform the contract under consideration. Due to the sensitive nature of USML/CCL items and the on-going regulatory requirements governing the management and transfer of such items, the Applicant must demonstrate a satisfactory history of compliance with contract terms and conditions.

(i) The Applicant must establish a history of favorable compliance and cooperation regarding changes in demilitarization codes or inadvertent releases affecting USML or CCL items obtaining from DRMS or the CV sales partner. Both DRMS and CV contracts contain terms requiring return of demilitarization-required items or providing subsequent transferee information when advised of a demilitarization code change or the inadvertent sale of demilitarization required property as non-controlled property by DRMS or the CV sales partner. Failure to cooperate with the U.S. Government or its contractors, when seeking to track or retrieve USML/CCL property deemed likely to present risks to national security, may be considered unfavorably under this criteria as may attempts to extract significant profits from Government officials charged with seeking retrieval of such property. Applicants acquiring USML/CCL items under these contracts must appreciate the Government's interest in protecting national security and comply with those terms now embodied in U.S. Government and CV contracts requiring transferees to assist in tracking or return such items upon Government request, in return for reimbursement covering their purchase price and expenses incurred only,

without compensation for any expected or anticipatory profits.

(ii) The Applicant history must reflect cooperation and contract compliance with respect to U.S. Government requests for records or information regarding subsequent transfers or any matter relating to compliance with the ITAR, EAR, and any other export control laws. Likewise, if the Applicant has previously acquired USML/CCL property, its history must reflect compliance with export control related terms, such as those related to properly identifying items as USML/CCL and perpetuating information about export control requirements to subsequent transferees.

(8) *Factor 8.* Applicant must certify it has the legal capability and capacity to contract with the U.S. Government to trade USML items.

(i) The Applicant must establish its status as an individual of at least 18 years old and that Applicant, if an individual or business operating as a sole proprietorship and all officers or officials of any business organized in any other juristic form, are ''U.S. persons'' as defined in the ITAR.

(ii) For Applicants seeking permission to become a trading partner for CCL items only, the same requirement applies, except the Agency may consider applications involving non-U.S. persons which may be approved on a ''Conditional Only'' basis. Although a non-U.S. person may be granted a favorable assessment to receive CCL items on a ''conditional only'' basis, such a status does not indicate an entitlement to receive additional CCL items sold by DRMS or CV partner. Although such status may indicate the Government will not review the trading partner's situation upon each subsequent sales/transfer request, non-U.S. persons should be aware that even a favorable assessment will not mean they are entitled to buy all items of CCL property, since the legality of such transfers are fact-specific. The Government will review the purchaser's application carefully to determine the appropriateness of any sale on a case-by-case basis.

(iii) In addition, to be eligible under this factor the Applicant must not appear on the General Services Administration (GSA) Excluded Parties List, on any Directorate of Defense Trade Controls or Department of Commerce, Bureau of Industry and Security lists of entities banned from trade in USML or CCL items, nor can the individual or firm be in a prohibited area under the Office of Foreign Assets Control Regulations (OFAC) regulations.

§ 161.6. Administrative procedures.

(a) *Application process.* (1) *Request for approval.* The Applicant will submit a letter to the Sales Contracting Officer (SCO) requesting approval as a trading partner for USML or CCL items only (as appropriate to Applicants intent). This letter will provide sufficient detail to allow the Agency to review its background and conduct relevant research regarding the criteria specified in § 161.5, as well as an EUC regarding the specific or immediate sales transaction in question to the SCO. If access to a particular type of information, such as bankruptcy or financial records, requires an authorization or approval, the Applicant agrees to furnish such consent upon request by the Agency. Applicants are encouraged to submit complete information, including existing DoS registrations, other business licenses, and evidence of experience in the defense article trade. Applicants are responsible for notifying the SCO when there are changes to their registrations, business operation or ownership, or business location.

(2) *Application review process.* The TSC Assessment Office will ensure the application is complete before conducting the TSC Assessment. Applicants bear the burden of providing sufficient information to establish that they meet the review criteria. Failure to do so may result in the return of an application (without action) until access to the requested information is provided and the information reviewed. An application will not be deemed submitted or pending relevant information pertaining to all the criteria addressed in § 161.5 have been received by the TSC Assessment Office.

(3) *Application assessment process.* The review will be an overall consideration of the Applicants information with respect to all the criteria, absent a clear inability to meet the eligibility requirements, such as not meeting the factor 8 ''legal capacity'' standard (*see* § 161.5(b)(8)), or significant negative information regarding the criminal/civil history criteria (*e.g.*, recent significant export law violation). In this procedure, even if there are no absolute disqualifiers to granting a favorable assessment, but there are several significant risk areas or areas where lack of information provided creates a risk in determining whether an Applicant will be able to successfully and safely manage export controlled materials, the TSC Assessment office may, in its discretion, determine that the QTP status should be denied.

(b) *Notification to applicant.* (1) Upon completion of the TSC assessment, the DLA will notify the Applicant on whether it has been granted QTP status. If QTP status is denied, the Agency will issue a denial notice to the Applicant along with a copy to the SCO. The Applicant must wait at least 90 days from the date of the notice before reapplying.

(2) Issuance of denial notice includes:

(i) A statement that DLA has determined the individual/business was not favorably assessed and is denied QTP status;

(ii) The basis for the denial determination; and

(iii) Information about the correction of records and appeal process.

(3) Rejection of an application is not a permanent rejection. For example, an Applicant that is disapproved because it lacked sufficient experience with USML items may be able to reapply and show it has taken affirmative action in the business or otherwise resolved deficient aspects of its initial application.

(c) *Revoking previously granted QTP status.* (1) If the DLA receives information that would merit removal of QTP status, the Agency will immediately suspend QTP status and send the QTP a Notice of Contemplated Removal, citing specific reasons for the proposed removal. The QTP will have 15 business days from the date of the letter to respond. Failure of the QTP to respond to the Notice of Contemplated Removal within the 15 day period will result in immediate revocation of QTP status. If the purchaser responds to the Notice within the 15 day period, the DLA will evaluate the response, including proposed corrective action, if any, and will determine whether revocation of QTP status, retention of QTP status, or further action, applies.

(2) If an individual's QTP status is removed, there is specified time limit for such removal. The removal period will be based on the time necessary to document those changes necessary to correct the problem(s) resulting in removal. If an individual's QTP status is removed, once corrective actions have been taken to remedy the reasons for removal, the individual may reapply for QTP status. A new letter requesting QTP status must be filed, together with information indicating the deficiencies resulting in the removal have been corrected. If the DLA has removed QTP status, notice of such removal and the reasons for it may be given to other interested Government activities.

§ 161.7 Appeals.

(a) *Scope.* (1) This part applies to applicants who either have had their

previously granted QTP status revoked or who have been issued an initial Denial notice, concluding that they do not meet the standards for QTP status, and who wish to appeal the decision.

(2) [Reserved]

(b) *Denials and revocations.* (1) Applicants whose requests for an approved QTP status are denied or whose previously approved QTP status has been revoked will be advised in writing of the Denial or Revocation. The written Denial or Revocation will state the reasons for the Denial or Revocation and the facts relied on in determining that the Applicant does not meet the requirements for QTP status.

(2) [Reserved]

(c) *Appeals.* (1) An Applicant whose request for an approved QTP status is denied or previously approved QTP status has been revoked may file an appeal of the Denial or Revocation. A written appeal must be filed directed to: Defense Logistics Agency, ATTN: DLA Criminal Investigations Activity (DCIA), 8725 John Kingman Road, Suite 2358, Fort Belvoir, Virginia 22060–6221. To be timely, an Appeal must be received within 30 days after receipt of the Denial or Revocation. The Denial or Revocation will be considered to be received when delivered or within 10 days after mailing the Notice to the last known street address if undeliverable or delivery is refused.

(2) DLA will appoint an Administrative Review Official (ARO) to consider the Appeal when received. The ARO will be at a minimum, either an individual at the GS–15 (civilian) or O–6 (military) level who was not involved in the Denial or the Revocation.

(3) In its written appeal, the Appellant must demonstrate that it meets the standards of the authorization for which it is applying in § 161.5, providing information and argument in support thereof. In addition to any information and argument in opposition to the Denial or Revocation, the Appeal must identify any specific facts or statements contained in the Denial or Revocation which it disputes and identify specific facts that contradict the identified disputed facts.

(4) The Appellant will be afforded the opportunity to present information and argument to the ARO and to request a hearing to present information or argument either in person or by teleconference. The Appeal proceedings under this section will be conducted in a fair and informal manner. The ARO may use flexible procedures to allow an Appellant to present matters in opposition and in so doing is not required to follow formal rules of evidence or procedure in creating an Official Record upon which the ARO will base the decision to grant QTP status to an Appellant.

(5) The ARO will provide the Appellant with any documents relied on in making the Revocation or Denial, subject to any restrictions on the release of the information provided by other agencies or other necessary restrictions on the release of the documents, when requested. The Appellant must present any documentary evidence it wants considered to the ARO prior to the close of the Official Record.

(6) If an Appellant's presentation raises a genuine dispute over facts material to the determinations made in a Denial or Revocation, the ARO must conduct additional fact finding to resolve those facts. Generally, a conviction of a criminal offense which was a material fact in the determination of the Denial or Revocation is not subject to dispute and will not require the conduct of additional fact finding.

(7) If fact finding is conducted, the Appellant and the Agency may present witnesses and other evidence and confront any witness presented by the other party and written findings of fact must be prepared for the record. A transcribed record of fact finding procedures must be made, unless both the Appellant and the Agency agree to waive it in advance. If either party wants a copy of the transcribed record, they may purchase it. The ARO may refer disputed material facts to another official for findings of fact. The ARO may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

(8) The ARO will make a determination on the Appellant's eligibility for QTP status based on all the information contained in the Official Record. The Official Record includes:

(i) The Notice of Denial or Notice of Revocation and all material relied on their issuance, along with all information submitted to the Reviewing Official in support of the Denial or Revocation.

(ii) Any information or argument presented by the appellant under these procedures in opposition to the Revocation or Denial.

(iii) Any transcribed record of fact finding.

(9) In any appeal under this section, the Agency must establish the cause for a Denial or Revocation by a preponderance of the evidence.

(10) In any appeal under this section, the Agency has the burden to prove that a cause for a Denial or Revocation exists.

(11) The ARO must make a written decision on an Appeal under this part within 45 days of closing the Official Record. The Official Record closes when the Reviewing Official receives final submissions and information and findings of fact, if any. The Reviewing Official may extend this period for good cause.

§ 161.8 Definitions.

(a) *Affiliate.* Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways used to determine control include, but are not limited to:

(1) Interlocking management or ownership.

(2) Identity of interests among family members.

(3) Shared facilities and equipment.

(4) Common use of employees.

(b) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812). Conviction is defined as follows:

(1) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or

(2) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

(c) *Commerce Control List (CCL) (formerly known as Strategic List Item).* Commodities and associated technical data (including software) subject to export controls under the EAR. The EAR contains the CCL and is administered by the BIS, Department of Commerce.

(d) *Demilitarization code.* A single-character code indicating ''USML'' or ''CCL'' and the degree of demilitarization necessary (if any) or TSCs (if any) before release from DoD control.

(e) *DoD excess and surplus personal property.* DoD excess personal property is property other than real property not needed by any DoD activity, whether located inside or outside the United States. DoD surplus personal property is property not needed by any Federal activity. DoD foreign excess personal property (FEPP) is property located

outside the United States, American Samoa, Guam, Puerto Rico, Palau, or the U.S. Virgin Islands. The term ''excess property'' includes FEPP. Foreign Military Sales, Military Assistance Program, or Grant Aid Program excess personal property transferred by the DoD to a foreign government that becomes excess to that government.

(f) *End-use certificate (EUC).* A DLA Form 1822 prepared by prospective recipients of USML or CCL property which provides identifying information, sales terms, acknowledgment of export licensing requirements, and a statement indicating the intended destination and disposition of the property.

(g) *Export.* The transfer of a controlled USML or CCL Item out of the United States in any manner. Transfer of an USML or CCL Item in the United States to a non-U.S. person may also be deemed an export in certain circumstances.

(h) *Indictment (for a criminal offense).* A presentment, information or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Preponderance of the evidence.* Proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(j) *Principal.* An officer, director, owner, partner, investor or other person within an organization with management or supervisory responsibilities related to the transaction in question.

(k) *Trade Security Controls (TSC).* The controls on export, import and demilitarization of personal property established by 22 U.S.C. 2778, 22 CFR parts 120–130, ''International Traffic in Arms Regulations'' (ITAR), 50 U.S.C. Chapter 35, 15 CFR parts 730–799, ''Export Administration Regulations'' (EAR), 31 CFR parts 500–598, ''Office of Foreign Assets Control Regulations'' (OFAC)) and any similar controls established by the Department of Homeland Security.

(l) *TSC assessment.* A pre-award assessment of the integrity and reliability of the prospective recipient made by DLA. The TSC assessment also verifies that the proposed destination and intended use of the property conforms to export license requirements.

(m) *TSC measures.* Measures designed to preclude the improper or unauthorized transfer of USML or CCL items, to any entity (*i.e.*, person, organization or country) whose interests are unfriendly or hostile to the United States. These measures shall also be applied to other selected entities as designated by the Under Secretary of Defense (USD(P)).

(n) *Transfer.* The sale, lease, loan, grant, exchange, trade, barter, release, or donation of property from DoD to another person or entity other than an agency of the United States Government.

(o) *United States Munitions List (USML) personal property.* Defense articles, associated technical data (including software), and defense services recorded or stored in any physical form, controlled by the ITAR. The ITAR, which contains the U.S. Munitions List, is administered by the Directorate of Defense Trade Controls, DOS.

§ 161.9 Responsibilities.

The following authorities apply to this part:

(a) Federal Property and Administrative Services Act, as amended, 40 U.S.C. 101(3) [1]

(1) Sec. 101. [40 U.S.C. 751] General Services Administration. The Administrator shall have authority to prescribe regulations to carry out this Act.

(2) Sec. 203. [40 U.S.C. 484] Disposal of Surplus Property.

(i) Except as otherwise provided in this section, the Administrator shall have supervision and direction over the disposition of surplus property. Such property shall be disposed of to such extent, at such time, in such areas, by such agencies, at such terms and conditions, and in such manner, as may be prescribed in or pursuant to this Act.

(ii) The care and handling of surplus property, pending its disposition, and the disposal of surplus property, may be performed by the GSA or, when so determined by the Administrator, by the executive agency in possession thereof or by any other executive agency consenting thereto.

(iii) Any executive agency designated or authorized by the Administrator to dispose of surplus property may do so by sale, exchange, lease, permit, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Administrator deems proper, and it may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this title.

(b) DoD Directive 4140.1, ''Supply Chain Materiel Management Policy,'' April 22, 2004.[2]

(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall:

(i) Develop DoD materiel management policies and ensure implementation in a uniform manner throughout the Department of Defense.

(ii) Develop and maintain DoD Materiel Management issuances to implement the policies contained in this Directive.

(iii) Monitor the overall effectiveness and efficiency of the DoD logistics system, and continually develop improvements.

(2) The Heads of the DoD Components shall implement the policies and procedures in this Directive and all supporting DoD issuances.

(c) DoD 4140.1–R, ''DoD Supply Chain Material Management Regulation,'' May 23, 2003.[3]

(1) The Director, DLA, shall administer the Defense Material Disposition Program including reutilization, transfer, donation, sales, loans, gifts, hazardous property disposal, precious metals recovery program, demilitarization, and trade security controls.

(2) [Reserved]

(d) DoD 4160.21–M, ''Defense Materiel Disposition Manual,'' August 19, 1997.[4]

(1) The Federal Property and Administrative Services Act assigned the responsibility for the supervision and direction over the disposition of excess and surplus property to the Administrator of General Services. The Act further assigned the responsibility for supervision and direction over the disposition of DoD FEPP to the Secretary of Defense.

(2) The Administrator of General Services delegated to the Secretary of Defense the responsibility for the sale and final disposition of surplus personal property which the Administrator determines is not needed for transfer as excess to other Federal agencies or for donation as surplus to authorized donees. The Secretary of Defense also has the responsibility, under the ''Act,'' for internal screening and redistribution of DoD property among the services and

[1] Information on the Federal Property and Administrative Services Act can be found on the Internet at URL *http://uscode.house.gov/download/title_40.shtml* or *http://epw.senate.gov/fpasa49.pdf.*

[2] Information on the DoDD 4140.1, can be found on the Internet at URL *http://www.dtic.mil/whs/directives/corres/html/41401.htm.*

[3] Additional information on the DoD 4140.1–R is available on the Internet at URL *http://www.dtic.mil/whs/directives/corres/html/41401r.htm.*

[4] To download additional information on the DoD 4160.21–M from the Internet go to URL *http://www.dtic.mil/whs/directives/corres/html/416021m.htm.*

defense agencies and for reporting such property as excess to the General Services Administration (GSA).

(3) The Secretary of Defense has assigned to the Director, Defense Logistics Agency (DLA), responsibility for the administration of the Defense Materiel Disposition Program, to include the PMRP and the Defense Demilitarization Program.

(e) DoD Instruction 2030.08, ''Implementation of Trade Security Controls (TSC) for Transfers of DoD U.S. Munitions List (USML) and Commerce Control List (CCL) Personal Property to Parties Outside DoD Control,'' May 23, 2006.[5] The Under Secretary of Defense for Acquisition, Technology, and Logistics shall:

(1) Provide for the establishment of supplemental procedures and TSC measures needed to implement this Instruction for dispositions of DoD USML and CCL personal property under DoD Directive 4140.01.

(2) Direct the Director of the Defense Logistics Agency (DLA) to:

(i) Provide assistance to the DoD Components, according to this Instruction, DoD 5105.38–M, ''Security Assistance Management Manual,'' October 3, 2003, and DoD 4140.01–R, in cases where they dispose of or transfer personal property to parties outside DoD control. In such cases, DoD Components remain ultimately responsible to ensure their subordinate elements comply with this Instruction.

(ii) Develop and implement a TSC Enforcement and Investigative Program within DLA.

(iii) Ensure all dispositions of DoD USML and CCL personal property under DLA's control are executed according to this Instruction.

(iv) Provide oversight of the Demilitarization Program, according to DoD 4160.21–M–1, ''Defense Demilitarization Manual,'' October 1991. Ensure that DoD Components are provided the necessary instructions to demilitarize all USML personal property properly before disposition to prevent unauthorized use and/or potential compromise of U.S. national security, except as otherwise permitted by law, regulation, and/or policy.

[5] To download additional information on the DoDI 2030.08, reference URL *http://www.dtic.mil/whs/directives/corres/html/203008.htm.*

Dated: October 19, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E6–17848 Filed 10–24–06; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0531–200618(b); FRL–8233–7]

Approval and Promulgation of Implementation Plans; Tennessee: Memphis/Shelby County Area Second 10-Year Maintenance Plan for the Carbon Monoxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Tennessee State Implementation Plan (SIP) submitted in final form on May 17, 2006. The SIP revision provides the second 10-year carbon monoxide (CO) maintenance plan for the Memphis/Shelby County Carbon Monoxide Maintenance Area. The second 10-year maintenance plan includes a new motor vehicle emissions budget (MVEB) for CO for the year 2017. EPA is proposing to approve this SIP revision, including the new 2017 MVEB for carbon monoxide, because it satisfies the requirement of the Clean Air Act for the second 10-year maintenance plan for the Memphis/Shelby County Area.

In addition, in this rulemaking, EPA is providing information on the status of its transportation conformity adequacy determination for the new MVEB for the year 2017 that is contained in the second 10-year CO maintenance plan for the Memphis/Shelby County Area.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision 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 rule, no further activity is contemplated. If EPA receives 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. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before November 24, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R04–OAR–2006–0531, by one of the following methods:

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

2. *E-mail: louis.egide@epa.gov*, or *benjamin.lynorae@epa.gov*.

3. *Fax*: (404) 562–9019.

4. *Mail*: ''EPA–R04–OAR–2006–0531'', Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier*: Egide Louis of the Regulatory Development Section or Lynorae Benjamin of the Air Quality Modeling and Transportation Section at the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Egide N. Louis telephone number is (404) 562–9240. He can be reached also via electronic mail at *louis.egide@epa.gov*. Lynorae Benjamin's telephone number is (404) 562–9040 and her electronic mail is *benjamin.lynorae@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: October 6, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. E6–17800 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 71, No. 206
Wednesday, October 25, 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 COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Open Meeting

The Information Systems Technical Advisory Committee will meet on November 8, 2006, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

1. Welcome and Introductions.
2. Remarks and Update from BIS.
3. Graphics Processors Technology.
4. Frequency Standards.
5. Telephony Signaling.
6. Phase Noise.
7. Frequency Synthesizer Assemblies.
8. Practitioner's Guide to APP.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials to Yvette Springer at *Yspringer@bis.doc.gov.*

For more information contact Ms. Springer on (202) 482–2813.

Dated: October 19, 2006.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 06–8887 Filed 10–24–06; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Open Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on November 9, 2006, 9:30 a.m., Room 6087B, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

1. Welcome and Introductions.
2. Presentation by the Office of Technology Evaluation.
3. Policy Overview.
4. Regulations Overview.
5. Missile Technology Control Regime.
6. Wassenaar Issues for Discussion at September 06 Multilateral Meeting—Call for 2007 Proposals.
7. Presentation Papers and Comments by the Public.
8. Reports on Working Groups.
9. Follow-up on Open Action Items.
10. Closing Comments.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials to Yvette Springer at *Yspringer@bis.doc.gov.*

For more information contact Ms. Springer on (202) 482–2813.

Dated: October 19, 2006.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 06–8888 Filed 10–24–06; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. A–570–846]

Brake Rotors from the People's Republic of China: Extension of Time Limit for Final Results of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews

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

EFFECTIVE DATE: October 25, 2006.

FOR FURTHER INFORMATION CONTACT: Erin C. Begnal or Christopher D. Riker, 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) 482–3441, respectively.

Background

On May 8, 2006, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the antidumping duty order on brake rotors from the People's Republic of China for the period April 1, 2004, through March 31, 2005. *See Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent to Rescind the 2004/2005 New Shipper Review,* 71 FR 26736 (May 8, 2006). On August 16, 2006, the Department published a notice of extension of time limit for the final results of this administrative review extending the time limit for the final results by 45 days until October 20, 2006. *See Brake Rotors from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative and New Shipper Reviews,* 71 FR 47169 (August 16, 2006). The final results of this administrative review are currently due October 20, 2006.

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(h)(1) of the Department's regulations, the Department shall issue final results in an administrative review of

antidumping duty order within 120 days after the date on which the notice of preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the specified time period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to 180 days.

Completion of the final results within the originally anticipated time limit, October 20, 2006, is impracticable because the Department requires additional time to address the comments of the interested parties as raised in their June 19, 2006, briefs, June 27, 2006, rebuttal briefs, July 17, 2006, comments on bentonite and coal powder usage, and July 24, 2006, rebuttal comments on this issue. Because it is not practicable to complete the review within the time specified under the Act, the Department is extending the time limit for completion of the final results by 15 days to November 4, 2006, in accordance with Section 751(a)(3)(A) of the Act. However, because November 4, 2006, falls on a Saturday, the signature day will roll over to the next business day, November 6, 2006, in accordance with our practice. See Notice of Clarification: Application of *Next Business Day* Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

Additionally, on April 29, 2005, Shanxi Zhongding Auto Parts Co. Ltd. agreed to waive the time limits of its new shipper review, pursuant to 19 CFR 351.214(j)(3), and to have its review conducted concurrently with the 2004/2005 administrative review of this order for the period April 1, 2004, through March 31, 2005. Therefore, the final results of this new shipper review will also be extended by 15 days to November 6, 2006.

Dated: October 18, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration

[FR Doc. 06–8896 Filed 10–21–06; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Petroleum Wax Candles From the People's Republic of China: Final Results of the 2004–2005 Antidumping Duty Administrative Review

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

SUMMARY: On June 21, 2006, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on petroleum wax candles (''candles'') from the People's Republic of China (''PRC''). *See Petroleum Wax Candles from the People's Republic of China: Preliminary Results of the 2004–2005 Administrative Review*, 71 FR 35613 (June 21, 2006) (''*Preliminary Results*''). We gave interested parties an opportunity to comment on the *Preliminary Results*, but we did not receive any comments. Therefore, we made no changes to the dumping margin calculations for these final results.

DATES: *Effective Date:* October 24, 2006.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Cindy Lai Robinson, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208 or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The *Preliminary Results* in this administrative review were published on June 21, 2006. *See Preliminary Results.* This administrative review covers one manufacturer/exporter of subject merchandise: Qingdao Youngson Industrial Co., Ltd. (''Youngson''), ''the Respondent.'' The Petitioner is the National Candle Association (''NCA'').

Period of Review

The period of review (''POR'') covers August 1, 2004, through July 31, 2005.

Scope of the Antidumping Duty Order [1]

The products covered by the *Order* are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: Tapers, spirals, and straight-sided dinner candles; round, columns, pillars, votives; and various wax-filled containers. The products were classified under the Tariff Schedules of the United States (''TSUS'') 755.25, Candles and Tapers. The products covered are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') item 3406.00.00. Although the HTSUS subheading is provided for convenience purposes, our written description remains dispositive. *See* the *Order* and *Notice of Final Results of the Antidumping Duty New Shipper Review: Petroleum Wax Candles from the People's Republic of China*, 69 FR 77990 (December 29, 2004).

Separate Rates

Youngson has requested a separate, company-specific antidumping duty rate. In the *Preliminary Results*, we determined that Youngson's untimely withdrawal from the current administrative review on March 31, 2006, which was 94 days after the Department's established deadline, left certain critical data potentially relevant to separate rates still outstanding. Youngson's untimely withdrawal prevented the Department from conducting a thorough separate rates analysis or from verifying Youngson's information. Therefore, we found that Youngson has not demonstrated that it is entitled to a separate rate, and it is deemed to be included in the PRC-wide entity and would be assigned the PRC-wide entity rate. *See Preliminary Results*, 71 FR at 35614. For these final results, we continue to find that Youngson has not demonstrated its entitlement to a separate rate.

Analysis of Comments Received

No interested parties submitted any comments for these final results.

Changes Since the Preliminary Results

We made no changes to the *Preliminary Results*.

Final Results of the Review

In the *Preliminary Results*, we based the dumping margin for Youngson on total adverse facts available (''AFA'') for Youngson's sales of merchandise subject to the *Order* pursuant to sections 776(a)(2), and 776(b) of the Tariff Act of 1930, as amended (''the Act''). *See Preliminary Results*, 71 FR at 35614–15.

In addition, we continue to find that Youngson is not entitled to a separate rate and is part of the PRC-wide entity, which is under review. As the PRC-wide entity, in this instance, was

[1] *See Antidumping Duty Order: Petroleum Wax Candles From the People's Republic of China*, 51 FR 30686 (August 28, 1986) (''*the Order*'').

uncooperative, we continue to find it appropriate to assign an antidumping duty margin for the PRC-wide entity based on total AFA pursuant to section 776(b) of the Act. As a result, Youngson continues to receive the 108.30 percent, PRC-wide entity rate. A complete explanation of the selection, corroboration, and application of AFA can be found in the *Preliminary Results*. *See Preliminary Results*, 71 FR at 35615.

The weighted-average dumping margin for the POR is as follows:

PETROLEUM WAX CANDLES FROM THE PRC

Manufacturer/exporter	Weighted-average margin (percent)
PRC-wide Entity ..... (including Qingdao Youngson Industrial Co., Ltd.)	108.30

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of petroleum wax candles from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) For any previously reviewed or investigated PRC or non-PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of those proceedings; (2) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate indicated above; and (3) the cash deposit rate for any non-PRC exporter of subject merchandise from the PRC who does not have its own rate will be the rate applicable to the PRC exporter that supplied the non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Assessment Rates

Normally, the Department will issue appraisement instructions directly to U.S. Customs and Border Protection (''CBP'') within 15 days of publication of the final results of this administrative review. On September 29, 2006, the Department issued the final determination on a concurrent later-developed merchandise anticircumvention inquiry on petroleum wax candles from the PRC. *See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 71 FR 59075 (October 6, 2006) (''*Final Anticircumvention Determination*''). Candles subject to the *Final Anticircumvention Determination* are candles which contain any amount of petroleum wax. Prior to the *Final Anticircumvention Determination* and at the time the Department began this administrative review, however, the Department considered candles containing less than 50 percent petroleum wax to be outside the scope of *Order*. However, given the Department 's affirmative *Final Anticircumvention Determination*, a candle containing any amount of petroleum wax will now be considered subject to antidumping duties. As such, following the *Final Anticircumvention Determination*, the Department instructed CBP to suspend liquidation of entries of candles containing any amount of petroleum wax beginning February 25, 2005. For this POR, the Department will instruct CBP to liquidate all suspended entries of subject merchandise from the PRC-wide entity, including Youngson, at 108.30 percent. This will include those mixed-wax candles composed of petroleum wax and more than 50 percent or more palm and/or other vegetable oil-based waxes subject to the *Final Anticircumvention Determination* that entered between February 25, 2005 and July 31, 2005.

Reimbursement of Duties

This notice also serves as a final 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 POR. 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.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a) and 777(i) of the Act.

Dated: October 18, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–17888 Filed 10–24–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars From Turkey; Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review

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

DATES: *Effective Date:* October 25, 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 May 31, 2006, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 30864 (May 31, 2006). The period of review is April 1, 2005, through March 31, 2006, and the preliminary results are currently due no later than January 2, 2007, the first business day after December 31, 2006. The review covers five producers/exporters of the subject merchandise to the United States.

In addition, on May 26, 2006, the Department published a notice of initiation of a new shipper review of the antidumping duty order on rebar from Turkey for Kroman Celik Sanayii A.S., a producer of subject merchandise, and its affiliated export trading company,

Yucelboru Ihracat Ithalat ve Pazarlama A.S. (collectively ''Kroman''). *See Notice of Initiation of New Shipper Antidumping Duty Review: Certain Steel Concrete Reinforcing Bars from Turkey*, 71 FR 30383 (May 26, 2006). Kroman agreed in writing to waive the time limits in order for the Department, pursuant to 19 CFR 351.214(j)(3), to conduct this review concurrently with the ninth administrative review of this order for the period April 1, 2005, through March 31, 2006, which is being conducted pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act). Therefore, the preliminary results are currently due no later than January 2, 2007, the first business day after December 31, 2006.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. Section 751(a)(3)(A) of the Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act because this review involves a number of complicated issues for certain of the respondents, including a request for revocation for two respondents. Analysis of these issues, as well as the required verifications of these companies, requires additional time. Therefore, we have fully extended the deadline for completing the preliminary results until April 30, 2007, which is 365 days from the last day of the anniversary month of the date of publication of the order. The deadline for the final results of the review continues to be 120 days after the publication of the preliminary results.

This extension notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: October 18, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–17893 Filed 10–24–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Electronic Education Fair for China

AGENCY: International Trade Administration.

ACTION: Notice.

SUMMARY: U.S. accredited colleges and universities are invited to participate in the U.S. Electronic Education Fair For China by purchasing space on the initiative's internet landing page.

DATES: Applications will be accepted from October 24, 2006 until 3 pm EST November 10, 2006. The initiative is scheduled to commence on November 19, 2006.

ADDRESSES: E-mail: Alex Feldman: *Alex.Feldman@mail.doc.gov.* Amber Wesley: *Amber.Wesley@mail.doc.gov.* Fax: 202–482–4821.

FOR FURTHER INFORMATION CONTACT: Alexander Feldman, U.S. Department of Commerce, Room 3850. Tel: (202) 482–8243. Amber Wesley, U.S. Department of Commerce, Room 3850. Tel: (202) 482–6357.

SUPPLEMENTARY INFORMATION: The U.S. Electronic Education Fair for China is a joint initiative between the U.S. Department of Commerce and the U.S. Department of State. The purpose of the initiative is to inform Chinese students who are interested in studying outside of China about the breadth and depth of the higher education opportunities available in the U.S. The initiative will have a three-pronged multimedia approach using television, the Internet and on-ground activities. Two, thirty minute TV programs will be produced in combination with a series of short, 3 minute programs, aired on local cable and national satellite TV stations throughout China all of which will drive viewers to the Internet landing page. DVDs distributed through education trade fairs and also through the 47 EducationUSA advisory centers throughout China will further this message.

Accredited U.S. Institutions are invited to purchase space on the Internet Landing page in order to provide information about their schools. Informational space will be available at a Gold or Silver level. Institutions purchasing at the Gold level, priced at $8,000, will receive a banner-sized ad with their schools logo and name, which will link to their school website. Those who purchase at the Silver level, priced at $3,000, will have their name listed on the site with a link to their institution Web site.

Dated: October 20, 2006.

Mary Ann McFate,

Director, Office of Organization and Management Support.

[FR Doc. E6–17868 Filed 10–24–06; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On October 18, 2006, Hylsa, S.A. de C.V. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Notice of Final Results and Partial Rescission of the Antidumping Duty Administrative Review made by the International Trade Administration, respecting Oil Country Tubular Goods from Mexico. This determination was published in the **Federal Register** (71 FR 54614) on September 18, 2006. The NAFTA Secretariat has assigned Case Number USA–MEX–2006–1904–06 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules'').

These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on October 18, 2006, requesting panel review of the Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is November 17, 2006);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is December 4, 2006); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: October 19, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–17830 Filed 10–24–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 00724218–6267–11]

Cancellation of the Solicitation of Applications for the Native American Business Enterprise Center (NABEC) and Extension of NABEC Program Period

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) publishes this notice to: (1) Announce that it is canceling the Solicitation of Applications for the Native American Business Enterprise Center (NABEC) (formerly Native American Business Development Center (NABDC)) Program as published on September 6, 2006, and (2) Amend the August 29, 2003 **Federal Register** notice solicitation to extend the total project award period for cooperative agreements under the NABEC program from three (3) years to four (4) years. MBDA is taking both actions in order to permit MBDA to solicit input from all stakeholders on any proposed Program changes. This notice also identifies certain NABECs currently funded through December 31, 2006, that will be eligible for an additional year of funding beyond the three (3) years normally allowed between competitions.

DATES: The additional year of funding, if approved by the Grants Officer, will commence January 1, 2007 and continue through December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Efrain Gonzalez, Program Manager at (202) 482–1940.

SUPPLEMENTARY INFORMATION: Under Executive order 11625, the NABEC Program was established to provide standardized business assistance services to the Native American business public directly, develop a network of strategic partnerships and provide strategic business consulting within the geographic services area. These mission goals generate increased results with respect to financing and contracts awarded to Native American and minority-owned firms and thus, are a key component of the Program.

MBDA is announcing the cancellation of the Solicitation of Applications for the NABEC Program, as published on September 6, 2006 (71 FR 52529), to allow for the solicitation of input from all stakeholders on any proposed Program changes. In addition, MBDA is extending the total project award period from three years to four years for awards under the NABEC Program. MBDA's prior **Federal Register** notice of August 29, 2003 (68 FR 51981), as amended on September 30, 2003 (68 FR 56267), February 11, 2004 (69 FR 6644), and February 19, 2004 (69 FR 7726) is hereby amended to allow for the extension of the total project award period of cooperative agreements under the NABEC Program to four (4) years.

NABECs that will be completing the third year of operation on December 31, 2006 will be eligible for an additional year of funding, on a non-competitive basis. Such additional funding will be at the total discretion of MBDA, using the evaluation criteria and process used to determine the continuation of funding during the original award period (Years 1–3).

In making its determination, MBDA will consider (1) the NABEC's performance rating, (2) the availability of funds, and (3) the agency's priorities. In determining the NABEC's performance rating, MBDA will review the overall project performance as evaluated through the standardized performance reports and assessments required by the NABEC Program. MBDA will consider only those NABEC's that have achieved a performance rating of ''Satisfactory,'' ''Good,'' ''Commendable,'' or ''Outstanding.''

The following NABECs are affected by this notice and will be eligible for an additional year (January 1, 2007 through December 31, 2007) of funding on a non-competitive basis: Arizona Statewide NABEC (The National Center for American Indian Enterprise Development), California Statewide NABEC (The National Center for American Indian Enterprise Development), Minnesota/Iowa Statewide NABEC (Minnesota Chippewa Tribe), New Mexico Statewide NABEC (The Native American Resource Center, Inc.), North Carolina/Cherokee/Ashville NABEC (Eastern Band of Cherokee Indians), North/South Dakota Statewide NABEC (United Tribes Technical College), Northwest NABEC (The National Center for American Indian Enterprise Development), and Oklahoma Statewide NABEC (The Native American Resource Center, Inc.).

The existing NABECs will continue to concentrate on serving Native American and minority-owned firms located in their originally designated geographic service area. The NABEC Program shall continue to leverage telecommunications technology, including the Internet, and a variety of online computer-based resources to dramatically increase the level of service that the NABEC can provide to Native American and minority-owned firms, including micro-enterprises.

Entrepreneurs eligible for assistance under the NABEC Program are Native Americans, Eskimos, African Americans, Puerto Ricans, Spanish-speaking Americans, Aleuts, Asian Pacific Americans, Asian Indians, and Hasidic Jews.

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this notice.

Executive Order 12866

This notice has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Authority: 15 U.S.C. 1512 and Executive Order 11625.

Dated: October 20, 2006.

Ronald Marin,

Financial Management Officer, Minority Business Development Agency.

[FR Doc. E6–17879 Filed 10–24–06; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101706D]

Marine Mammals; File No. 1097–1859

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Coral World (V.I.), Inc., 6450 Estate Smith Bay, St. Thomas, Virgin Islands 00802 [Gertrude J. Prior, Responsible Party] has been issued a permit to import four South American (Patagonian) sea lions (*Otaria flavescens*) for public display.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: On August 10, 2006 notice was published in the **Federal Register** (71 FR 45778) that a request for a public display permit to import four male sea lions from International Sea Lion Search and Rescue, Koh Samui, Thailand to Coral World Ocean Park had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a determination was made that the permitted activity is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: October 20, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–17899 Filed 10–24–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101806G]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for renewal and modification of scientific research/enhancement permit and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application to renew and modify a permit from the Eel River Salmon Restoration Project, Miranda, CA (Permit 1075). This permit would affect Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*), California Coastal (CC) Chinook Salmon (*Oncorhynchus tshawytscha*) and Northern California (NC) Steelhead (*Oncorhynchus mykiss*). This document serves to notify the public of the availability of the permit application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Daylight Savings Time on November 24, 2006.

ADDRESSES: Written comments on this renewal and modification request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment: For Permit 1075 : Steve Liebhardt, Protected Species Division, NOAA Fisheries, 1655 Heindon Road, Arcata, CA 95521 (ph: 707–825–5186, fax: 707–825–4840).

FOR FURTHER INFORMATION CONTACT: Steve Liebhardt by telephone at (707–825B5186), or e-mail: *steve.liebhardt@noaa.gov*

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NOAA Fisheries regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the following four threatened salmonid ESUs: Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*, California Coastal (CC) Chinook Salmon (*Oncorhynchus tshawytscha*) and Northern California (NC) Steelhead (*Oncorhynchus mykiss*).

Renewal and Modification Requests Received

Permit 1075

The Eel River Salmon Restoration Project has requested renewal and modification 2 of Permit 1075 for take of SONCC coho salmon, CC Chinook Salmon and NC steelhead. Studies include: monitoring changes in fish populations in tributaries to the South Fork Eel River, provide fertilized Chinook salmon eggs to local schools for educational purposes and run an adult trap for collection of future fish population trend data sets. Proposed capture methods are by fyke trap and downstream migrant trap. Renewal and Modification of Permit 1075 was originally issued to the Eel River Salmon Restoration Project on February 27, 2004. The Eel River Salmon Restoration Project is currently authorized take of up to 2,000 juvenile coho salmon. The Eel River Salmon Restoration Project has requested a total take of up to 50 adult SONCC coho salmon, 2,000 juvenile SONCC coho salmon, 15,000 juvenile NC steelhead, 50 adult NC steelhead, 303 adult CC Chinook salmon, and 2,500 juvenile CC Chinook salmon. Renewal and Modification of Permit 1075 will expire September 1, 2016.

Dated: October 19, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–17890 Filed 10–24–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101806F]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Receipt of application for research permit; request for comments.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit for an Endangered Species Act (ESA) scientific research from California Department of Fish and Game Glenn Colusa Irrigation District Fish Screen Facilities Office (DFG GCID FSFO) in Hamilton City, CA. This notice is relevant to federally endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened Central Valley steelhead (*O. mykiss*), and threatened Southern Distinct Population Segment (DPS) of North American green sturgeon (*Acipenser medirostris*). This document serves to notify the public of the availability of the permit application for review and comment.

DATES: Written comments on the permit applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on November 24, 2006.

ADDRESSES: Written comments on the permit application should be sent to the appropriate office as indicated below. Comments may also be sent via e-mal to *FRNpermit.sac@noaa.gov* or fax to the number indicated for the request. The application and related documents are available for review by appointment: Protected Resources Division, NMFS, 650 Capitol Mall, Suite 8-300, Sacramento, CA 95814 (ph: 916–930–3615, fax: 916–930–3629).

FOR FURTHER INFORMATION CONTACT: Russell Bellmer, Ph.D. by telephone at 916–930–3615, or e-mail: *FRNpermit.sac@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to Federally endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened Central Valley steelhead (*O. mykiss*), and threatened Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*).

Applications Received

DFG GCID FSFO requests a 5-year permit 1582 with an annual estimated take of 4,000 juvenile winter-run Chinook Salmon, 20,000 spring-run Chinook Salmon, and 4,000 Central Valley steelhead (with 2 percent incidental mortality) to monitor emigration behavior in the Sacramento River in California. DFG GCID FSFO requests authorization for this estimated annual take resulting from capturing, measuring, transporting, and releasing fish that may be caught by 8-foot (2.44m) diameter rotary screw trap deployed to specifically capture juvenile Chinook salmon in the Sacramento River near River near Mile 205 (Lat. 39°79′ 00′ N, long. 122° 05′ 00″ W). A sub-sample of 50 salmon juveniles will be placed into a bucket containing a solution of Tricaine methanesulfonate (MS-222) and anaesthetized. Individuals are measured and identified to species or race. DFG GCID FSFO requests authorization for an estimated annual take of 10 adult Sacramento River winter-run Chinook salmon, 10 adult Central Valley spring-run Chinook salmon, and 10 adult Central Valley steelhead (with 1 percent incidental mortality) resulting from capture and release of the fish.

DFG GCID FSFO will take a total of 90 juveniles of the threatened Southern DPS of North American green sturgeon (with 1 percent incidental mortality) resulting from capture and release of the fish.

Dated: October 19, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–17892 Filed 10–24–06; 8:45 am]

BILLING CODE 3510–22–S

PATENT AND TRADEMARK OFFICE

Deposit of Biological Materials

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 26, 2006.

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

- E-mail: *Susan.Brown@uspto.gov.* Include ''0651–0022 comment'' in the subject line of the message.
- Fax: 571–273–0112, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- Federal e-Rulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Robert J. Spar, Director, Office of Patent Legal Administration, U.S. Patent and Trademark Office (USPTO), P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7700; or by e-mail at *bob.spar@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The deposit of biological materials as part of a patent application is required by 35 U.S.C. 2(b)(2) and outlined in 37 CFR Chapter 1, Subpart G, 1.801–1.809. Every patent must contain a description of the invention sufficient to enable a person (knowledgeable in the relevant science) to make and use the invention as specified by 35 U.S.C. 112. The term biological includes material that is capable of self-replication either directly or indirectly. When the invention involves a biological material, sometimes words alone cannot sufficiently describe how to make and use the invention in a reproducible or repeatable manner. In such cases, the required biological material must either be known and readily (and continually) available, or be deposited in a suitable depository to meet the enablement and written description requirements of 35 U.S.C. 112.

In cases where a novel microorganism is involved, the USPTO traditionally requires the deposit of a sample with a recognized patent depository in order to meet the above disclosure requirements. When a deposit is necessary, the USPTO collects information to determine whether the depositor is in compliance with the patent statute. This includes a statement proving notification to the interested public on where to obtain samples of the deposits. A viability statement showing that the biological material was tested by the depository, and is a viable or acceptable deposit, must also be submitted to the USPTO.

In order to meet and satisfy requirements for international patenting, all countries signing the Budapest Treaty must recognize the deposit of biological material with any International Depository Authority (IDA).

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO when the applicant or agent files a patent application with the USPTO or submits subsequent papers during the prosecution of the application to the USPTO.

III. Data

OMB Number: 0651–0022.

Form Number(s): None.

Type of Review: Extension of a currently approved collection.

Affected Public: Households and individuals; business or other for-profit, not-for-profit institutions; and the Federal Government.

Estimated Number of Respondents: 3,500 responses per year for deposited materials and 1 per year for depository approval.

Estimated Time per Response: The USPTO estimates that it will take approximately 1 hour per application for deposited materials and 5 hours per application for depository approval.

Estimated Total Annual Respondent Burden Hours: 3,505 hours per year.

Estimated Total Annual Respondent Cost Burden: $106,520 per year to submit the information to the USPTO. Using the professional hourly rate of $30 for a senior administrative assistant, the USPTO estimates $105,000 per year for salary costs associated with collecting and submitting the necessary deposit information. Using the professional hourly rate of $304 for associate attorneys in private firms, the USPTO estimates $1,520 per year for salary costs associated with the average depository seeking approval to store biological material.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Deposited Materials	1 hour	3,500	3,500
Depository Approval	5 hours	1	5
Total		3,501	3,505

Estimated Total Annual (Non-hour) Respondent Cost Burden: $9,850,929. There are no maintenance costs or filing fees associated with this information collection. There are, however, capital start-up and mailing costs.

Depositories charge fees to depositors; all depositories charge about the same rates for their services. For example, the American Type Culture Collection (ATCC), one of the world's leading biological supply houses and recognized patent depositories, offers comprehensive patent services for $2,500 per deposit. Most deposits received from outside the United States require an import permit from the U.S. Department of Agriculture (USDA). Also required is a Public Health Service (PHS) permit, available from the Centers for Disease Control and Prevention (CDC), for importation of agents infectious to humans. There is no extra charge for this permit application processing. The USPTO estimates that the total non-hour respondent cost

burden in the form of capital start-up costs amounts to $8,750,000.

In addition, this collection does have mailing costs. Biological deposits are generally shipped to the depository Domestic Overnight by Federal Express (FedEx) and, since depositors are urged to supply frozen or freeze dried material, it must be packed in dry ice, according to a representative from the Patent Department at ATCC. Dry ice itself is considered dangerous goods and requires special packaging. Additional FedEx special handling charges of $60 per shipment apply for temperature-sensitive biological material and also for the dry ice. An average cost for shipping by FedEx Domestic Overnight is estimated to be $75. If the shipment requires pick-up by FedEx, there is an additional charge of $2.50. Special packaging is also required for these shipments. According to DG Supplies Inc., a supplier of infectious and diagnostic goods packaging, frozen infectious shippers are estimated to cost $177.05 per package for specimen shipments requiring refrigeration or dry ice. Therefore, mailing costs average $314.55 per shipment, for a total cost to all the respondents of $1,100,025. The postage cost for a depository seeking recognition is estimated to be $4.05, sent to the USPTO by priority mail through the United States Postal Service. Therefore, the USPTO estimates that the total non-hour respondent cost burden in the form of postage costs amounts to $1,100,929.

Item	Responses (a)	Postage costs ($) (b)	Total non-hour cost burden (a) × (b)
Deposited Materials	3,500	$314.55	$1,100,925.00
Depository Approval	1	4.05	4.00
Total	3,501		1,100,929.00

The USPTO estimates that the total non-hour respondent cost burden for this collection in the form of capital start-up costs ($8,750,000) and mailing costs ($1,100,929) amounts to $9,850,929.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: October 19, 2006.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E6–17855 Filed 10–24–06; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0114]

Federal Acquisition Regulation; Submission for OMB Review; Right of First Refusal of Employment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0114).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat is submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning right of first refusal of employment. A request for public comments was published in the **Federal Register** at 71 FR 38137 on July 5, 2006. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 24, 2006.

ADDRESSES: Submit comments including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), Room 4035 1800 F Street, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jackson, Contract Policy Division, GSA, at (202) 208–4949.

SUPPLEMENTARY INFORMATION:

A. Purpose

Right of First Refusal of Employment is a regulation which establishes policy regarding adversely affected or separated Government employees resulting from the conversion from in-house performance to performance by contract. The policy will enable these employees to have an opportunity to work for the contractor who is awarded the contract.

The information gathered will be used by the Government to gain knowledge of which employees, adversely affected or separated as a result of the contract award, have gained employment with the contractor within 90 days after contract performance begins.

B. Annual Reporting Burden

Number of Respondents: 200.
Responses Per Respondent: 1.

Total Responses: 200.

Average Burden Hours Per Response: 3.

Total Burden Hours: 600.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0114, Right of First Refusal of Employment, in all correspondence.

Dated: October 3, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. 06–8863 Filed 10–24–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0075]

Federal Acquisition Regulation; Submission for OMB Review; Government Property

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0075).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Government Property. A request for public comments was published in the **Federal Register** at 71 FR 40999, on July 19, 2006. No public comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 24, 2006.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Contract Policy Division, GSA (202) 501–4082.

ADDRESSES: Submit comments, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

''Property,'' as used in Part 45, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property. Government property includes both Government-furnished property and contractor-acquired property.

Contractors are required to establish and maintain a property system that will control, protect, preserve, and maintain all Government property because the contractor is responsible and accountable for all Government property under the provisions of the contract including property located with subcontractors.

The contractor's property control records shall constitute the Government's official property records and shall be used to—

(a) Provide financial accounts for Government-owned property in the contractor's possession or control;

(b) Identify all Government property (to include a complete, current, auditable record of all transactions);

(c) Locate any item of Government property within a reasonable period of time.

This clearance covers the following requirements:

(a) FAR 45.307–2(b) requires a contractor to notify the contracting officer if it intends to acquire or fabricate special test equipment.

(b) FAR 45.502–1 requires a contractor to furnish written receipts for Government property.

(c) FAR 45.502–2 requires a contractor to submit a discrepancy report upon receipt of Government property when overages, shortages, or damages are discovered.

(d) FAR 45.504 requires a contractor to investigate and report all instances of loss, damage, or destruction of Government property.

(e) FAR 45.505–1 requires that basic information be placed on the contractor's property control records.

(f) FAR 45.505–3 requires a contractor to maintain records for Government material.

(g) FAR 45.505–4 requires a contractor to maintain records of special tooling and special test equipment.

(h) FAR 45.505–5 requires a contractor to maintain records of plant equipment.

(i) FAR 45.505–7 requires a contractor to maintain records of real property.

(j) FAR 45.505–8 requires a contractor to maintain scrap and salvage records.

(k) FAR 45.505–9 requires a contractor to maintain records of related data and information.

(l) FAR 45.505–10 requires a contractor to maintain records for completed products.

(m) FAR 45.505–11 requires a contractor to maintain records of transportation and installation costs of plant equipment.

(n) FAR 45.505–12 requires a contractor to maintain records of misdirected shipments.

(o) FAR 45.505–13 requires a contractor to maintain records of property returned for rework.

(p) FAR 45.505–14 requires a contractor to submit an annual report of Government property accountable to each agency contract.

(q) FAR 45.508–2 requires a contractor to report the results of physical inventories.

(r) FAR 45.509–1(a)(3) requires a contractor to record work accomplished in maintaining Government property.

(s) FAR 45.509–1(c) requires a contractor to report the need for major repair, replacement and other rehabilitation work.

(t) FAR 45.509–2(b)(2) requires a contractor to maintain utilization records.

(u) FAR 45.606–1 requires a contractor to submit inventory schedules.

(v) FAR 45.606–3(a) requires a contractor to correct and resubmit inventory schedules as necessary.

(w) FAR 52.245–2(a)(3) requires a contractor to notify the contracting officer when Government-furnished property is received and is not suitable for use.

(x) FAR 52.245–2(a)(4) requires a contractor to notify the contracting officer when government-furnished property is not timely delivered and the contracting officer will make a determination of the delay, if any, caused the contractor.

(y) FAR 52.245–2(b) requires a contractor to submit a written request

for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(z) FAR 52.245–4 requires a contractor to submit a timely written request for an equitable adjustment when Government-furnished property is not furnished in a timely manner.

(aa) FAR 52.245–5(a)(4) requires a contractor to notify the contracting officer when Government-furnished property is received that is not suitable for use.

(bb) FAR 52.245–5(a)(5) requires a contractor to notify the contracting officer when Government-furnished property is not received in a timely manner.

(cc) FAR 52.245–5(b)(2) requests a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(dd) FAR 52.245–7(f) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ee) FAR 52.245–7(l)(2) requires a contractor to alert the contracting officer within 30 days of receiving facilities that are not suitable for use.

(ff) FAR 52.245–9(f) requires a contractor to submit a facilities use statement to the contracting officer within 90 days after the close of each rental period.

(gg) FAR 52.245–10(h)(2) requires a contractor to notify the contracting officer if facilities are received that are not suitable for the intended use.

(hh) FAR 52.245–11(e) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ii) FAR 52.245–11(j)(2) requires a contractor to notify the contracting officer within 30 days of receiving facilities not suitable for intended use.

(jj) FAR 52.245–17 requires a contractor to maintain special tooling records.

(kk) FAR 52.245–18(b) requires a contractor to notify the contracting officer 30 days in advance of the contractor's intention to acquire or fabricate special test equipment (STE).

(ll) FAR 52.245–18(d) & (e) requires a contractor to furnish the names of subcontractors who acquire or fabricate special test equipment (STE) or components and comply with paragraph (d) of this clause, and contractors must comply with the (b) paragraph of this clause if an engineering change requires acquisition or modification of STE. In so complying, the contractor shall identify the change order which requires the proposed acquisition, fabrication, or modification.

(mm) FAR 52.245–19 requires a contractor to notify the contracting officer if there is any change in the condition of property furnished ''as is'' from the time of inspection until time of receipt.

(nn) FAR 49.602–2(a) through (e) refers to the inventory schedule forms, SF's 1426 through 1434.

This information is used to facilitate the management of Government property in the possession of the contractor.

B. Annual Reporting Burden

Number of Respondents: 27,884.

Responses per Respondent: 488.6.

Total Responses: 13,624,122.

Average Burden Hours Per Response: .4826.

Total Burden Hours: 6,575,805.

The total burden hours have changed under this OMB clearance 9000–0075 to reflect the incorporation of hours currently associated with OMB clearance 9000–0151 (FAR Case l995–013) which expired as of June 2000 and was not renewed. The OMB collection burden associated with Government property nonetheless remains unchanged.

Obtaining Copies of Proposals: Requesters may obtain a copy ofthe information collection documents from the General ServicesAdministration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0075, Government Property, in all correspondence.

Dated: October 6, 2006.

Ralph De Stefano,

Director, Acquisition Policy Division.

[FR Doc. 06–8864 Filed 10–24–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0136]

Federal Acquisition Regulation; Information Collection; Commercial Item Acquisitions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0136).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the clauses and provisions required for use in commercial item acquisitions. A request for public comments was published in the **Federal Register** at 71 FR 38867, July 10, 2006. No comments were received. The OMB clearance expires on October 31, 2006.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 24, 2006.

FOR FURTHER INFORMATION CONTACT: Michael Jackson, Contract Policy Division, GSA (202) 208–4949.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies.To implement these changes, DOD, NASA, and GSA amended the Federal Acquisition Regulation (FAR) to include several streamlined and simplified clauses and provisions to be used in place of existing clauses and provisions.

They were designed to simplify solicitations and contracts for commercial items.Information is used by Federal agencies to facilitate the acquisition of commercial items and services.

B. Annual Reporting Burden

Respondents: 37,500.
Responses Per Respondent: 34.
Total Responses: 1,275,000.
Hours Per Response: .312.
Total Burden Hours: 397,800.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0136, Commercial Item Acquisitions, in all correspondence.

Dated: October 3, 2006.

Ralph De Stefano,

Director,Contract Policy Division.

[FR Doc. 06–8865 Filed 10–24–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF THE DEFENSE

Office of the Secretary

Missile Defense Advisory Committee (MDAC)

AGENCY: Missile Defense Agency (MDA).

ACTION: Notice of Closed Meeting.

SUMMARY: The Missile Defense Advisory Committee will meet in closed session on November 28–29, 2006, in Washington, DC.

The mission of the Missile Defense Advisory Committee is to provide the Department of Defense advice on all matters relating to missile defense, including system development, technology, program maturity and readiness of configurations of the Ballistic Missile Defense System (BMDS) to enter the acquisition process. At this meeting, the Committee will conduct classified discussions on capability-based acquisition.

FOR FURTHER INFORMATION CONTACT: COL David R. Wolf, Designated Federal Official (DFO) at *david.wolf@mda.mil*, phone/voice mail (703) 695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20302–7100.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Missile Defense Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: October 19, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 06–8868 Filed 10–24–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 24, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

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.

Dated: October 19, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Priority Needs for Educational Research Needs of the Southwest and Establishing a Baseline for SWREL Performance.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 8,052. *Burden Hours:* 2,013.

Abstract: The Southwestern Regional Educational Laboratory (SWREL) has been tasked with establishing a baseline for SWREL performance and identifying the educational needs (Pre-K through Higher Education) of constituents within its five state region. The respondents will consist of parents, business leaders, and educators (*e.g.*, teachers, principals, testing directors, etc.) from Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. The information obtained in this project will provide a landscape of the region. It will also identify the educational research needs of SWREL constituents and create insights needed to most efficiently serve those constituents. In addition, it will identify satisfaction levels with current research available, identify educational issues facing SWREL constituents, and identify unique areas of technical assistance most needed.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3165. 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. E6–17852 Filed 10–24–06; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed reinstatement of the Forms EIA–871A,B,C,E,G, and H, ''2007 Commercial Buildings Energy Consumption Survey''.

DATES: Comments must be filed by December 26, 2006. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Joelle Michaels. To ensure receipt of the comments by the due date, submission by fax (202–586–0018) or e-mail (*joelle.michaels@eia.doe.gov*) is recommended. The mailing address is Joelle Michaels, Survey Manager, EI–63, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Ms. Michaels may be contacted by telephone at (202) 586–8952.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Joelle Michaels at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The Commercial Buildings Energy Consumption Survey (CBECS) has been conducted eight times covering the years 1979, 1983 and 1986 under the name of the ''Nonresidential Buildings Energy Consumption Survey,'' and years 1989, 1992, 1995, 1999, and 2003 under the current name, ''Commercial Buildings Energy Consumption Survey.'' CBECS collects baseline data on energy consumption and expenditures in commercial buildings, and on the energy-related characteristics of those buildings. To obtain this information, interviews are conducted for a sample of commercial buildings in the 50 States and the District of Columbia. For buildings in the survey, data are collected on the types, amount and cost of energy consumed in the building, how the energy is used, structural characteristics of the buildings, activities conducted inside the buildings that relate to energy use, building ownership and occupancy, energy conservation measures, and energy-using equipment. The information will be collected using Computer Assisted Personal Interviewing (CAPI) for the 2007 CBECS. For those buildings that cannot provide energy consumption data for the building, the data will be obtained in a mail survey from the suppliers of electricity and natural gas to the building, after receiving permission from the building owner, manager or tenant. This mail survey to the energy suppliers is mandatory. The data obtained from the CBECS are available to the public in a variety of EIA electronic tables and reports at *http://www.eia.doe.gov/emeu/cbecs.* Public use files that have been screened to protect the identity of the individual respondents are also available electronically at the above Web address. Selected data from the surveys are also published in the *Monthly Energy Review* and the *Annual Energy Review*.

II. Current Actions

This will be a proposed reinstatement of a previously approved collection and three-year clearance request to OMB.

The content of the 2007 CBECS will be largely unchanged from the 2003 CBECS. The sampling frame, which was redesigned for the 2003 CBECS, will be updated to account for new construction since 2003.

Proposed changes include:

Form EIA–871I—which collected information from college/university and hospital complexes on the inputs and outputs to their central physical plant, if present—will be discontinued. This form had been added for the 2003 CBECS, but upon review, it was determined that using a separate form was cumbersome and the data that were collected were not of high quality. However, a few questions from the form, such as the total square footage of the entire campus, may be incorporated into the computerized survey instrument for the 2007 CBECS.

The Environmental Protection Agency (EPA) has requested the inclusion of questions on the CBECS, relating to water consumption in commercial buildings. Pending funding from EPA and EIA and OMB approval, these questions will be used to gather some basic water use information to support a program to help consumers select more water efficient products.

For the 2003 CBECS, EPA's Energy Star program funded some supplemental sample cases and a few additional questions regarding the building activity. The purpose of their additional work was to help improve their publicly-available benchmarking models. We anticipate that a similar agreement will be put in place for the 2007 CBECS; discussions are currently underway.

The CBECS no longer collects data from energy suppliers about fuel oil or district heat consumption (consumption information for these sources are collected only from the building respondents). Forms EIA–871D and F have been eliminated.

Existing survey questions may be modified slightly based on knowledge gained from the 2003 CBECS and based on feedback from CBECS data users.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average approximately 45 minutes per interview for the building respondent (Form EIA–871A) and approximately 30 minutes per energy supplier response in those cases where the data must be collected from the energy suppliers (Forms EIA–871C and E). The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, October 18, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E6–17856 Filed 10–24–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0616; FRL–8083–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; Submission of Unreasonable Adverse Effects Information Under FIFRA Section 6(a)(2); EPA ICR No. 1204.10, OMB Control No. 2070–0039

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Submission of Unreasonable Adverse Effects Information Under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 6(a)(2)'' and identified by EPA ICR No. 1204.10 and OMB Control No.2070–0039, is scheduled to expire on May 31, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before December 26, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0616, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0616. 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: Kathryn Boyle, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; fax number: (703) 305–5884 e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

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 estimates 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.

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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Information Collection Activity or ICR Does This Action Apply To?

Affected entities: Entities potentially affected by this action are anyone who holds or ever held a registration for a pesticide product issued under FIFRA section 3 or 24(c). The North American Industrial Classification System (NAICS) code is 325320 (Pesticide and Other Agricultural Chemical Manufacturing).

Title: Submission of Unreasonable Adverse Effects Information Under FIFRA Section 6(a)(2).

ICR numbers: EPA ICR No. 1204.10, OMB Control No. 2070–0039.

ICR status: This ICR is currently scheduled to expire on May 31, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 6(a)(2) of FIFRA requires pesticide registrants to submit information to the Agency which may be relevant to the balancing of the risks and benefits of a pesticide product. The statute requires the registrant to submit any factual information that it acquires regarding adverse effects associated with its pesticidal products, and it is up to the Agency to determine whether or not that factual information constitutes an unreasonable adverse effect. Responses to this collection are mandatory. The authority for this information collection is section 6(a)(2) of FIFRA. Compliance regulations are contained in 40 CFR part 159. CBI submitted to EPA in response to this information collection is protected from disclosure under FIFRA section 10.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 97.3 hours per registrant (respondent). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1,720 registrants.

Frequency of response: As needed.

Estimated total average number of responses for each respondent: For submission of studies: Less than 1. For submission of incident reports: 1 to 3, since incidents are usually reported as aggregate statistics.

Estimated total annual burden hours: 167,316 hours.

Estimated total annual costs: $9,809,591. There are no capital expenditures or operation and maintenance costs associated with this information collection activity.

IV. Are There Changes In the Estimates from the Last Approval?

This ICR renewal request reflects an increase of approximately 11,677 burden hours to an annual respondent burden of 167,316 hours at a cost of $9,809,591 (in 2006 dollars). Thus, the costs decreased. The change in burden reflects a number of adjustments. First, for this renewal ICR, there are now fewer registrants of active products (1,720 versus 1,877) and therefore fewer employees to be trained (17,200 versus

18,770) than reflected in the existing ICR.

The hours used to calculate total burden hours and costs are unchanged from the existing ICR. Total burden hour estimates associated with studies are reduced because the estimated number of study submissions is reduced from 325 studies to 240. Burden estimates associated with the number of incident reports, however, are increased because of the increased volume of incident reporting (17%). Overall, considering both the decrease in studies and the increase in incidents, the total burden hours increased minimally from 155,639 to 167,316.

V. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 5, 2006.

James B. Gulliford,

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

[FR Doc. E6–17763 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0636; FRL–8085–5]

Agency Information Collection Activities; Proposed Collection; Comment Request; Pesticide Registration Fee Waivers; EPA ICR No. 2147.03, OMB Control No. 2070–0167

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Pesticide Registration Fee Waivers'' and identified by EPA ICR No. 2147.03 and OMB Control No. 2070–0167, is scheduled to expire on December 31, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before December 26, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0636, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0636. EPA's policy is that all comments received will be included in the public 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 regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 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: Joseph Hogue, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9072; fax number: (703) 305–5884; e-mail address: *hogue.joe@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

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 estimates 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.

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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Information Collection Activity or ICR Does This Action Apply To?

Affected entities: Entities potentially affected by this action are pesticide registrants and applicants for pesticide registration.

Title: Pesticide Registration Fee Waivers.

ICR numbers: EPA ICR No. 2147.03, OMB Control No. 2070–0167.

ICR status: This ICR is currently scheduled to expire on December 31, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection will allow EPA to process requests for waivers of fees under the Pesticide Registration Improvement Act of 2003 (PRIA). The ICR covers the collection activities associated with requesting a fee waiver and involves requesters submitting a waiver request, information to demonstrate eligibility for the waiver, and certification of eligibility. Waivers are available for small businesses, for minor uses, and for actions solely associated with the Inter-Regional Research Project Number 4 (IR–4). State and Federal Agencies are exempt from the payment of fees. Information collected will allow EPA to determine whether to grant a waiver of registration fees, according to PRIA requirements. Responses to the collection of information are required to obtain a fee waiver. Data and/or information submitted to the Agency in conjunction with service fee waiver requests may be claimed as trade secret or commercial or financial information and will be protected from disclosure under FIFRA section 10 and the associated regulation as contained in 40 CFR part 2, subpart B.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 37, 12, and 27 hours per response, for the three different types of applications. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 389.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 8,368 hours.

Estimated total annual costs: $521,903. This includes an estimated burden cost of $518,013. There are no capital investment or maintenance and operational costs.

IV. Are There Changes In the Estimates From the Last Approval?

The total estimated respondent burden hours have decreased by 2,302 hours, from 10,670 to 8,368, compared with that identified in the ICR currently approved by OMB. The number of responses per year was estimated in the currently approved ICR, as it was a new requirement, whereas this proposed renewal uses actual values based on experience.

V. What is the Next Step In the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 5, 2006.

James B. Gulliford,

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

[FR Doc. E6–17765 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0660; FRL–8087–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Pesticide Product Registration Maintenance Fee; EPA ICR No. 1214.07, OMB Control No. 2070–0100

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This

ICR, entitled: ''Pesticide Product Registration Maintenance Fee'' and identified by EPA ICR No. 1214.07 and OMB Control No. 2070–0100, is scheduled to expire on May 31, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before December 26, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0660, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0660. EPA's policy is that all comments received will be included in the public 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 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 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 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: Joseph Hogue, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9072; fax number: (703) 305–5884; e-mail address: *hogue.joe@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

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 estimates 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.

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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Information Collection Activity or ICR Does This Action Apply To?

Affected entities: Entities potentially affected by this action are pesticide registrants.

Title: Pesticide Product Registration Maintenance Fee.

ICR numbers: EPA ICR No. 1214.07, OMB Control No. 2070–0100.

ICR status: This ICR is currently scheduled to expire on May 31, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This collection provides a practical means of communication between the registrants and the Environmental Protection Agency's

Office of Pesticide Programs (OPP) to collect registration maintenance fees from pesticide registrants as required by law. Respondents complete and submit EPA Form 8570–30 indicating the respondent's liability for the registration maintenance fee. Each affected firm is required to complete the filing form and submit their fee payment by January 15 of each year. No changes in the substance or in the method of collection are proposed in this ICR renewal request.

Burden statement: The annual ''respondent'' (applicant) burden for the Pesticide Product Registration Maintenance Fee program is estimated to average 0.96 hours per form. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1,720.

Frequency of response: Annually.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 1,645.

Estimated total annual costs: $125,801. There are no capital investment or maintenance and operational costs.

IV. Are There Changes In the Estimates From the Last Approval?

The total annual burden for respondents associated with this renewal is 1,645 hours. This reflects a decrease of 118 hours from the last renewal period. The decrease represents the steady decline of the number of pesticide registrants and, therefore, participation under this program. In 2006, the projected estimate is 1,720 registrants. This represents a decrease of 157 respondents from the 1,877 reported in the last ICR renewal. The average time required to complete the maintenance fee filing form depends upon the number of registrations held by the registrant. In addition to fewer respondents in 2006, a smaller percentage of registrants held a small number of registered products. This shift to a slightly larger average number of registrations per registrant resulted in a slight increase in the average burden hours required to complete the form, from 0.94 hours in the last ICR renewal, to 0.96 hours.

V. What is the Next Step In the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 5, 2006.

James B. Gulliford,

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

[FR Doc. E6–17778 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0631; FRL–8083–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection; EPA ICR No. 1249.08, OMB Control No. 2070–0074

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection'' and identified by EPA ICR No. 1249.08 and OMB Control No. 2070–0074, is scheduled to expire on May 31, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before December 26, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0631, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0631. EPA's policy is that all comments received will be included in the public 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 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 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 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:

Nathanael R. Martin, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *martin.nathanael@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

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 estimates 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.

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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Information Collection Activity or ICR Does This Action Apply To?

Affected entities: Entities potentially affected by this action are pesticide and other agricultural manufacturers (North American Industrial Classification System (NAICS) code 325320), e.g., pesticide registrants whose products include 1080 collars; and government establishments primarily engaged in the administration of agricultural pest control programs and regulation (NAICS code 926140) and environmental quality programs (NAICS code 9241), e.g., goverment agencies involved in the application of 1080 collars and states implementing a 1080 collar monitoring program, respectively.

Title: Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection.

ICR numbers: EPA ICR No. 1249.08, OMB Control No. 2070–0074.

ICR status: This ICR is currently scheduled to expire on May 31, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR affects approximately 40 certified pesticide applicators who utilize 1080 toxic collars for livestock protection. Four states (Montana, New Mexico, South Dakota, and Wyoming) monitor the program and five pesticide registrants are required to keep records of:

- Number of collars purchased.
- Number of collars attached on livestock.
- Pasture(s) where collared livestock were placed.
- Number and locations of livestock found with ruptured or punctured collars and the apparent cause of the damage.
- The dates of each attachment, inspection, and removal.
- Number, dates, and approximate location of all collars lost.
- Locations and dates of all suspected poisonings of humans, domestic animals or non-target wild animals resulting from collar use location and species data on each animal poisoned as an apparent result of the toxic collar.

Applicators maintain records, and the registrants/lead agencies do monitoring studies and submit the reports. These records are monitored by either the: State lead agencies, EPA regional offices, or the registrants. EPA receives annual monitoring reports from registrants or state lead agencies.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated as follows: Average of 9 hours per response for registrant respondents, 40 hours per response for certified applicator respondents, and 77 hours per response for state agency respondents. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have

subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 49.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 1,953 hours.

Estimated total annual costs: $70,261.59.

IV. Are There Changes In the Estimates From the Last Approval?

There is an increase of 200 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's estimate of increased numbers of certified applicators (from 35 certified applicators in 2003 to 40 in the current ICR). This change is an adjustment.

V. What is the Next Step In the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 5, 2006.

James B. Gulliford,

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

[FR Doc. E6–17779 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0632; FRL–8083–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Application for Experimental Use Permit to Ship and Use a Pesticide for Experimental Purposes Only; EPA ICR No. 0276.13, OMB Control No. 2070–0040

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Application for Experimental Use Permit to Ship and Use a Pesticide for Experimental Purposes Only'' and identified by EPA ICR No. 0276.13 and OMB Control No. 2070–0040, is scheduled to expire on May 31, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before December 26, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0632, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0632. EPA's policy is that all comments received will be included in the public 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 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 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 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: Cameo G. Smoot, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5454; fax number: (703) 305–5884; e-mail address: *smoot.cameo@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

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 estimates 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.

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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Information Collection Activity or ICR Does This Action Apply To?

Affected entities: Entities potentially affected by this action are pesticide and other agricultural chemical manufacturers (North American Industrial Classification System (NAICS) code 325320).

Title: Application for Experimental Use Permit to Ship and Use a Pesticide for Experimental Purposes Only.

ICR numbers: EPA ICR No. 0276.13, OMB Control No. 2070–0040.

ICR status: This ICR is currently scheduled to expire on May 31, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection provides EPA with the data necessary to determine whether to issue an experimental use permit (EUP) under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. FIFRA requires that before a pesticide product may be distributed or sold in the United States it must be registered by EPA. However, section 5 authorizes EPA to issue EUPs which allow pesticide companies to temporarily ship pesticide products for experimental use for the purpose of gathering data necessary to support the application for registration of a pesticide product. In general, EUPs are issued either for a pesticide not registered with the Agency or for a registered pesticide for a use not registered with the Agency.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10.10 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 75.

Frequency of response: As needed.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 757.50 hours.

Estimated total annual costs: $48,327.45. There are no capital expenditures or operation and maintenance costs associated with this information collection activity.

IV. Are There Changes In the Estimates From the Last Approval?

There is no change in the number of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

V. What is the Next Step In the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 5, 2006.

James B. Gulliford,

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

[FR Doc. E6–17791 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2006–0369; FRL–8234–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Estuary Program; EPA ICR No. 1500.06, OMB Control No. 2040–0138

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 24, 2006.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2006–0369, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket—Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 *FR* 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations, and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *http://www.regulations.gov* are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: John McShane, Oceans and Coastal Protection Division, Office of Wetlands, Oceans, and Watersheds, Mail Code 4504T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1381; fax number (202) 566–1336; e-mail address: *mcshane.john@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 23, 2006 (71 *FR* 29619), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA did not receive any comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2006–0369, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Water Docket is (202) 566–2426.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: National Estuary Program.

ICR numbers: EPA ICR No. 1500.06, OMB Control No. 2040–0138.

ICR Status: This ICR is scheduled to expire on November 30, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Estuary Program (NEP) involves collecting information from the state or local agency or nongovernmental organizations that receive funds under Section 320 of the Clean Water Act. The regulation requiring this information is found at 40 CFR part 35. Prospective grant recipients seek funding to develop or oversee and coordinate implementation of Comprehensive Conservation Management Plans (CCMPs) for estuaries of national significance. In order to receive funds, grantees must submit an annual workplan to EPA. The workplan consists of two parts: (a) Progress on projects funded previously; and (b) new projects proposed with dollar amounts and completion dates. The workplan is reviewed by EPA and also serves as the scope of work for the grant agreement. EPA also uses these workplans to track performance of each of the 28 estuary programs currently in the NEP.

EPA provides funding to NEPs to support long-term implementation of CCMPs if such programs pass an implementation review process. Implementation reviews are used to determine progress each NEP is making in implementing its CCMP and achieving environmental results. In addition to evaluating progress, the results are used to identify areas of weakness each NEP should address for long-term success in protecting and restoring their estuaries. EPA will also compile successful tools and approaches as well as lessons learned from all implementation reviews to transfer to the NEPs and other watershed programs. For this ICR cycle, implementation reviews will be required for seven programs in FY2006, 12 programs in FY2007, and nine programs in 2008.

EPA requests that each of the 28 NEPs receiving Section 320 funds report information that can be used in the Government Performance and Results Act (GPRA) reporting process. This reporting is done on an annual basis and is used to show environmental results that are being achieved within the overall NEP Program. This information is ultimately submitted to Congress

along with GPRA information from other EPA programs.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 218 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State or local agencies or nongovernmental organizations in the NEP who receive grants under Section 320 of the Clean Water Act.

Estimated Number of Respondents: 28.

Frequency of Response: Annual.

Estimated Total Annual Burden Hours: 5,833.

Estimated Total Annual Cost: $409,349, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 280 hours, which is a result of the information collection process being more streamlined and efficient.

Dated: October 10, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–17875 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8234–2]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) response to Agency Clearance requests, in compliance with the Paperwork Reduction Act (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 currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 2032.04; NESHAP for Hydrochloric Acid Production; in 40 CFR part 63, subpart NNNNN; was approved 09/06/2006; OMB number 2060–0529; expires 09/30/2009.

EPA ICR No. 2034.03; NESHAP for Wood Products Surface Coating Industry (Renewal); in 40 CFR part 63, subpart QQQQ; was approved 09/06/2006; OMB Number 2060–0510; expires 09/30/2009.

EPA ICR No. 1952.03; NESHAP for Metal Furniture Surface Coating (Renewal); in 40 CFR part 63, subpart RRRR; was approved 09/06/2006; OMB Number 2060–0518; expires 09/30/2009.

EPA ICR No. 1894.05; NESHAP for Secondary Aluminum Production (Renewal); in 40 CFR part 63, subpart RRR; was approved 09/06/2006; OMB number 2060–0433; expires 09/30/2009.

EPA ICR No. 0633.09; NSPS for Beverage Can Surface Coating (Renewal); in 40 CFR part 60, subpart WW; was approved 10/03/2006; OMB Number 2060–0001; expires 10/31/2009.

EPA ICR No. 0794.11; Notification of Substantial Risk of Injury to Health and the Environment under TSCA Sec. 8(e); was approved 10/02/2006; OMB Number 2070–0046; expires 10/31/2009.

EPA ICR No. 0649.09; NSPS for Metal Furniture Coating (Renewal); in 40 CFR part 60, subpart EE; was approved 10/02/2006; OMB Number 2060–0106; expires 10/31/2009.

EPA ICR No. 2177.02; Standards of Performance for Stationary Combustion Turbines (Final Rule); in 40 CFR part 60, subpart KKKK; was approved 10/02/2006; OMB Number 2060–0582; expires 10/31/2009.

EPA ICR No. 1934 .03; National Primary Drinking Water Regulations: Ground Water Rule (Final Rule); in 40 CFR 141.400–406; 40 CFR 142.14–16; OMB Number 2040–0271; was approved 10/11/2006; expires 10/31/2009.

EPA ICR No. 2244.01; Reducing the State Reporting Burden and Streamlining Measures; was approved 10/11/2006; OMB Number 2090–0027; expires 04/30/2007.

EPA ICR No. 0659.10; NSPS for Surface Coating of Large Appliances; in 40 CFR part 60, subpart SS; was approved 10/10/2006; OMB Number 2060–0108; expires 10/31/2009.

EPA ICR No. 2088.02; Reporting and Recordkeeping Requirements under EPA's Hospitals for a Healthy Environment (H2E) Program; was approved 10/10/2006; OMB Number 2070–0166; expires 10/31/2009.

Comment Filed

EPA ICR No. 1230.13; Information Collection Request for Proposed Rule for Review of New Sources and Modifications in Indian Country; in 40 CFR part 49 and 51; OMB Number 2060–0003; OMB filed comments on 09/27/2006.

EPA ICR No. 1975.03; Additional Reporting and Recordkeeeping Requirements for NESHAP for Stationary Reciprocating Internal Combustion Engines (Proposed Rule); in 40 CFR part 63, subpart ZZZZ; OMB Number 2060–0548; OMB filed comments on 09/06/2006.

Dated: October 16, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–17876 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2006–0486; FRL–8234–4]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request; 2007 Drinking Water Infrastructure Needs Survey and Assessment; Agency Information Collection; EPA ICR No. 2234.01; OMB Control No. 2040–NEW

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 24, 2006.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2006–0486, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *barles.robert@epa.gov* or by mail to: Water Docket, EPA Docket Center (EPA/DC), U.S. Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: Robert Barles, Office of Ground Water and Drinking Water (4606M) Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–3814; fax number: (202) 564–3757; e-mail address: *barles.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 5, 2006 (71 FR 32344), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 1 comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2006–0486, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Water Docket in the 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 Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: 2007 Drinking Water Infrastructure Needs Survey and Assessment.

ICR numbers: EPA ICR No. 2234.01; OMB Control No. 2040-new.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The purpose of this information collection is to identify the infrastructure needs of community public water systems for the 20-year period from January 2007 through December 2027. EPA's Office of Ground Water and Drinking Water (OGWDW) will collect these data to comply with Sections 1452(h) and 1452(i)(4) of the Safe Drinking Water Act (42 U.S.C. 300j–12). EPA will use a questionnaire to collect capital investment need information from large (serving more than 100,000 people) and medium (serving more than 3,300 people but less than 100,000) community water systems. The questionnaire will also be used by EPA survey teams in visits to 400 to 600 statistically-selected small (serving less than 3,300 people) community water systems to ascertain their infrastructure needs. Participation in the survey is voluntary. The data from the questionnaires will provide EPA with a basis for estimating the nationwide infrastructure needs of community water systems. Also, as mandated by Section 1452(a)(1) (D)(ii) of the Safe Drinking Water Act, EPA uses the results of the latest survey to allocate Drinking Water State Revolving Fund (DWSRF) monies to the States. Under the allotment formula, each State receives a grant of the annual DWSRF appropriation in proportion to its share of the total national need—with the proviso that each State receives at least 1 percent of the total funds available.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7.62 hours per response for Local Government Owned Water Systems; 5.68 hours per response for Privately Owned Water Systems; 6.72 hours per response for State Government Owned Water Systems; and 18.7 hours per response for State and U.S. Territories Water Agencies. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Local Government Owned Water Systems, Privately Owned Water Systems, State Government Owned Water Systems, and State and U.S. Territories Water Agencies.

Estimated Number of Respondents: 3,193.

Frequency of Response: 0.33 times per year.

Estimated Total Annual Hour Burden: 15,343.

Estimated Total Annual Cost: $513,462 includes $0 annualized capital or O&M costs.

Dated: October 18, 2006.

Rick Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. E6–17877 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8234–5]

Guidelines for Awarding Clean Water Act Section 319 Base Grants to Indian Tribes and Request for Proposals From Indian Tribes for Competitive Grants Under Clean Water Act Section 319 in FY 2007 (CFDA 66.460—Nonpoint Source Implementation Grants; Funding Opportunity Number EPA–OW–OWOW–07–1)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Guidelines for Section 319 Base Grants and Request for Proposals for Section 319 Competitive Grants.

SUMMARY: This notice publishes EPA's national guidelines for the award of base grants and EPA's Request for Proposals (RFP) for the award of supplemental funding in the form of competitive grants under the Clean Water Act (CWA) section 319(h) nonpoint source (NPS) grants program to Indian Tribes in FY 2007. Section 319 of the CWA authorizes EPA to award grants to eligible Tribes for the purpose of assisting them in implementing approved NPS management programs developed pursuant to section 319(b). The primary goal of the NPS management program is to control NPS pollution through implementation of management measures and practices to reduce pollutant loadings resulting from each category or subcategory of NPSs identified in the Tribe's NPS assessment report developed pursuant to section 319(a). EPA anticipates, pending enactment of its FY 2007 appropriations, awarding a total of $7,000,000 to eligible Tribes which have approved NPS assessments and management programs and (treatment-as-a-state'' (TAS) status as of October 13, 2006. EPA expects the allocation of funds will be similar to the amount distributed in FY 2006, which included approximately $3.2 million in base grants awarded to 95 Tribes and $3.8 million awarded to 28 Tribes through a competitive process. Section A includes EPA's national guidelines which govern the process for awarding base grants to all eligible Tribes, and section B is the national RFP for awarding the remaining funds on a competitive basis. In future years, EPA intends to post the RFP for competitive grants under section 319 at *http://www.grants.gov* and on EPA's Web site at *http://www.epa.gov/owow/nps/tribal.*

DATES: These guidelines are effective October 25, 2006.

FOR FURTHER INFORMATION CONTACT: Andrea Matzke, U.S. EPA, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division, telephone: (202) 566–1155; fax: (202) 566–1331; e-mail: *matzke.andrea@epa.gov.* Also contact the appropriate EPA Regional Tribal NPS Coordinator identified in section B.VII and also listed on EPA's website under ''EPA Tribal NPS Coordinators'' at *http://www.epa.gov/owow/nps/tribal.*

SUPPLEMENTARY INFORMATION:

Background

EPA anticipates that Congress will, for the eighth year in a row, authorize EPA to award NPS control grants to Indian Tribes in FY 2007 in an amount that exceeds the statutory cap (in section 518(f) of the CWA) of ⅓ of 1 percent of the total section 319 appropriation. There is continuing recognition that Indian Tribes need increased financial support to implement NPS programs that address critical water quality concerns on Tribal lands. EPA will continue to work closely with the Tribes to assist them in developing and implementing effective Tribal NPS pollution programs.

EPA was pleased by the quality of the Tribes' work plans that formed the basis of the grants awarded to Tribes in FY 2006, which included approximately $3.2 million in base grants awarded to 95 Tribes and $3.8 million awarded to 28 Tribes for specific watershed projects through a competitive process. We believe that the FY 2006 grants were directed towards high-priority activities that will produce improved water quality. We look forward to working with Tribes again in FY 2007 to implement successful projects addressing the extensive NPS control needs throughout Indian country.

Guidelines for Awarding CWA Section 319 Base Grants to Indian Tribes (See Section A Below)

Overview Information

Section 319 of the CWA authorizes EPA to award grants to eligible Tribes for the purpose of assisting them in implementing approved NPS management programs developed pursuant to section 319(b). The primary goal of the NPS management program is to control NPS pollution through implementation of management measures and practices to reduce pollutant loadings resulting from each category or subcategory of NPSs identified in the Tribe's NPS assessment report developed pursuant to section 319(a). EPA anticipates awarding section 319 base grants to eligible Tribes in the amount of $30,000 or $50,000 of Federal section 319 funding (depending on land area). Section 319 base funds may be used for a range of activities that implement the Tribe's approved NPS management program, including: Hiring a program coordinator; conducting NPS education programs; providing training and authorized travel to attend training; updating the NPS management program; developing watershed-based plans; and implementing, alone or in conjunction with other agencies or other funding sources, watershed-based plans and on-the-ground watershed projects.

Request for Proposals From Indian Tribes for Competitive Grants Under Clean Water Act Section 319 in FY 2007 (See Section B Below)

Overview Information

This RFP is issued pursuant to section 319(h) of the CWA. Section 319 of the CWA authorizes EPA to award grants to eligible Tribes for the purpose of assisting them in implementing approved NPS management programs developed pursuant to section 319(b). The primary goal of the NPS management program is to control NPS pollution through implementation of management measures and practices to reduce pollutant loadings resulting from each category or subcategory of NPSs identified in the Tribe's NPS assessment report developed pursuant to section 319(a). EPA anticipates setting aside a portion of section 319 funds for competitive grant awards to Tribes for the purpose of funding the development and implementation of watershed-based plans and other on-the-ground projects that result in a significant step towards solving NPS impairments on a watershed-wide basis. Tribes are strongly encouraged to submit proposals that develop and/or implement watershed-based plans designed to protect unimpaired waters and restore NPS-impaired waters. EPA believes that watershed-based plans provide the best means for preventing and resolving NPS problems and threats. Watershed-based plans provide a coordinating framework for solving water quality problems by providing a specific geographic focus, integrating strong partnerships, integrating strong science and data, and coordinating priority setting and integrated solutions. EPA anticipates awarding approximately 25 competitive grants, subject to availability of funds and the quality of proposals submitted. Eligible Tribes may apply for competitive funding by submitting a proposal for up to a maximum budget of $150,000 of Federal section 319 funding

(plus the additional required match of the total project cost).

Federal Agency Name: EPA.

Funding Opportunity Title: Tribal Nonpoint Source Implementation Grants.

Announcement Type: Request for Proposals.

Funding Opportunity Number: EPA-OW-OWOW–07–1.

Catalog of Federal Domestic Assistance (CFDA) Number: 66.460.

Dates: Deadline EPA uses to determine eligibility to receive competitive 319 grants. October 13, 2006.

Deadline for receipt of proposals in hard copy by Region or electronically through Grants.gov. December 19, 2006.

Headquarters notifies Regions/Tribes of selections for competitive 319 grants. March 5, 2007.

Tribes submit final grant application to Region for competitive 319 grants. April 5, 2007.

Other than the date EPA will use to determine eligibility to receive 319 grants and the deadline for receipt of proposals in response to the RFP (Section B), the dates above are the anticipated dates for those actions.

Section A. Guidelines for Awarding Clean Water Act Section 319 Base Grants to Indian Tribes

I. General

EPA has developed guidelines for awarding CWA section 319 base grants to Indian Tribes. These guidelines apply to section 319 base grants awarded from funds appropriated by Congress in FY 2007 and in subsequent years.

1. Environmental Results

Grants awarded under these guidelines will advance the protection and improvement of water quality in support of Goal 2 (Clean and Safe Water), Objective 2 (Protect Water Quality), Sub-objective 1 (Protect and Improve Water Quality on a Watershed Basis) of EPA's 2003–2008 Strategic Plan (see *http://www.epa.gov/water/waterplan/documents/Goal2.pdf*). In support of Sub-objective 2.2.1, and consistent with EPA Order 5700.7, Environmental Results under EPA Assistance Agreements (see *http://www.epa.gov/ogd/grants/award/5700.7.pdf*), it is anticipated that grants awarded under these guidelines will be expected to accomplish various environmental outputs and outcomes as described below. All proposed work plans must include specific statements describing the environmental results of the proposed project in terms of well-defined outputs, and, to the maximum extent practicable, well-defined outcomes that demonstrate how the project will contribute to the overall protection and improvement of water quality.

Environmental outputs (or deliverables) refer to an environmental activity, effort, and/or associated work product related to an environmental goal or objective, that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative, but must be measurable during an assistance agreement funding period. Examples of environmental outputs anticipated as a result of section 319 grant awards may include but are not limited to: a watershed-based plan, progress reports, or a particular number of on-the-ground management measures or practices installed or implemented during the project period.

Environmental outcomes mean the result, effect, or consequence that will occur from carrying out an environmental program or activity that is related to an environmental or programmatic goal or objective. Outcomes may be environmental, behavioral, health-related or programmatic in nature, must be quantitative, and may not necessarily be achieved within an assistance agreement funding period. Examples of environmental outcomes anticipated as a result of section 319 grants to be awarded may include but are not limited to: an increased number of NPS-impaired waterbodies that have been partially or fully restored to meet water quality standards or other water quality-based goals established by the Tribes; and/or an increased number of waterbodies that have been protected from NPS pollution.

2. Allocation Formula

Each eligible Tribe will receive Federal section 319 base funding in accordance with the following land area scale:

Square miles (acres)	Base amount
Less than 1,000 sq. mi. (less than 640,000 acres)	$30,000
Over 1,000 sq. mi. (over 640,000 acres)	50,000

The land area scale is the same as used in previous years. EPA continues to rely upon land area as the deciding factor for allocation of funds because NPS pollution is strongly related to land use; thus land area is a reasonable factor that generally is highly relevant to identifying Tribes with the greatest needs (recognizing that many Tribes have needs that significantly exceed available resources).

3. Eligible Activities

Section 319 base funds may be used for a range of activities that implement the Tribe's approved NPS management program, including: Hiring a program coordinator; conducting NPS education programs; providing training and authorized travel to attend training; updating the NPS management program; developing watershed-based plans; and implementing, alone or in conjunction with other agencies or other funding sources, watershed-based plans and on-the-ground watershed projects. In general, base funding should not be used for general assessment activities (e.g., monitoring the general status of reservation waters, which may be supported with CWA section 106 funding). EPA encourages Tribes to use section 319 funding, and explore the use of other funding such as CWA section 106 funding, to support project-specific water quality monitoring, data management, data analysis, assessment activities, and the development of watershed-based plans.

II. Eligibility and Match Requirements

To be eligible for NPS base grants, a Tribe or intertribal consortium must: (1) Be Federally recognized; (2) have an approved NPS assessment report in accordance with CWA section 319(a); (3) have an approved NPS management program in accordance with CWA section 319(b); and (4) have ''treatment-as-a-state'' (TAS) status in accordance with CWA section 518(e). To be eligible for base and competitive NPS grants in FY 2007, Tribes must meet these eligibility requirements as of October 13, 2006, as announced in the FY 2006 guidelines on January 17, 2006, at 71 FR 2531. To be eligible for NPS grants in years beyond FY 2007, Tribes must meet these eligibility requirements as of the second Friday in October for the applicable fiscal year unless otherwise announced. Tribes should contact their EPA Regional Tribal NPS Coordinator for further information about the eligibility process (see section B.VII for Agency contact information and also EPA's Web site under ''EPA Tribal NPS Coordinators'' at *http://www.epa.gov/owow/nps/tribal*).

Section 319(h)(3) of the CWA requires that the match for NPS grants is 40 percent of the total project cost. In general, as required in 40 CFR 31.24, the match requirement can be satisfied by any of the following: allowable costs incurred by the grantee, subgrantee, or a cost-type contractor, including those allowable costs borne by non-Federal

grants; by cash donations from non-Federal third parties; or by the value of third party in-kind contributions.

EPA's regulations also provide that EPA may decrease the match requirement to as low as 10 percent if the Tribe can demonstrate in writing to the Regional Administrator that fiscal circumstances within the Tribe or within each Tribe that is a member of the intertribal consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship (see 40 CFR 35.635). In making grant awards to Tribes that provide for a reduced match requirement, Regions must include a brief finding in the final award package that the Tribe has demonstrated that it does not have adequate funds to meet the required match.

III. Application Requirements for Base Grants

1. Address To Request Application Package for Base Grants

Grant application forms, including Standard Form (SF) 424, are available at *http://www.epa.gov/ogd/grants/how_to_apply.htm* and by mail upon request by calling the EPA Headquarters Grants Administration Division at (202) 564–5320. Tribes may also contact their EPA Regional Tribal NPS Coordinator for further information about the application process (see section B.VII for Agency contact information and also EPA's Web site under ''EPA Tribal NPS Coordinators'' at *http://www.epa.gov/owow/nps/tribal*).

2. Content and Form of Application Submission for Base Grants

Please note that only the proposed work plan, including all of the components outlined in the section immediately below, needs to be included in the initial application for base grants (see section A.VIII for deadlines and milestones for FY 2007 base grants).

To apply for section 319 base grants, you must submit a proposed work plan to the appropriate EPA Regional Tribal NPS Coordinator (see section B.VII for Agency contact information and also EPA's Web site under ''EPA Tribal NPS Coordinators'' at *http://www.epa.gov/owow/nps/tribal*). You may submit the proposed work plan as either a hard copy or an electronic submission. If you submit a hard copy proposed work plan, you have the option to submit it by U.S. Postal Mail, express delivery service, hand delivery, or courier service only. EPA will not accept faxed submissions. If you submit a hard copy proposed work plan, you are encouraged (not required) to include a compact disc (CD) with the electronic version of the proposed work plan. If you submit your proposed work plan electronically, it should be sent to the appropriate EPA Regional Tribal NPS Coordinator at the e-mail address listed in section B.VII of this announcement and also on EPA's Web site under ''EPA Tribal NPS Coordinators'' at *http://www.epa.gov/owow/nps/tribal.*

The specific content and form of the proposed work plan for the award of section 319 base grants is as follows:

a. Proposed Work Plan. Tribes must submit a work plan to receive base funding. All work plans must be consistent with the Tribe's approved NPS management program and conform to legal requirements that are applicable to all environmental program grants awarded to Tribes (see 40 CFR 35.507 and 35.515) as well as the grant requirements which specifically apply to NPS management grants (see 40 CFR 35.638). As provided in those regulations, and in accordance with EPA Order 5700.7, *Environmental Results under EPA Assistance Agreements*, all work plans must include:

i. Description of each significant category of NPS activity to be addressed;

ii. Work plan components;

iii. Work plan commitments for each work plan component, including anticipated environmental outputs and outcomes (as required by EPA Order 5700.7) and the applicant's plan for tracking and measuring its progress towards achieving the expected outputs and outcomes;

iv. Estimated funding amounts for each work plan component;

v. Estimated work years for each work plan component;

vi. Roles and responsibilities of the recipient and EPA in carrying out the work plan commitments; and

vii. Reporting schedule and a description of the performance evaluation process that will be used that accounts for: (a) A discussion of accomplishments as measured against work plan commitments and anticipated environmental outputs and outcomes; (b) a discussion of the cumulative effectiveness of the work performed under all work plan components; (c) a discussion of existing and potential problem areas; and (d) suggestions for improvement, including, where feasible, schedules for making improvements.

b. Work Plan to Develop a Watershed-Based Plan. If a Tribe submits a work plan to develop a watershed-based plan, it must include a commitment to incorporate the nine components of a watershed-based plan identified in section A.V.1 below.

c. Work Plan to Implement a Watershed-Based Plan. If a Tribe submits a work plan to implement a watershed-based plan, it must be accompanied by a statement that the Region finds that the watershed-based plan to be implemented includes the nine components of a watershed-based plan identified in section A.V.1 below.

IV. Submission Dates and Times for Proposed Work Plans for Base Grants

In FY 2007, eligible Tribes must submit to the appropriate EPA Regional Tribal NPS Coordinator proposed work plans for base funding by December 19, 2006 (see section B.VII for Agency contact information; Agency contact information is also posted on EPA's Web site under ''EPA Tribal NPS Coordinators'' at *http://www.epa.gov/owow/nps/tribal*). Each EPA Region will review the proposed work plan for base funding and, where appropriate, recommend improvements to the plan by January 19, 2007. The Tribe must submit a final work plan by February 20, 2007. If a Tribe has not submitted an approvable work plan for base funding by February 20, 2007, its allocated amount will be added to the competitive pool which will be used to fund Tribal NPS competitive grants (see section B).

Submission dates and times for proposed work plans for NPS base grant funding for years beyond FY 2007 are described in section A.IX below.

V. Watershed-Based Plans

EPA strongly encourages Tribes to use section 319 funding for the development and/or implementation of watershed-based plans to protect unimpaired waters and restore NPS-impaired waters. EPA also encourages Tribes to explore the use of other funding such as CWA section 106 funding to support the development of watershed-based plans. EPA believes that watershed-based plans provide the best means for preventing and resolving NPS problems and threats. Watershed-based plans provide a coordinating framework for solving water quality problems by providing a specific geographic focus, integrating strong partnerships, integrating strong science and data, and coordinating priority setting and integrated solutions. This section outlines the specific information that should be included in all watershed-based plans that are developed or implemented using section 319 funding. This information correlates with the elements of a watershed-based plan outlined in the NPS grants guidelines for States (see *FY 2004 Nonpoint Source*

Program and Grants Guidelines for States and Territories, available at *http://www.epa.gov/owow/nps/cwact.html*). One significant difference from the State guidelines is that a watershed-based plan for Tribes provides for the integration of ''water quality-based goals'' (see element (c) below), whereas the State guidelines call for specific estimates of load reductions that are expected to be achieved by implementing the plan. EPA has incorporated this flexibility for Tribes in recognition that not all Tribes have yet developed water quality standards and many Tribes may need additional time and/or technical assistance in order to develop more sophisticated estimates of the NPS pollutants that need to be addressed. Where such information does exist, or is later developed, EPA expects that it will be incorporated as appropriate into the watershed-based plan.

To the extent that information already exists in other documents (e.g., NPS assessment reports or NPS management programs), the information may be incorporated by reference into the watershed-based plan. Thus, the Tribe need not duplicate any existing process or document that already provides needed information.

1. Components of a Watershed-Based Plan

a. An identification of the causes and sources or groups of similar sources that will need to be controlled to achieve the goal identified in element (c) below. Sources that need to be controlled should be identified at the significant subcategory level with estimates of the extent to which they are present in the watershed (e.g., X number of dairy cattle feedlots needing upgrading, including a rough estimate of the number of cattle per facility; Y acres of row crops needing improved nutrient management or sediment control; or Z linear miles of eroded streambank needing remediation).

b. A description of the NPS management measures that will need to be implemented to achieve a water quality-based goal described in element (c) below, as well as to achieve other watershed goals identified in the watershed-based plan, and an identification (using a map or a description) of the critical areas for which those measures will be needed to implement the plan.

c. An estimate of the water quality-based goals expected to be achieved by implementing the measures described in element (b) above. To the extent possible, estimates should identify specific water quality-based goals, which may incorporate, for example: load reductions; water quality standards for one or more pollutants/uses; NPS total maximum daily load allocations; measurable, in-stream reductions in a pollutant; or improvements in a parameter that indicates stream health (e.g., increases in fish or macroinvertebrate counts). If information is not available to make specific estimates, water quality-based goals may include narrative descriptions and best professional judgment based on existing information.

d. An estimate of the amounts of technical and financial assistance needed, associated costs, and/or the sources and authorities that will be relied upon to implement the plan. As sources of funding, Tribes should consider other relevant Federal, State, local and private funds that may be available to assist in implementing the plan.

e. An information and education component that will be used to enhance public understanding and encourage early and continued participation in selecting, designing, and implementing the NPS management measures that will be implemented.

f. A schedule for implementing the NPS management measures identified in the plan that is reasonably expeditious.

g. A description of interim, measurable milestones for determining whether NPS management measures or other control actions are being implemented.

h. A set of criteria that can be used to determine whether the water quality-based goals are being achieved over time and substantial progress is being made towards attaining water quality-based goals and, if not, the criteria for determining whether the watershed-based plan needs to be revised.

i. A monitoring component to evaluate the effectiveness of the implementation efforts over time, measured against the criteria established under element (h) above.

EPA recognizes the difficulty of developing the information described above with precision and, as these guidelines reflect, believes that there must be a balanced approach to address this concern. On one hand, it is absolutely critical that Tribes make, at the subcategory level, a reasonable effort to identify the significant sources; identify the management measures that will most effectively address those sources; and broadly estimate the expected water quality-based goals that will be achieved. Without such information to provide focus and direction, it is much less likely that a project that implements the plan can efficiently and effectively address the NPSs of water quality impairments. On the other hand, EPA recognizes that even with reasonable steps to obtain and analyze relevant data, the available information at the planning stage (within reasonable time and cost constraints) may be limited; preliminary information and estimates may need to be modified over time, accompanied by mid-course corrections in the watershed plan; and it often will require a number of years of effective implementation to achieve the goals. EPA fully intends that the watershed planning process described above should be implemented in a dynamic and iterative manner to assure that projects implementing the plan may proceed even though some of the information in the watershed plan is imperfect and may need to be modified over time as information improves.

2. Scale and Scope of Watershed-Based Plans

The watershed-based plan should address a large enough geographic area so that its implementation addresses all of the significant sources and causes of impairments and threats to the waterbody in question. EPA recognizes that many Tribes may face jurisdictional limitations outside reservation boundaries. To the extent possible, EPA encourages Tribes to engage other partners and include mixed ownership watersheds when appropriate to solve the water quality problems (e.g., Tribal, Federal, State, and private lands). While there is no rigorous definition or delineation for this concept, the general intent is to avoid single segments or other narrowly defined areas that do not provide an opportunity for addressing a watershed's stressors in a rational and economical manner. At the same time, the scale should not be so large as to minimize the probability of successful implementation.

Once a watershed-based plan that contains the information identified above has been established, it can be used as the foundation for preparing annual work plans. Like the NPS management program approved under section 319(b), a watershed-based plan may be a multi-year planning document. Whereas the NPS management program provides overall program guidance to address NPS pollution on Tribal lands, a watershed-based plan focuses NPS planning on a particular watershed identified as a priority in the NPS management program. Due to the greater specificity of a watershed-based plan, it will generally have considerably more detail than a NPS management program, and identified portions may be implemented through highly specific

annual work plans. While the watershed-based plan can be considered a subset of the NPS management program, the annual work plan can be considered a subset of the watershed-based plan.

A Tribe may choose to implement the watershed-based plan in prioritized portions (e.g., based on particular segments, other geographic subdivisions, NPS categories in the watershed, or specific pollutants or impairments), consistent with the schedule established pursuant to item (f) above. In doing so, Tribes may submit annual work plans for section 319 grant funding that implement specific portions of the watershed-based plan. A watershed-based plan is a strategic plan for long-term success; annual work plans are the specific ''to-do lists'' to achieve that long-term success.

VI. Base Grant Requirements

1. Grant Requirements

A listing and description of general EPA regulations applicable to the award of assistance agreements may be viewed at *http://www.epa.gov/ogd/AppKit/appplicable_epa_regulations_and_description.htm*.

All applicable legal requirements including, but not limited to, EPA's regulations on environmental program grants for Tribes (see 40 CFR 35.500 to 35.735) and regulations specific to NPS grants for Tribes (see 40 CFR 35.630 to 35.638), apply to all section 319 grants.

2. Performance Partnership Grants

Performance Partnership Grants (PPG) enable Tribes to combine funds from more than one environmental program grant into a single grant with a single budget. If the Tribe includes the section 319 grant as a part of an approved PPG, the match requirement may be reduced to 5 percent of the allowable cost of the work plan budget for the first 2 years in which the Tribe receives a PPG; after 2 years, the match may be increased up to 10 percent of the work plan budget (as determined by the Regional Administrator). (See 40 CFR 35.536).

Where the stated purpose is to include the section 319 base grant in a PPG, a Tribe may prepare a budget and proposed work plan based upon the assumption that EPA will approve the waiver amount for PPGs under 40 CFR 35.536. If a proposed PPG work plan differs significantly from the section 319 work plan approved for funding, the Regional Administrator must consult with the National Program Manager. (See 40 CFR 35.535). The purpose of this consultation requirement is to address the issue of ensuring that a project which is awarded section 319 base funding is implemented once commingled with other grant programs in a PPG.

If the Tribe does not or cannot include the section 319 base grant as part of an approved PPG, or chooses to withdraw the section 319 grant from their PPG, the Tribe must then meet the match requirements identified in section A.II above and, as applicable, negotiate a revised work plan with the EPA Regional Tribal NPS Coordinator.

3. Intertribal Consortia

Some Tribes have formed intertribal consortia to promote cooperative work. An intertribal consortium is a partnership between two or more Tribes that is authorized by the governing bodies of those Tribes to apply for and receive assistance under this program. (See 40 CFR 35.502.) Individual Tribes who are a part of intertribal consortia that is awarded a section 319 base grant may not also be awarded an individual section 319 base grant. (Note that individual Tribes may still be eligible to apply for competitive funds described in section B if they do not also submit a proposal for competitive funds as part of an intertribal consortium.)

The intertribal consortium is eligible only if the consortium demonstrates that all its members meet the eligibility requirements for the section 319 program and authorize the consortium to apply for and receive assistance in accordance with 40 CFR 35.504. An intertribal consortium must submit with their proposed work plan to EPA adequate documentation of the existence of the partnership and the authorization of the consortium by its members to apply for and receive the grant. (See 40 CFR 35.504.) In making grant awards to Tribes who are part of intertribal consortia, Regions must include a brief finding in the final award package that the Tribes have demonstrated the existence of the partnership and the authorization of the consortium by its members to apply for and receive the grant.

4. Non-Tribal Lands

The following discussion explains the extent to which section 319 grants may be awarded to Tribes for use outside the reservation. We discuss two types of off-reservation activities: (1) Activities that are related to waters within a reservation, such as those relating to sources upstream of a waterway entering the reservation; and (2) activities that are unrelated to waters of a reservation. As discussed below, the first type of these activities may be eligible; the second is not.

a. Activities That Are Related to Waters Within a Reservation. Section 518(e) of the CWA provides that EPA may treat an Indian Tribe as a State for purposes of section 319 of the CWA if, among other things, ''the functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are * * * within the borders of an Indian reservation'' (see 33 U.S.C. 1377(e)(2)). EPA already awards grants to Tribes under section 106 of the CWA for activities performed outside of a reservation (on condition that the Tribe obtains any necessary access agreements and coordinates with the State, as appropriate) that pertain to reservation waters, such as evaluating impacts of upstream waters on water resources within a reservation. Similarly, EPA has awarded section 106 grants to States to conduct monitoring outside of State borders. EPA has concluded that grants awarded to an Indian Tribe pursuant to section 319 may similarly be used to perform eligible section 319 activities outside of a reservation if: (1) The activity pertains to the management and protection of waters within a reservation; and (2) just as for on-reservation activities, the Tribe meets all other applicable requirements.

b. Activities That Are Unrelated to Waters of a Reservation. As discussed above, EPA is authorized to award section 319 grants to Tribes to perform eligible section 319 activities if the activities pertain to the management and protection of waters within a reservation and the Tribe meets all other applicable requirements. In contrast, EPA is not authorized to award section 319 grants for activities that do not pertain to waters of a reservation. For off-reservation areas, including ''usual and accustomed'' hunting, fishing, and gathering places, EPA must determine whether the activities pertain to waters of a reservation prior to awarding a grant.

5. Administrative Costs

Pursuant to CWA section 319(h)(12), administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with the grant shall not exceed 10 percent of the grant award. The costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer are not subject to this limitation.

6. Satisfactory Progress

For a Tribe that received section 319 funds in the preceding fiscal year, section 319(h)(8) of the CWA requires that the Region determine whether the Tribe made ''satisfactory progress'' during the previous fiscal year in meeting the schedule of activities specified in its approved NPS management program. The Region will base this determination on an examination of Tribal activities, reports, reviews, and other documents and discussions with the Tribe in the previous year. Regions must include in each section 319 base grant award (or in a separate document, such as the grant-issuance cover letter, that is signed by the same EPA official who signs the grant), a written determination that the Tribe has made satisfactory progress during the previous fiscal year in meeting the schedule of milestones specified in its NPS management program. The Regions must include brief explanations that support their determinations.

7. Operation and Maintenance

Each section 319 grant must contain a condition requiring that the Tribe assure that any management practices implemented for the project be properly operated and maintained for the intended purposes during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail. Management practices and projects that are damaged or destroyed due to a natural disaster (e.g., earthquakes, storm events, floods, etc.) or events beyond the control of the grantee are exempt from this condition.

The condition must require the Tribe to assure that any subrecipient of section 319 funds similarly include the same condition in the subaward. Additionally, such condition must reserve the right of EPA and the Tribe, respectively, to conduct periodic inspections during the life span of the project to ensure that operation and maintenance are occurring, and shall state that, if it is determined that participants are not operating and maintaining practices in an appropriate manner, EPA or the Tribe, respectively, will request a refund for the project supported by the grant.

The life span of a project will be determined on a case-by-case basis, tailored to the types of practices expected to be funded in a particular project, and should be specified in the grant condition. For assistance in determining the appropriate life span of the project, Tribes may wish to examine other programs implementing similar practices, such as the U.S. Department of Agriculture's conservation programs. For example, for conservation practices, it may be appropriate to construct the life span consistent with the life span for similar conservation practices as determined by the Commodity Credit Corporation (pursuant to the implementation of the Environmental Quality Incentives Program). Following the approach used in many Federal funding programs, practices will generally be operated and maintained for a period of at least 5 to 10 years.

8. Reporting

As provided in 40 CFR 31.40, 31.41, 35.507, 35.515, and 35.638, all section 319 grants must include a set of reporting requirements and a process for evaluating performance. Some of these requirements have been explicitly incorporated into the required work plan components that all Tribes must include in order to receive section 319 grant funding.

The work plan components required for section 319 funding, specifically those relating to work plan commitments and timeframes for their accomplishment, facilitate the management and oversight of Tribal grants by providing specific activities and outputs by which progress can be monitored. The performance evaluation process and reporting schedule (both work plan components) also establish a formal process by which accomplishments can be measured. Additionally, the satisfactory progress determination (for Tribes that received section 319 funding in the preceding fiscal year) helps ensure that Tribes are making progress in achieving the goals in their NPS management programs.

Regions will ensure that the required evaluations are performed according to the negotiated schedule (at least annually) and that copies of the performance evaluation reports are placed in the official files and provided to the recipient.

VII. Technical Assistance to Tribes

In addition to providing NPS grant funding to Tribes, EPA remains committed to providing continued technical assistance to Tribes in their efforts to control NPS pollution. During the past ten years, EPA has presented many workshops to Tribes nationwide to assist them in developing: (1) NPS assessments to further their understanding of NPS pollution and its impact on water quality; (2) NPS management programs to apply solutions to address their NPS problems; and (3) specific projects to effect on-the-ground solutions. The workshops have provided information on related EPA and other programs that can help Tribes address NPS pollution, including the provision of technical and funding assistance. Other areas of technical assistance include watershed-based planning, water quality monitoring, section 305(b) reports on water quality, and section 303(d) lists of impaired waters. EPA intends to continue providing NPS workshops to interested Tribes in FY 2007 (and beyond) and to provide other appropriate technical assistance as needed. EPA also intends to include special emphasis in the workshops on the development and implementation of watershed-based plans that are designed to address on-the-ground water quality improvements.

VIII. Anticipated Deadlines and Milestones for FY 2007 Base Grants

Deadline for Tribes to be eligible for 319 grants	October 13, 2006.
Tribes submit base grant proposed work plan to Region	December 19, 2006.
Region comments on Tribe's base grant proposed work plan	January 19, 2007.
Tribes submit final base grant work plan to Region	February 20, 2007.
Tribes submit final base grant application to Region	April 5, 2007.

Other than the date EPA will use to determine eligibility to receive 319 grants, the dates above are the anticipated dates for those actions.

IX. Anticipated Deadlines and Milestones for Base Grants Beyond FY 2007

Listed below are the anticipated deadlines and milestones for NPS base grants for years beyond FY 2007 unless otherwise announced. The deadlines and milestones below refer to the dates within the particular fiscal year for which the Tribe is applying for NPS base grants. Each year, the specific dates will be posted on EPA's Web site at *http://www.epa.gov/owow/nps/tribal.* Tribes should also contact their EPA Regional Tribal NPS Coordinator for further information about deadlines and milestones for years beyond FY 2007 (see EPA's Web site under ''EPA Tribal NPS Coordinators'' at *http://www.epa.gov/owow/nps/tribal* for Agency contact information).

Deadline for Tribes to be eligible for 319 grants	Second Friday in October.
Tribes submit base grant proposed work plan to Region	First Friday in December.
Region comments on Tribe's base grant proposed work plan	Second Wednesday in January.
Tribes submit final base grant work plan to Region	Second Friday in February.
Tribes submit final base grant application to Region	First Wednesday in April.

X. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. Section 601 et seq.) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. Although this action does not generally create new binding legal requirements, where it does, such requirements do not substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action 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.*, generally provides that before certain actions may take effect, the Agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit its final action in its report to Congress under the Act. This applies only to section A of this announcement.

Section B. Request for Proposals From Indian Tribes for Competitive Grants Under Clean Water Act Section 319 in FY 2007 (Funding Opportunity Number EPA–OW–OWOW–07–1)

Deadline EPA uses to determine eligibility to receive competitive 319 grants	October 13, 2006.
Deadline for receipt of proposals in hard copy by Region or electronically through Grants.gov	December 19, 2006.
Headquarters notifies Regions/Tribes of selections for competitive 319 grants	March 5, 2007.
Tribes submit final grant application to Region for competitive 319 grants	April 5, 2007.

Other than the date EPA will use to determine eligibility to receive 319 grants and the deadline for receipt of proposals in response to this RFP, the dates above are the anticipated dates for those actions.

I. Funding Opportunity Description for Competitive Grants

This RFP is issued pursuant to section 319(h) of the Clean Water Act (CWA). Section 319 of the CWA authorizes EPA to award grants to eligible Tribes for the purpose of assisting them in implementing approved nonpoint source (NPS) management programs developed pursuant to section 319(b). The primary goal of the NPS management program is to control NPS pollution through implementation of management measures and practices to reduce pollutant loadings resulting from each category or subcategory of NPSs identified in the Tribe's NPS assessment report developed pursuant to section 319(a). EPA anticipates, pending enactment of its FY 2007 appropriations, setting aside a portion of section 319 funds for competitive grant awards to Tribes for the purpose of funding the development and implementation of watershed-based plans and other on-the-ground projects that result in a significant step towards solving NPS impairments on a watershed-wide basis. Tribes are strongly encouraged to submit proposals that develop and/or implement watershed-based plans designed to protect unimpaired waters and restore NPS-impaired waters.

Grants awarded under this RFP will advance the protection and improvement of water quality in support of Goal 2 (Clean and Safe Water), Objective 2 (Protect Water Quality), Sub-objective 1 (Protect and Improve Water Quality on a Watershed Basis) of EPA's 2003–2008 Strategic Plan (see *http://www.epa.gov/water/waterplan/documents/Goal2.pdf*). In support of Sub-objective 2.2.1, and consistent with EPA Order 5700.7, *Environmental Results under EPA Assistance Agreements* (see *http://www.epa.gov/ogd/grants/award/5700.7.pdf*), it is anticipated that grants awarded under this RFP will accomplish various environmental outputs and outcomes described below. All proposed work plans must include specific statements describing the anticipated environmental results of the proposed project in terms of well-defined outputs, and, to the maximum extent practicable, well-defined outcomes that demonstrate how the

project will contribute to the overall protection and improvement of water quality.

Environmental outputs (or deliverables) refer to an environmental activity, effort, and/or associated work product related to an environmental goal or objective, that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during an assistance agreement funding period. Examples of environmental outputs anticipated as a result of grants awarded under this RFP may include but are not limited to: a watershed-based plan, progress reports, or a particular number of on-the-ground management measures or practices installed or implemented during the project period. Including the environmental output of a watershed-based plan furthers progress towards achieving the specific indicator measure for Sub-objective 2.2.1 in EPA's Strategic Plan which measures the number of Tribes that have developed and begun to implement a watershed-based plan for Tribal waters (see Measure WQ–28, EPA's National Water Program Guidance for FY 2007 at *http://www.epa.gov/water/waterplan/#nwp07*).

Environmental outcomes mean the result, effect, or consequence that will occur from carrying out an environmental program or activity that is related to an environmental or programmatic goal or objective. Outcomes may be environmental, behavioral, health-related or programmatic in nature, must be quantitative, and may not necessarily be achieved within an assistance agreement funding period. Examples of environmental outcomes anticipated as a result of grants to be awarded under this RFP may include but are not limited to: an increased number of NPS-impaired waterbodies that have been partially or fully restored to meet water quality standards or other water quality-based goals established by the Tribes; and/or an increased number of waterbodies that have been protected from NPS pollution.

II. Award Information

In FY 2006, EPA awarded approximately $3.8 million to 28 Tribes for specific watershed projects through a competitive process. EPA anticipates that the amount of competitive funding available in FY 2007 will be similar or slightly lower than the amount available in FY 2006, since the availability of competitive funding is dependent, in part, upon the amount of funding that remains after a portion is first distributed as base grants to all eligible Tribes (which may increase due to additional Tribes entering the NPS program).

EPA anticipates awarding approximately 25 competitive grants, subject to availability of funds and the quality of proposals submitted under this RFP. Eligible Tribes may apply for competitive funding by submitting a proposal up to a maximum budget of $150,000 of Federal section 319 funding (plus the additional required match of the total project cost). Proposals evaluated, but not selected for this funding, may be retained for consideration for possible future awards under this RFP if additional funding materializes. Any additional selections for award under this RFP based on additional funding will be in accordance with the rankings developed by the review Committee (discussed below in section B.V.2) and Agency policy, and must be made within six months of the original competitive funding decisions.

EPA reserves the right to make partial awards by funding discrete activities, portions, or phases of the proposal. If EPA decides to partially fund the proposal, it will do so in a manner that does not prejudice any applicants or affect the basis upon which the proposal, or portion thereof, was evaluated and selected for award, and that maintains the integrity of the competition and the evaluation/selection process. EPA reserves the right to reject all proposals and make no award as a result of this announcement, or make fewer awards than anticipated. The EPA Award Official is the only official that can bind the Agency to the expenditure of funds for selected projects resulting from this announcement.

III. Eligibility Information

1. Eligible Applicants

To be eligible for NPS grants, a Tribe or intertribal consortium must: (1) Be Federally recognized; (2) have an approved NPS assessment report in accordance with CWA section 319(a); (3) have an approved NPS management program in accordance with CWA section 319(b); and (4) have ''treatment-as-a-state'' (TAS) status in accordance with CWA section 518(e). To be eligible for NPS grants in FY 2007, Tribes must meet these eligibility requirements as of October 13, 2006.

Some Tribes have formed intertribal consortia to promote cooperative work. An intertribal consortium is a partnership between two or more Tribes that is authorized by the governing bodies of those Tribes to apply for and receive assistance under this program. (See 40 CFR 35.502.) Individual Tribes who are a part of an intertribal consortia that is awarded a section 319 competitive grant may not also be awarded an individual section 319 competitive grant.

The intertribal consortium is eligible only if the consortium demonstrates that all its members meet the eligibility requirements for the section 319 program and authorize the consortium to apply for and receive assistance in accordance with 40 CFR 35.504. An intertribal consortium must submit with its proposal to EPA adequate documentation of the existence of the partnership and the authorization of the consortium by its members to apply for and receive the grant. (See 40 CFR 35.504.)

2. Cost Sharing or Matching

Section 319(h)(3) of the CWA requires that the match for NPS grants is 40 percent of the total project cost. In general, as required in 40 CFR 31.24, the match requirement can be satisfied by any of the following: allowable costs incurred by the grantee, subgrantee, or a cost-type contractor, including those allowable costs borne by non-Federal grants; by cash donations from non-Federal third parties; or by the value of third party in-kind contributions.

EPA's regulations also provide that EPA may decrease the match requirement to as low as 10 percent if the Tribe can demonstrate in writing to the Regional Administrator that fiscal circumstances within the Tribe or within each Tribe that is a member of the intertribal consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship. (See 40 CFR 35.635.) Where the stated purpose is to decrease the match requirement based upon undue hardship, a Tribe may prepare a budget and proposal based upon the assumption that EPA will approve the reduced match under 40 CFR 35.635. If the Tribe does not demonstrate undue hardship, the Tribe must then meet the 40 percent match requirement. The Tribe must also provide a new budget with the final grant application based upon the program's 40 percent match requirement and the Federal award will be reduced to reflect the work plan and budget provided in the original proposal. The purpose of this requirement is to ensure that all work plan activities for a project which is evaluated and competitively awarded will be implemented as described in the original proposal.

Performance Partnership Grants (PPG) enable Tribes to combine funds from more than one environmental program grant into a single grant with a single budget. If the Tribe includes the section 319 competitive grant as a part of an approved PPG, the match requirement may be reduced to 5 percent of the allowable cost of the work plan budget for the first 2 years in which the Tribe receives a PPG; after 2 years, the match may be increased up to 10 percent of the work plan budget (as determined by the Regional Administrator). (See 40 CFR 35.536).

Where the stated purpose is to include the section 319 grant in a PPG, a Tribe may prepare a budget and proposal based upon the assumption that EPA will approve the waiver amount for PPGs under 40 CFR 35.536. If a proposed PPG work plan differs significantly from the section 319 work plan approved for funding under this RFP, the Regional Administrator must consult with the National Program Manager. (See 40 CFR 35.535). The purpose of this consultation requirement is to address the issue of ensuring that a project which is competitively awarded is implemented once commingled with other grant programs in a PPG. If the Tribe does not or cannot include the section 319 grant as part of an approved PPG, or chooses to withdraw the section 319 grant from their PPG, the Tribe must then meet the 40 percent match requirement (or 10 percent if undue hardship is demonstrated). The Tribe must also provide a new budget with the final grant application based upon the program's match requirement and the Federal award will be reduced to reflect the budget provided in the original proposal. The purpose of this requirement is to ensure that all work plan activities for a project which is competitively awarded will be implemented in accordance with the same budget and as described in the original proposal.

3. Threshold Evaluation Criteria

In addition to applicant eligibility and cost-share (discussed above in sections B.III.1 and B.III.2, respectively), all of the following threshold evaluation criteria must be met in order for a Tribe's proposal to be evaluated under section B.V and be considered for award. The appropriate EPA Regional Tribal NPS Coordinator will notify applicants who do not meet the threshold eligibility criteria under this section within 15 calendar days of EPA's decision on applicant eligibility.

a. An individual Tribe (or intertribal consortium) may not be awarded competitive funding for more than one competitive grant proposal in a given year.

b. An individual Tribe (or intertribal consortium) may apply for competitive funding by submitting a proposal up to a maximum budget of $150,000 of Federal section 319 funding (plus the additional required match of the total project cost). If a Tribe submits a proposal that exceeds $150,000 of Federal section 319 funding, it will be rejected from further consideration.

c. All proposals must propose to fund activities that are related to waters within a reservation or they will be rejected. Section 319 grants may be awarded to Tribes for use outside the reservation only if they fund activities that are related to waters within a reservation, such as those relating to sources upstream of a waterway entering the reservation.

i. Activities That Are Related to Waters Within a Reservation. Section 518(e) of the CWA provides that EPA may treat an Indian Tribe as a State for purposes of section 319 of the CWA if, among other things, ''the functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are * * * within the borders of an Indian reservation'' (see 33 U.S.C. 1377(e)(2)). EPA already awards grants to Tribes under section 106 of the CWA for activities performed outside of a reservation (on condition that the Tribe obtains any necessary access agreements and coordinates with the State, as appropriate) that pertain to reservation waters, such as evaluating impacts of upstream waters on water resources within a reservation. Similarly, EPA has awarded section 106 grants to States to conduct monitoring outside of State borders. EPA has concluded that grants awarded to an Indian Tribe pursuant to section 319 may similarly be used to perform eligible section 319 activities outside of a reservation if: (1) the activity pertains to the management and protection of waters within a reservation; and (2) just as for on-reservation activities, the Tribe meets all other applicable requirements.

ii. Activities That Are Unrelated to Waters of a Reservation. As discussed above, EPA is authorized to award section 319 grants to Tribes to perform eligible section 319 activities if the activities pertain to the management and protection of waters within a reservation and the Tribe meets all other applicable requirements. In contrast, EPA is not authorized to award section 319 grants for activities that do not pertain to waters of a reservation. For off-reservation areas, including ''usual and accustomed'' hunting, fishing, and gathering places, EPA must determine whether the activities pertain to waters of a reservation prior to awarding a grant.

d. All work plans must address one of the following four factors:

i. The work plan develops a watershed-based plan and implements a watershed-based plan;

ii. The work plan develops a watershed-based plan and implements a watershed project (that does not implement a watershed-based plan);

iii. The work plan implements a watershed-based plan; or

iv. The work plan implements a watershed project that is a significant step towards solving NPS impairments or threats on a watershed-wide basis.

e. All work plans must be consistent with the Tribe's approved NPS management program and conform to legal requirements that are applicable to all environmental program grants awarded to Tribes (see 40 CFR 35.507 and 35.515) as well as the legal requirements that specifically apply to NPS management grants (see 40 CFR 35.638). As provided in those regulations, and in accordance with EPA Order 5700.7, *Environmental Results under EPA Assistance Agreements*, all work plans must include:

i. Description of each significant category of NPS activity to be addressed;

ii. Work plan components;

iii. Work plan commitments for each work plan component, including anticipated environmental outputs and outcomes (as required by EPA Order 5700.7) and the applicant's plan for tracking and measuring its progress towards achieving the expected outputs and outcomes including those identified in section B.I of this RFP;

iv. Estimated funding amounts for each work plan component;

v. Estimated work years for each work plan component;

vi. Roles and responsibilities of the recipient and EPA in carrying out the work plan commitments;

vii. Reporting schedule and a description of the performance evaluation process that will be used that accounts for: (a) A discussion of accomplishments as measured against work plan commitments and anticipated environmental outputs and outcomes; (b) a discussion of the cumulative effectiveness of the work performed under all work plan components; (c) a discussion of existing and potential problem areas; and (d) suggestions for improvement, including, where feasible, schedules for making improvements; and

viii. Description of past performance on reporting environmental results, including a description of Federally funded assistance agreements performed within the last 3 years (no more than 5 agreements, and preferably EPA agreements) and how progress towards achieving the expected results (i.e., outputs and outcomes) under those agreements was documented and/or reported. If there was no progress, please indicate whether, and how, this was documented. If information on relevant or available environmental results past performance does not exist, please indicate this in the proposal and a neutral score will be given for this factor under Section B.V.

f. Except as stated above in sections B.III.3.d and B.III.3.e, proposals must *substantially* comply with the proposal submission instructions and requirements set forth below in section B.IV of this announcement or they will be rejected.

g. Proposals submitted in hard copy must be received by the appropriate EPA Regional Tribal NPS Coordinator (identified in section B.VII) or received electronically through Grants.gov on or before the submission closing date and time published in section B.IV.3. EPA will not accept faxed or e-mail submissions and they will be rejected from consideration. Proposals received after the published closing date and time will be returned to the sender without further consideration.

IV. Application and Submission Information

EPA will respond to questions from individual applicants regarding threshold eligibility criteria, administrative issues related to the submission of the proposal, and requests for clarification about this announcement. Questions must be submitted before December 5, 2006 in writing to the appropriate EPA Regional Tribal NPS Coordinator and written responses will be posted on EPA's Web site at *http://www.epa.gov/owow/nps/tribal.* In accordance with EPA's Competition Policy (EPA Order 5700.5A1), EPA staff will not meet with individual applicants to discuss draft proposals, provide informal comments on draft proposals, or provide advice to applicants on how to respond to ranking criteria. Applicants are responsible for the contents of their proposals.

1. Address to Request Application Package

Grant application forms, including SF 424s, are available at *http://www.epa.gov/ogd/grants/how_to_apply.htm* and by mail upon request by calling the EPA Headquarters Grants Administration Division at (202) 564–5320. Tribes may also contact their EPA Regional Tribal NPS Coordinator for further information about the application process (see section B.VII for Agency contact information).

2. Content and Form of Application Submission

You may submit either a hard copy proposal or an electronic proposal through *http://www.grants.gov* (but not both) for this announcement. If you submit a hard copy proposal, you have the option to submit it by express delivery service, hand delivery, or courier service. EPA will not accept faxed submissions and they will be rejected from consideration. If you submit a hard copy proposal, you are encouraged (not required) to include with it a CD with the electronic version of the narrative work plan. If you submit your proposal electronically, it must be submitted through *http://www.grants.gov*. EPA will not accept submissions by e-mail and they will be rejected from consideration.

All proposal packages, regardless of how submitted, must include the following documents:

a. Complete narrative work plan addressing the requirements described above in sections B.III.3.d and B.III.3.e.

b. Signed SF 424.

c. Any supplemental information, if applicable, relating to:

i. Eligibility (e.g., adequate documentation to demonstrate eligibility of intertribal consortium);

ii. Documentation of a finding from the Region that the watershed-based plan to be implemented includes the nine components identified in Attachment A (if the work plan includes a component to implement a watershed-based plan); and

iii. Any other supplemental information that may be relevant or applicable to the proposal.

3. Submission Dates and Times for Proposals for Competitive Funding

If you submit a hard copy proposal, the appropriate EPA Regional Tribal NPS Coordinator must receive the signed SF 424, work plan, and any other supplemental information that may be relevant or applicable to the proposal by 5 p.m. local time on December 19, 2006 (see section B.VII for Agency contact information). If you submit your proposal electronically through *http://www.grants.gov*, you must meet the requirements for electronic submission outlined in section B.IV.6 below and your proposal must be received through *http://www.grants.gov* no later than 11:59 p.m. Eastern Standard Time on December 19, 2006. Any hard copy or electronic proposals received after the due date and time will not be considered for funding.

4. Funding Restrictions

The use of competitive funding for the development of a watershed-based plan will be limited to 20 percent of the total competitive grant (e.g., up to $30,000 of a $150,000 grant) to assure that these competitive funds are primarily focused on implementation activities. If a Tribe submits a work plan to develop a watershed-based plan, it must be submitted as a component of the overall work plan for implementing a watershed project (i.e., a Tribe will not receive competitive funding only for the development of a watershed-based plan).

5. Confidential Business Information

In accordance with 40 CFR 2.203, applicants may claim all or a portion of their proposal as confidential business information. EPA will evaluate confidentiality claims in accordance with 40 CFR part 2. Applicants must clearly mark proposals or portions of proposals they claim as confidential. If no claim of confidentiality is made, EPA is not required to make the inquiry to the applicant otherwise required by 40 CFR 2.204(c)(2) prior to disclosure.

6. Submission Instructions for Electronic Applications Using Grants.gov

In lieu of hard copy submission, you may submit the proposal electronically through *http://www.grants.gov* as explained below. The electronic submission of your proposal must be made by an official representative of your institution who is registered with Grants.gov and is authorized to sign applications for Federal assistance. For more information, go to *http://www.grants.gov* and click on ''Get Registered'' on the left side of the page. *Note that the registration process may take a week or longer to complete.* If your organization is not currently registered with Grants.gov, please encourage your office to designate an Authorized Organizational Representative (AOR) and ask that individual to begin the registration process as soon as possible.

To begin the application process under this grant announcement, go to www.grants.gov and click on the ''Apply for Grants'' tab on the left side of the page. Then click on ''Apply Step 1: Download a Grant Application Package and Instructions'' to download the PureEdge viewer and obtain the

application package for the announcement. To download the PureEdge viewer click on the ''PureEdge Viewer'' link. Once you have downloaded the viewer, you may retrieve the application package by entering the Funding Opportunity Number, EPA–OW–OWOW–07–1, or the CFDA number that applies to the announcement (CFDA 66.460). You may also be able to access the application package by clicking on the button ''How To Apply'' at the top right of the synopsis page for this announcement on *http://www.grants.gov* (to find the synopsis page, go to *http://www.grants.gov* and click on the ''Find Grants Opportunities'' button on the left side of the page and then go to Search Opportunities and use the Browse by Agency feature to find EPA opportunities.

Proposal Submission Deadline: Your organization's AOR must submit your complete proposal electronically to EPA through Grants.gov (*http://www.grants.gov*) no later than 11:59 p.m. Eastern Standard Time on December 19, 2006.

Proposal Materials

The application package *must* include the following materials:

a. Signed SF 424. Complete the form. There are no attachments. Please be sure to include organization fax number and e-mail address in Block 5 of the signed SF 424.

b. Narrative Work Plan. The work plan must include the components set forth in sections B.III.3.d and B.III.3.e of this RFP and will be evaluated based on the selection criteria set forth in section B.V.1 of this announcement. Applicants who elect to use *http://www.grants.gov* to apply will need to refer to sections B.III.3.d and B.III.3.e of this RFP when preparing the work plan.

c. Supplemental Information. The work plan may include additional required information, if applicable, relating to:

i. Eligibility (e.g., adequate documentation to demonstrate eligibility of intertribal consortium);

ii. Documentation of a finding from the Region that the watershed-based plan to be implemented includes the nine components identified in Attachment A (if the work plan includes a component to implement a watershed-based plan); and

iii. Any other supplemental information that may be relevant or applicable to the proposal.

Application Preparation and Submission Instructions

Documents a and b listed under Proposal Materials above should appear in the ''Mandatory Documents'' box on the Grants.gov Grant Application Package page.

For document a, click on the SF 424 form and then click ''Open Form'' below the box. The fields that must be completed will be highlighted in yellow. Optional fields and completed fields will be displayed in white. If you enter an invalid response or incomplete information in a field, you will receive an error message. When you have finished filling out the form, click ''Save.'' When you return to the electronic Grant Application Package page, click on the form you just completed, and then click on the box that says, ''Move Form to Submission List.'' This action will move the document over to the box that says, ''Mandatory Completed Documents for Submission.''

For document b, you will need to attach electronic files. Prepare your work plan as described in sections B.III.3.d and B.III.3.e of the RFP and save it to your computer as an MS Word, PDF, or WordPerfect file. When you are ready to attach your work plan to the application package, click on ''Project Narrative Attachment Form,'' and open the form. Click ''Add Mandatory Project Narrative File,'' and then attach your work plan (previously saved to your computer) using the browse window that appears. You may then click ''View Mandatory Project Narrative File'' to view it. Enter a brief descriptive title of your project in the space beside ''Mandatory Project Narrative File Filename;'' the file name should be no more than 40 characters long. If there are other attachments that you would like to submit to accompany your proposal (e.g., the supplemental information described above), you may click ''Add Optional Project Narrative File'' and proceed as before. When you have finished attaching the necessary documents, click ''Close Form.'' When you return to the ''Grant Application Package'' page, select the ''Project Narrative Attachment Form'' and click ''Move Form to Submission List.'' The form should now appear in the box that says, ''Mandatory Completed Documents for Submission.''

Once you have finished filling out all of the forms/attachments and they appear in one of the ''Completed Documents for Submission'' boxes, click the ''Save'' button that appears at the top of the Web page. It is suggested that you save the document a second time, using a different name, since this will make it easier to submit an amended package later if necessary. Please use the following format when saving your file: ''Applicant Name—FY07 Tribal 319 Competitive Grants—1st Submission'' or ''Applicant Name—FY07 Tribal 319 Competitive Grants—Back-up Submission.'' If it becomes necessary to submit an amended package at a later date, then the name of the 2nd submission should be changed to ''Applicant Name—FY07 Tribal 319 Competitive Grants—2nd Submission.''

Once your application package has been completed and saved, send it to your AOR for submission to U.S. EPA through Grants.gov. Please advise your AOR to close all other software programs before attempting to submit the application package through Grants.gov.

In the ''Application Filing Name'' box, your AOR should enter your organization's name (abbreviate where possible), the fiscal year (e.g., FY07), and the grant category (e.g., Tribal 319 Grants). The filing name should not exceed 40 characters. From the ''Grant Application Package'' page, your AOR may submit the application package by clicking the ''Submit'' button that appears at the top of the page. The AOR will then be asked to verify the agency and funding opportunity number for which the application package is being submitted. If problems are encountered during the submission process, the AOR should reboot his/her computer before trying to submit the application package again. [It may be necessary to turn off the computer (not just restart it) before attempting to submit the package again.] If the AOR continues to experience submission problems, he/she may contact Grants.gov for assistance by phone at 1–800–518–4726 or e-mail at *http://www.grants.gov/help/help.jsp* or contact Andrea Matzke, EPA Headquarters, at 202–566–1155 or by e-mail at *matzke.andrea@epa.gov.*

Proposal packages submitted through Grants.gov will be time/date stamped electronically.

If you have not received a confirmation of receipt from EPA (not from Grants.gov) within 15 calendar days of the proposal deadline, please contact Andrea Matzke, EPA Headquarters, at 202–566–1155 or by e-mail at *matzke.andrea@epa.gov.* Failure to do so may result in your proposal not being reviewed.

V. Application Review Information

1. Selection Criteria for Competitive Grants

Tribes submitting proposals for competitive grants must comply with all of the threshold evaluation criteria described in section B.III.3 of this RFP in order to be considered for further evaluation under this section. The EPA Regional Tribal NPS Coordinator will determine whether the proposals comply with the threshold evaluation criteria, and will forward work plans that meet the threshold evaluation criteria to EPA Headquarters NPS Control Branch for distribution to EPA's Watershed Project Review Committee. Work plans that do not comply with the threshold evaluation criteria will be rejected and not evaluated under this section.

EPA's Watershed Project Review Committee will evaluate work plans by assigning a value of 0 to 5 (with 5 being highest) for each factor described below based upon how well the following list of specific elements are addressed and represented in the work plan. Each factor has been assigned a specific weight which will be multiplied (by a value of 0 to 5) to calculate a total point score for the particular factor. The scores for each factor are then combined to result in a total score for the overall work plan—the total maximum score available is 825.

EPA's Watershed Project Review Committee will evaluate work plans for competitive grants based upon the following evaluation factors (and corresponding weights):

a. The extent, and quality, to which the subcategories of NPS pollution are identified and described. (Weight = 15; 75 points maximum.). The work plan will be evaluated based upon the extent, and quality, to which it identifies each significant subcategory of NPS pollution. Since identifying the categories of NPS pollution (e.g., agriculture) is a threshold evaluation criteria, the work plan will be evaluated based upon how well it identifies sources at the *subcategory* level with estimates of the extent to which these subcategories are present in the watershed (e.g., X number of dairy cattle feedlots needing upgrading, including a rough estimate of the number of cattle per facility; Y acres of row crops needing improved nutrient management or sediment control; or Z linear miles of eroded streambank needing remediation).

b. The extent, and quality, to which the water quality problems or threats to be addressed are identified and described. (Weight = 15; 75 points maximum.) The work plan will be evaluated based upon the extent, and quality, to which it identifies each water quality problem or threat to be addressed caused by the subcategories of NPS pollution identified in evaluation factor (a) above. EPA encourages Tribes to incorporate specific descriptions of water quality problems or threats, for example, in relation to impairments to water quality standards or other parameters that indicate stream health (e.g., decreases in fish or macroinvertebrate counts).

c. The extent, and quality, to which the goals and objectives of the project specifically identify the project location and activities to be implemented. (Weight = 20; 100 points maximum.)

The work plan will be evaluated based upon how well it specifically identifies where the NPS project will take place and the waterbody affected by the NPS pollutants; and the level of detail provided in relation to the specific activities that will be implemented (e.g., identifies specific management measures and practices to be implemented).

d. The extent to which significant water quality benefits will be achieved as a result of the project. (Weight = 20; 100 points maximum.) The work plan will be evaluated based upon the extent to which it describes how significant water quality benefits will be achieved as a result of the project, either through restoring NPS-impaired waters or addressing threats to unimpaired waters. EPA encourages Tribes to incorporate specific water quality-based goals that are linked to: load reductions; water quality standards for one or more pollutants/uses; NPS total maximum daily load allocations; measurable, in-stream reductions in a pollutant; or improvements in a parameter that indicates stream health (e.g., increases in fish or macroinvertebrate counts). If information is not available to make specific estimates, water quality-based goals may include narrative descriptions and best professional judgment based on existing information.

e. The specificity of the budget in relation to each work plan component. (Weight = 15; 75 points maximum.) The work plan will be evaluated based upon the level of specificity of the budget in relation to each work plan component, and the extent to which it outlines the total operational and construction costs of the project (including match). Budget categories may include, but are not limited to, the following items: personnel; travel; equipment; supplies; contractual; and construction costs.

f. The level of detail in relation to the schedule for achieving the activities identified in the work plan. (Weight = 15; 75 points maximum.) The work plan will be evaluated based upon the level of detail and clarity that it includes in relation to the schedule of activities for each work plan component. Such information includes, but is not limited to, the following: Identifies a specific ''start'' and ''end'' date for each work plan component; an estimate of the specific work years for each work plan component; and interim milestone dates for achieving each work plan component. A work plan that includes a schedule that can be implemented with minimal delay upon the award of the grant (i.e., indicates a ''readiness to proceed'') will score higher than work plans which may require significant further action before the project can be implemented.

g. The extent to which the roles and responsibilities of the recipient and project partners in carrying out the work plan activities are specifically identified. (Weight = 15; 75 points maximum.) The work plan will be evaluated based upon how specifically and clearly it defines the roles and responsibilities of each responsible party in relation to each work plan component, which may include, but is not limited to, the following: defining the specific level of effort for the responsible parties for each work plan component; identifying parties who will take the lead in carrying out the work plan commitments; and identifying other programs, parties, and agencies that will provide additional technical and/or financial assistance.

h. The extent to which the performance evaluation process meets each of the following sub-criteria: (Weight = 15; 75 points maximum.)

(i) Extent and quality to which the work plan demonstrates potential environmental results (i.e., whether the project will result in the protection of water resources), anticipated outputs and outcomes, and how the outcomes are linked to EPA's Strategic Plan. (Value = 2 points maximum.)

(ii) Extent and quality to which the work plan demonstrates a sound plan for measuring progress toward achieving the expected outputs and outcomes (examples of outputs and outcomes can be found in section B.I of this announcement). (Value = 1 point maximum.)

(iii) Extent and quality to which the applicant adequately documented and/or reported on progress towards achieving the expected results (e.g., outputs and outcomes) under Federal agency assistance agreements performed within the last 3 years, and if such progress was not being made, whether

the applicant adequately documented and/or reported why not. (Value = 2 points maximum.)

Note: In evaluating applicants under (iii) above, EPA will consider the information provided by the applicant and may also consider relevant programmatic information from other sources including Agency files and prior/current grantors (e.g., to verify and/or supplement the information supplied by the applicant). Applicants with no relevant or available past performance reporting history will not be penalized for absence of this information (and will receive 1 point for this factor).

i. The extent, and quality, to which the work plan addresses one of the following four factors. (Weight = 35; 175 points maximum.)

(i) The work plan develops a watershed-based plan and implements a watershed-based plan.

If a work plan includes a plan to develop a watershed-based plan, it will be evaluated based on the extent to which it: Includes a commitment to incorporate the nine components of a watershed-based plan described in Attachment A; clearly identifies the geographical coverage of the watershed; includes a specific schedule for developing the watershed-based plan; and clearly identifies the estimated funds that will be used to develop the watershed-based plan (not to exceed 20 percent of the total competitive grant).

If a Tribe submits a work plan to implement a watershed-based plan, it will be evaluated based on the extent to which it: is accompanied by a statement that the Region finds that the watershed-based plan to be implemented includes the nine components of a watershed-based plan identified in Attachment A; identifies and briefly summarizes the watershed-based plan that will be implemented; and describes how the work plan will make progress towards achieving the overall goals of the watershed-based plan and the specific water quality-based goals identified in the watershed-based plan.

(ii) The proposed work plan develops a watershed-based plan and implements a watershed project (that does not implement a watershed-based plan).

If a work plan includes a plan to develop a watershed-based plan, it will be evaluated based on the extent to which it: Includes a commitment to incorporate the nine components of a watershed-based plan described in Attachment A; clearly identifies the geographical coverage of the watershed; includes a specific schedule for developing the watershed-based plan; and clearly identifies the estimated funds that will be used to develop the watershed-based plan (not to exceed 20 percent of the total competitive grant).

If a work plan is designed to implement a watershed project that is not implementing a watershed-based plan, it will be evaluated based on the extent to which it can be linked to or expanded upon to address NPS impairments or threats on a watershed-wide basis. For example, a work plan that sets a precedent for future implementation on a watershed-basis will be ranked higher than a work plan that implements an individual demonstration project designed to address an individual threat or problem.

(iii) The work plan implements a watershed-based plan.

If a Tribe submits a work plan to implement a watershed-based plan, it will be evaluated based on the extent to which it: is accompanied by a statement that the Region finds that the watershed-based plan to be implemented includes the nine components of a watershed-based plan identified in Attachment A; identifies and briefly summarizes the watershed-based plan that will be implemented; and describes how the work plan will make progress towards achieving the overall goals of the watershed-based plan and the specific water quality-based goals identified in the watershed-based plan.

(iv) The work plan implements a watershed project that is a significant step towards solving NPS impairments or threats on a watershed-wide basis.

If a work plan is designed to implement a watershed project that is not implementing a watershed-based plan, it will be evaluated based on the extent to which it can be linked to or expanded upon to address NPS impairments or threats on a watershed-wide basis. For example, a work plan that sets a precedent for future implementation on a watershed-basis will be ranked higher than a work plan that implements an individual demonstration project designed to address an individual threat or problem.

2. Review and Selection Process for Competitive Funding

The EPA Regional Tribal NPS Coordinators will determine whether the proposals comply with the threshold evaluation criteria described in section B.III.3. The EPA Regional Tribal NPS Coordinator will notify applicants who do not meet the threshold eligibility criteria within 15 calendar days of EPA's decision on applicant eligibility. The EPA Regional Tribal NPS Coordinators will forward those work plans that meet the threshold evaluation criteria to EPA Headquarters NPS Control Branch by approximately January 12, 2007.

EPA will establish a Watershed Project Review Committee (Committee) comprised of 9 EPA staff, including 3 EPA Regional State NPS Coordinators, 3 EPA Regional Tribal NPS Coordinators, 2 staff members of the EPA Headquarters NPS Control Branch, and 1 staff member of EPA's American Indian Environmental Office.

EPA Headquarters NPS Control Branch will forward copies of the work plans for competitive funding to the Committee and hold a conference call with the Committee on or around January 19, 2007, to ensure that all Committee members fully understand how to objectively and consistently apply the criteria discussed above. Scores for each work plan will be developed by each Committee member based on evaluating the work plans against the factors identified above in accordance with the weighting system described in section B.V.1.

On or around February 16, 2007, each Committee member will forward the scores for each work plan to EPA Headquarters NPS Control Branch. Based on these scores, EPA Headquarters NPS Control Branch will calculate the average score for each work plan and then rank the work plans based on the resulting average scores. On or around February 23, 2007, EPA Headquarters NPS Control Branch will send the resulting average scores and rankings to the Committee and hold a conference call to provide a final opportunity for members of the Committee to discuss the rankings based on the average scores. The Committee will then make funding recommendations to EPA Headquarters NPS Control Branch; in making the funding recommendations, in addition to considering the rankings, the Committee may also give priority consideration to high quality work plans that are designed to develop and/or implement a watershed-based plan. EPA Headquarters NPS Control Branch then will make the final funding decisions based on the Committee's recommendations.

The Committee will use the following ''Competitive Work Plan Evaluation Review Sheet'' to score and rank work plans in accordance with the evaluation criteria discussed above.

Competitive Work Plan Evaluation Review Sheet

Tribe Name_____

Reviewer_____

(Weight × Value = Score) (Value: 0 is Lowest; 5 is Highest) (Maximum ''Max'' Score is 825)

1. Assign a value of 0 to 5 for each evaluation factor (*refer to section B.V.1 for further description of each factor*). Use only whole numbers.

2. Multiply the value by the designated weight to develop a score for each evaluation factor (the maximum score for each factor is shown in the score box).

3. Add the score for each evaluation factor to calculate the total score at the end.

Weight	Evaluation factors	Value (max)	Score (max)
15	(1) The extent, and quality, to which the subcategories of NPS pollution are identified and described. COMMENTS (strengths, weaknesses):	5	75
15	(2) The extent, and quality, to which the water quality problems or threats to be addressed are identified and described. COMMENTS (strengths, weaknesses):	5	75
20	(3) The extent, and quality, to which the goals and objectives of the project specifically identify the project location and activities to be implemented. COMMENTS (strengths, weaknesses):	5	100
20	(4) The extent to which significant water quality benefits will be achieved as a result of the project. COMMENTS (strengths, weaknesses):	5	100
15	(5) The specificity of the budget in relation to each work plan component ..... COMMENTS (strengths, weaknesses):	5	75
15	(6) The level of detail in relation to the schedule for achieving the activities identified in the work plan. COMMENTS (strengths, weaknesses):	5	75
15	(7) The extent to which the roles and responsibilities of the recipient and project partners in carrying out the work plan activities are specifically identified. COMMENTS (strengths, weaknesses):	5	75
15	(8) The extent to which the performance evaluation process meets each sub-criteria: Demonstrates environmental results, anticipated outputs and outcomes, and how outcomes are linked to EPA's Strategic Plan. (Value = 2 points maximum.) (b) Demonstrates a sound plan for measuring progress towards achieving expected outcomes and outputs. (Value = 1 point maximum.) (c) Documentation of progress towards achieving expected results under Federal agency assistance agreements within last 3 years. (Value = 2 points maximum.) Note: Applicants with no relevant or available past performance reporting history will not be penalized for absence of this information (and will receive 1 point for this factor). COMMENTS (strengths, weaknesses):	5	75
35	(9) The extent, and quality, to which the work plan addresses one of the following four factors: (a) The work plan develops a watershed-based plan and implements a watershed-based plan. (b) The work plan develops a watershed-based plan and implements a watershed project (that does not implement a watershed-based plan). (c) The work plan implements a watershed-based plan. (d) The work plan implements a watershed project that is a significant step towards solving NPS impairments or threats on a watershed-wide basis. COMMENTS (strengths, weaknesses):	5	175
Total Maximum Score		825	

3. Anticipated Selection Date

On or around March 5, 2007, EPA Headquarters NPS Control Branch will select the proposals for award and announce to the Regions which Tribes' proposals have been selected for competitive funding.

VI. Award Administration Information

1. Award Notices

Following final selections, all applicants will be notified regarding their proposal's status.

a. EPA anticipates notification to *successful* applicant(s) will be made by the appropriate EPA Regional Tribal NPS Coordinator via e-mail or U.S. Postal Mail on or around March 5, 2007. This notification, which advises that the applicant's proposal has been selected and is being recommended for award, is not an authorization to begin performance. The award notice signed by the EPA Award Official is the authorizing document and will be provided through U.S. Postal Mail. At a minimum, this process can take 90 days from the date of selection notification. EPA reserves the right to negotiate and/or adjust the final grant amount and work plan prior to award, as appropriate and consistent with Agency policy including the Assistance Agreement Competition Policy, EPA Order 5700.5A1. In addition, successful applicants will be required to certify that they have not been Debarred or Suspended from participation in Federal assistance awards in accordance with 40 CFR part 32.

b. EPA anticipates notification to *unsuccessful* applicant(s) will be made by the appropriate EPA Regional Tribal NPS Coordinator via e-mail or U.S. Postal Mail within 15 calendar days after final selection of successful applicants. The notification will be sent

to the authorization official of the proposal.

c. The appropriate EPA Regional Tribal NPS Coordinator will notify applicants who do not meet the threshold eligibility criteria under section B.III.3 via e-mail or U.S. Postal Mail within 15 calendar days of EPA's decision on applicant eligibility.

2. Administrative and National Policy Requirements

a. Grant Requirements. A listing and description of general EPA regulations applicable to the award of assistance agreements may be viewed at *http://www.epa.gov/ogd/AppKit/appplicable_epa_regulations_and_description.htm.*

All applicable legal requirements including, but not limited to, EPA's regulations on environmental program grants for Tribes (see 40 CFR 35.500 to 35.735) and regulations specific to NPS grants for Tribes (see 40 CFR 35.630 to 35.638), apply to all section 319 grants.

b. Dun and Bradstreet Number. All applicants are required to provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for a Federal grant or cooperative agreement. Applicants can receive a DUNS number, at no cost, by calling the dedicated tollfree DUNS Number request line at 1–866–705–5711, or visiting the D&B Web site at: *http://www.dnb.com.*

c. Administrative Costs. Pursuant to CWA section 319(h)(12), administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with the grant shall not exceed 10 percent of the grant award. The costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer are not subject to this limitation.

d. Satisfactory Progress. For a Tribe that received section 319 funds in the preceding fiscal year, section 319(h)(8) of the CWA requires that the Region determine whether the Tribe made ''satisfactory progress'' during the previous fiscal year in meeting the schedule of activities specified in its approved NPS management program in order to receive section 319 funding in the current fiscal year. The Region will base this determination on an examination of Tribal activities, reports, reviews, and other documents and discussions with the Tribe in the previous year. Regions must include in each section 319 grant award (or in a separate document, such as the grant-issuance cover letter, that is signed by the same EPA official who signs the grant), a written determination that the Tribe has made satisfactory progress during the previous fiscal year in meeting the schedule of milestones specified in its NPS management program. The Regions must include brief explanations that support their determinations.

e. Operation and Maintenance. Each section 319 grant must contain a condition requiring that the Tribe assure that any management practices implemented for the project be properly operated and maintained for the intended purposes during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail. Management practices and projects that are damaged or destroyed due to a natural disaster (i.e., earthquakes, storm events, floods, etc.) or events beyond the control of the grantee are exempt from this condition.

The condition must require the Tribe to assure that any subrecipient of section 319 funds similarly include the same condition in the subaward. Additionally, such condition must reserve the right of EPA and the Tribe, respectively, to conduct periodic inspections during the life span of the project to ensure that operation and maintenance are occurring, and shall state that, if it is determined that participants are not operating and maintaining practices in an appropriate manner, EPA or the Tribe, respectively, will request a refund for the project supported by the grant.

The life span of a project will be determined on a case-by-case basis, tailored to the types of practices expected to be funded in a particular project, and should be specified in the grant condition. For assistance in determining the appropriate life span of the project, Tribes may wish to examine other programs implementing similar practices, such as the U.S. Department of Agriculture's conservation programs. For example, for conservation practices, it may be appropriate to construct the life span consistent with the life span for similar conservation practices as determined by the Commodity Credit Corporation (pursuant to the implementation of the Environmental Quality Incentives Program). Following the approach used in many Federal funding programs, practices will generally be operated and maintained for a period of at least 5 to 10 years.

f. In making grant awards to Tribes who are part of an intertribal consortia, Regions must include a brief finding in the final award package that the Tribe has demonstrated the existence of the partnership and the authorization of the consortium by its members to apply for and receive the grant.

g. In making grant awards to Tribes that provide for a reduced match requirement, Regions must include a brief finding in the final award package that the Tribe has demonstrated that it does not have adequate funds to meet the required match.

3. Reporting

As provided in 40 CFR 31.40, 31.41, 35.507, 35.515, and 35.638, all section 319 grants must include a set of reporting requirements and a process for evaluating performance. Some of these requirements have been explicitly incorporated into the required work plan components that all Tribes must include in order to receive section 319 grant funding.

The work plan components required for section 319 funding, specifically those relating to work plan commitments and timeframes for their accomplishment, facilitate the management and oversight of Tribal grants by providing specific activities and outputs by which progress can be monitored. The performance evaluation process and reporting schedule (both work plan components) also establish a formal process by which accomplishments can be measured. Additionally, the satisfactory progress determination (for Tribes that received section 319 funding in the preceding fiscal year) helps ensure that Tribes are making progress in achieving the goals in their NPS management programs.

Regions will ensure that the required evaluations are performed according to the negotiated schedule (at least annually) and that copies of the performance evaluation reports are placed in the official files and provided to the recipient.

4. Dispute Resolution

Assistance agreement competition-related disputes will be resolved in accordance with the dispute resolution procedures published in 70 FR 3629, 3630 (January 26, 2005) which can be found at *http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05–1371.htm.* Copies of these procedures may also be requested by contacting the EPA Regional Tribal NPS Coordinator listed in section B.VII below.

VII. Agency Contacts: EPA Headquarters and Regional Tribal NPS Coordinators

EPA Headquarters—Andrea Matzke, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division, telephone: 202–566–1155; e-mail: *matzke.andrea@epa.gov*.

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Warren Howard; mailing address: U.S. EPA Region I, 1 Congress Street, Suite 1100, Boston, MA 02203; telephone: 617–918–1587; e-mail: *howard.warren@epa.gov.*

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Donna Somboonlakana; mailing address: U.S. EPA Region II, 290 Broadway—24th Floor (MC DEPP:WPB), New York, NY 10007; telephone: 212–637–3700; e-mail: *somboonlakana.donna@epa.gov*.

Region III—Delaware, Maryland, Pennsylvania, Virginia, West Virginia, Washington, DC

Fred Suffian; mailing address: U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103; telephone: 215–814–5753; e-mail: *suffian.fred@epa.gov.*

Region IV—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Yolanda Brown; mailing address: U.S. EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303; telephone: 404–562–9451; e-mail: *brown.yolanda@epa.gov*.

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Daniel Cozza; mailing address: U.S. EPA Region V, 77 West Jackson Blvd. (MC: WS–15J), Chicago, IL 60604; telephone: 312–886–7252; e-mail: *cozza.daniel@epa.gov.*

Region VI—Arkansas, Louisiana, New Mexico, Oklahoma, Texas

George Craft; mailing address: U.S. EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202; telephone: 214–665–6684; e-mail: *craft.george@epa.gov.*

Region VII—Iowa, Kansas, Missouri, Nebraska

Peter Davis; mailing address: U.S. EPA Region VII, 901 N 5th Street, Kansas City, KS 66101; telephone: 913–551–7372; e-mail: *davis.peter@epa.gov.*

Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Mitra Jha; mailing address: U.S. EPA Region VIII, 999 18th Street, Suite 300 (MC: EPR–EP), Denver, CO 80202; telephone: 303–312–6895; e-mail: *jha.mitra@epa.gov.*

Region IX—Arizona, California, Hawaii, Nevada, American Samoa, Mariana Islands, Guam

Tiffany Eastman; mailing address: U.S. EPA Region IX, 75 Hawthorne Street (MC: WTR–10), San Francisco, CA 94105; telephone: 1–800–735–2922, relay #415–972–3404; e-mail: *eastman.tiffany@epa.gov.*

Region X—Alaska, Idaho, Oregon, Washington

Susan Ennes; mailing address: U.S. EPA Region X, 1200 6th Avenue (MC: OWW–137), Seattle, WA 98101; telephone: 206–553–6249; e-mail: *ennes.susan@epa.gov.*

VIII. Other Information

1. Anticipated Deadlines and Milestones for FY 2008 Competitive Grants

In future years, EPA intends to post the RFP for competitive grants under section 319 at *http://www.grants.gov* and on EPA's Web site at *http://www.epa.gov/owow/nps/tribal*. The following estimated dates are provided in order to assist Tribes in planning for EPA's FY 2008 funding cycle for competitive grants:

Deadline EPA uses to determine eligibility to receive competitive 319 grants	Second Friday in October 2007.
Date for receipt of proposals in hard copy by Region or electronically through Grants.gov	December 7, 2007.
Headquarters notifies Regions/Tribes of selections for competitive 319 grants	March 3, 2008.
Tribes submit final grant application to Region for competitive 319 grants	April 2, 2008.

Other than the date EPA will use to determine eligibility to receive 319 grants, the dates above are the anticipated dates for those actions.

2. Right to Reject All Proposals.

EPA reserves the right to reject all proposals and make no award as a result of this announcement, or make fewer awards than anticipated. The EPA Award Official is the only official that can bind the Agency to the expenditure of funds for selected projects resulting from this announcement.

Dated: October 19, 2006.

Benjamin H. Grumbles

Assistant Administrator for Water.

Attachment A—Components of a Watershed-Based Plan

1. An identification of the causes and sources or groups of similar sources that will need to be controlled to achieve the goal identified in element 3 below. Sources that need to be controlled should be identified at the significant subcategory level with estimates of the extent to which they are present in the watershed (e.g., X number of dairy cattle feedlots needing upgrading, including a rough estimate of the number of cattle per facility; Y acres of row crops needing improved nutrient management or sediment control; or Z linear miles of eroded streambank needing remediation).

2. A description of the NPS management measures that will need to be implemented to achieve a water quality-based goal described in element 3 below, as well as to achieve other watershed goals identified in the watershed-based plan, and an identification (using a map or a description) of the critical areas for which those measures will be needed to implement the plan.

3. An estimate of the water quality-based goals expected to be achieved by implementing the measures described in element 2 above. To the extent possible, estimates should identify specific water quality-based goals, which may incorporate, for example: load reductions; water quality standards for one or more pollutants/uses; NPS total maximum daily load allocations; measurable, in-stream reductions in a pollutant; or improvements in a parameter that indicates stream health (e.g., increases in fish or macroinvertebrate counts). If information is not available to make specific estimates, water quality-based goals may include narrative descriptions and best professional judgment based on existing information.

4. An estimate of the amounts of technical and financial assistance needed, associated costs, and/or the sources and authorities that will be relied upon to implement the plan. As sources of funding, Tribes should consider other relevant Federal, State, local and private funds that may be available to assist in implementing the plan.

5. An information and education component that will be used to enhance public understanding and encourage early and continued participation in selecting, designing, and implementing the NPS management measures that will be implemented.

6. A schedule for implementing the NPS management measures identified in the plan that is reasonably expeditious.

7. A description of interim, measurable milestones for determining whether NPS management measures or other control actions are being implemented.

8. A set of criteria that can be used to determine whether the water quality-based goals are being achieved over time and substantial progress is being made

towards attaining water quality-based goals and, if not, the criteria for determining whether the watershed-based plan needs to be revised.

9. A monitoring component to evaluate the effectiveness of the implementation efforts over time, measured against the criteria established under element 8 above.

[FR Doc. E6–17895 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0162; FRL–8100–4]

Carbofuran; Interim Reregistration Eligibility Decision; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of August 30, 2006, concerning the availability of the Interim Reregistration Eligibility Decision for the N-methyl carbamate pesticide carbofuran. This document is extending the comment period for 30 days, from October 30, 2006, to November 30, 2006.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0162 must be received on or before November 30, 2006.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of August 30, 2006.

FOR FURTHER INFORMATION CONTACT: Stephanie Plummer, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0076; e-mail address: *plummer.stephanie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice of August 30, 2006 a list of those who may be potentially affected by this action. If you have 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.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in **SUPPLEMENTARY INFORMATION** of the August 30, 2006 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** of August 30, 2006 (71 FR 51610) (FRL–8088–2). In that document, EPA announced the availability of the Interim Reregistration Eligibility Decision document for the N-methyl carbamate pesticide carbofuran. EPA is hereby extending the comment period, which was set to end on October 30, 2006, to November 30, 2006.

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

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration. Further provisions are made to allow a public comment period. However, the Administrator may extend the comment period, if additional time for comment is requested. In this case, the registrant, FMC, has requested additional time.

List of Subjects

Environmental protection, Pesticides and Pests.

Dated: October 18, 2006.

Debra Edwards,

Director, Special Review and Reregistration, Division, Office of Pesticide Programs.

[FR Doc. E6–17860 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0202; FRL–8101–2]

Pentachloronitrobenzene (PCNB) Reregistration Eligibility Decision (RED); Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of August 2, 2006, concerning the availability of the PCNB reregistration eligibility decision (RED) and the opening of the 60–day public comment period on the RED. The original comment period was to close on October 2, 2006. The Agency subsequently issued a notice in the **Federal Register** of September 29, 2006, extending the comment period to November 1, 2006. The Agency is now extending the comment period for an additional interval, to **December 4, 2006**.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–

OPP–2004–0202 must be received on or before **December 4, 2006**.

ADDRESSES: Follow the detailed instructions for submitting comments as provided in the **SUPPLEMENTARY INFORMATION** of the August 2, 2006 FR Notice. In addition, comments may be submitted through the Federal Document Management System Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jill Bloom, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8019; e-mail address:*bloom.jill@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have 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.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.B. of the **SUPPLEMENTARY INFORMATION** of the August 2, 2006 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** of August 2, 2006 (70 FR 43746) (FRL–8066–6) and later extended in the **Federal Register** of September 29, 2006 (71 FR 57506) (FRL–8096–6). In the first notice, the Agency provided a 60–day comment period for public input on the reregistration decision for PCNB, particularly on the benefits associated with certain minor uses of PCNB. This original comment period was to close on October 2, 2006. EPA then extended the comment period until November 1, 2006, based on requests from a PCNB registrant and the National Potato Council. Both entities had requested that the comment period be extended by 60 days, but the Agency granted an extension of approximately 30 days. The registrant and the National Potato Council subsequently reiterated their requests for the longer extension, and the Agency determined that the longer time period would facilitate comments from potato growers, many of whom will be busy with the potato harvest through November, and provide additional time for technical review by the registrant. The Agency is hereby extending the comment period to **December 4, 2006**. This new extension brings the total duration of the comment period to four months.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration. Further provisions are made to allow a public comment period. However, the Administrator may extend the comment period if additional time for comment is requested. In this case, two different public entities have requested additional time to develop comments.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 19, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division.

[FR Doc. E6–17861 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0572; FRL–8099–6]

Notice of Filing of Pesticide Petition for Amendment to Regulations for Residues of Di-n-Alkyl (C8-10) Dimethyl Ammonium Chloride (DDAC) Compounds on Food Applied to Food Contact Surfaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the amendment of regulations for residues of antimicrobial pesticide formulation containing Di-n-Alkyl (C_{8-10}) dimethyl ammonium chloride compound and total quaternary ammonium compounds applied to food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils.

DATES: Comments must be received on or before November 24, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0572 and pesticide petition number (PP) 6F7045, 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 Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0572. 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 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, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either 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 Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Velma Noble, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-6233; e-mail address: *noble.velma@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. 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.

Amendment to Existing Tolerance

PP 6F7045. Lonza Inc., 90 Boroline Road, Allendale, NJ 07401, proposes to amend the tolerances in 40 CFR 180.190(a) for residues of the antimicrobial pesticide formulation Di-n-Alkyl (C_{8-10}) dimethyl ammonium chloride compound and total quaternary ammonium compounds may be applied to food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils at 400 parts per million (ppm). Analytical method is not necessary since these quaternary ammonium compounds are exempt from the requirement of a tolerance.

List of Subjects

Environmental protection, Food Contact Sanitizers, DDAC, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 16, 2006.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E6–17880 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 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, as required by the Paperwork Reduction Act 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 comments should be submitted on or before November 24, 2006. If you anticipate that you will be submitting 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: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Allison E. Zaleski, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–6466 or via the Internet at *Allison_E._Zaleski@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. If you would like to obtain a copy of the information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

SUPPLEMENTARY INFORMATION:

Title: Broadcast EEO Program Report; Broadcast Equal Employment Opportunity Model Program Report.

Form Number: FCC Forms 396 and 396–A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 7,000.

Estimated Time per Response: 1 to 1.5 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Renewal reporting requirement.

Total Annual Burden: 8,000 hours.

Total Annual Cost: $350,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Broadcast Equal Employment Opportunity Program Report (FCC Form 396) is a device that is used to evaluate a broadcaster's EEO program to ensure that satisfactory efforts are being made to comply with FCC's EEO requirements. FCC Form 396 is required to be filed at the time of renewal of license by all AM, FM, TV, Low Power TV and International stations.

FCC Form 396–A is filed in conjunction with applicants seeking authority to construct a new broadcast station, to obtain assignment of construction permit or license and/or seeking authority to acquire control of an entity holding construction permit or license. This program is designed to assist the applicant in establishing an effective EEO program for its station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–17857 Filed 10–24–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 19, 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 November 24, 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–B441, 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.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Surrenders of Authorizations for International Carrier, Space Station and Earth Station Licensees.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 306.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 306 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as a new collection to the Office of Management and Budget (OMB) in order to obtain the full three year clearance. The Federal Communications Commission (''Commission'') is requesting that the Office of Management and Budget (OMB) approve the establishment of a new collection for surrenders of authorization for international carriers (214 authorizations), space stations and earth stations. A surrender of authorization is the licensee's voluntary cancellation of a license (or authorization) to provide international telecommunications services, such as discontinuing operation of a space station.

This new collection is being initiated as a result of the Commission's release of Public Notice (DA 06–569) on March 15, 2006 titled, ''International Bureau Announces New and Improved Filing Modules Within Its MyIBFS Electronic Filing System: Surrender of Authorization and Improved Space Station Milestone Filing.'' The Public Notice announced the International Bureau's launching of an E-filing module for surrendering authorizations and an improved milestone filing module for satellite space stations within its MyIBFS consolidated licensing and electronic filing system. (**Note:** The OMB approved the electronic filing of milestones under OMB Control No. 3060–1007). Additionally, the Commission is requesting the OMB's approval of mandatory electronic filing of surrenders of authorizations that do not fall under Part 25 of the Commission's rules. Currently, the surrender module is available to licensees in MyIBFS who are not required to comply with Part 25 on a voluntary basis. (**Note:** The OMB approved electronic filing of all Part 25-related applications and associated documents under OMB Control No. 3060–0678).

Without this collection of information, licensees would be required to submit surrenders of authorizations to the Commission by letter which is more time consuming than submitting such requests to the Commission electronically. In addition, Commission staff would spend an extensive amount of time processing surrenders of authorizations received by letter. This new collection of information saves time (and burden) for both licensees and Commission staff since they are received in MyIBFS electronically and include only the information that is essential to process the request(s) in a timely manner. Furthermore, the E-filing module expedites the Commission staff's announcement of surrenders of authorizations via Public Notice.

OMB Control No.: 3060–0775.

Title: Section 64.1903, Obligations of All Incumbent Local Exchange Carriers (LECs).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10.

Estimated Time per Response: 6,056 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 60,560 hours.

Total Annual Cost: $1,215,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension of a currently approved collection to the Office of Management and Budget (OMB) in order to obtain the full three year clearance.

In CC Docket Nos. 96–149 and 96–61, the Commission imposed recordkeeping requirements on independent local exchange carriers (LECs). Independent LECs wishing to offer international, interexchange services must comply with the separate affiliate requirements of the Competitive Carrier Fifth Report and Order in order to do so. One of these requirements is that the independent LEC's international, interexchange affiliate must maintain books of account separate from such LEC's local exchange and other activities. This regulation does not require that the affiliate maintain books of account that comply with the Commission's Part 32 rules; rather, it refers to the fact that as a separate legal entity, the international, interexchange affiliate must maintain its own books of accounts in the ordinary course of its business.

This recordkeeping requirement is used by Commission staff to ensure that independent 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. E6–17869 Filed 10–24–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 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 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 December 26, 2006. If you anticipate that you will be submitting 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: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0928.

Title: Application for Class A Television Broadcast Station Construction Permit or License.

Form Number: FCC Form 302–CA.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 50.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 100 hours.

Total Annual Cost: $13,500.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Low Power TV (LPTV) stations use FCC Form 302–CA when applying to convert to Class A status and for existing Class A stations to file for a license to cover a construction permit. The FCC Form 302–CA requires a series of certifications by the Class A applicant as prescribed by the Community Broadcasters Protection Act (CBPA). Licensees are required to provide weekly announcements to their listeners informing them that the applicant has applied for a Class A license and announcing the public's ability to comment on the application prior to Commission action. FCC staff use the data to confirm that the station meets the eligibility standards to convert their licenses to Class A status. The FCC Form 302–CA data is also included in any subsequent license to operate the station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–17871 Filed 10–24–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 17, 2006.

SUMMARY: The Federal Communications Commissions, 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, as required by the Paperwork Reduction Act 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 comments should be submitted on or before November 24, 2006. If you anticipate that you will be submitting 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: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Allison E. Zaleski, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–6466 or via the Internet at *Allison_E._Zaleski@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. If you would like to obtain a copy of the information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0912.

Title: Sections 76.501, 76.503 and 76.504, Cable Ownership and Attribution Rules.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 40.

Estimated Time per Response: 1 to 4 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 100 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.501 Note 2(f)(1) requires limited partners, Registered Limited Liability Partnerships (''RLLPs''), and Limited Liability Companies (''LLCs'') attempting to insulate themselves from attribution to file a certification of ''non-involvement'' with the Commission. LLCs who submit the non-involvement certification also are required to submit a statement certifying that the relevant state statute authorizing LLCs permits an LLC member to insulate itself in the manner required by our criteria. 47 CFR 76.501 Note 2, 76.503 Note 2, and 76.504 Note 2, also provide that officers and directors of an entity are considered to have a cognizable interest in the entity with which they are associated. If any such entity engages in businesses other than video programming-related activities, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to the entity's video-programming activities. The officers and directors of a parent company of a video-programming business, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the video-programming subsidiary and a

statement properly documenting this fact is submitted to the Commission. This statement may be included on the Licensee Qualification Report.

47 CFR 76.503 Note 2 includes a requirement for limited partners who are not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership to certify that fact or be attributed to a limited partnership interest.

47 CFR 76.503(g) of the Commission's rules states: ''Prior to acquiring additional multichannel video-programming providers, any cable operator that serves 20% or more of multichannel video-programming subscribers nationwide shall certify to the Commission, concurrent with its applications to the Commission for transfer of licenses at issue in the acquisition, that no violation of the national subscriber limits prescribed in this section will occur as a result of such acquisition.''

The filings required by these rules will be used by the Commission to determine the nature of the corporate, financial, partnership, ownership and other business relationships that confer on their holders a degree of ownership or other economic interest, or influence or control over an entity engaged in the provision of communications services such that the holders are subject to the Commission's regulations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–17872 Filed 10–24–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 16, 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 December 26, 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 FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167 or via Internet at *Allison_E._Zaleski@eop.omb.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection after the 60-day comment period, 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), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0678.

Title: Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by Satellite Network Stations and Space Stations.

Form No.: FCC Form 312, including Schedule B; Schedule S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 3,473.

Estimated Time per Response: .50–40 hours.

Frequency of Response: On occasion and annual reporting requirements and third party disclosure requirements.

Total Annual Burden: 42,136 hours.

Total Annual Cost: $610,644,061.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission will submit this revised information collection to OMB after this 60-day comment period to obtain the full three-year clearance from them.

The Federal Communications Commission (''Commission''), on its own motion, proposes to revise OMB Control No. 3060–0678 to add a section to the Application for Satellite Space and Earth Station Authorizations (FCC Form 312) which will enable satellite applicants to certify whether or not they are subject to geographic service or geographic coverage requirements and whether they will comply with the requirements. Currently, Section 25.148(c) of the Commission's rules requires Direct Broadcast Satellite (DBS) operators to provide service to Alaska and Hawaii if ''technically feasible,'' or to provide a technical analysis showing that such service is not technically feasible. In addition, some Mobile Satellite Service (MSS) operators and Non-geostationary Satellite Orbit Fixed Satellite Service (NGSO FSS) operators have similar geographic coverage requirements. For example, Ka-band NGSO FSS systems must provide service between 70° North Latitude and 55° South Latitude for at least 75 percent of every 24-hour period in accordance with Section 25.145(c)(1) of the Commission's rules. The Commission also proposes to require other applicants to provide this certification in the event that it expands its geographic rules, as proposed in two pending rulemakings. See 71 FR 43687 (Aug. 2, 2006); 71 FR 56923 (Sept. 28, 2006).

The addition of the certification will require modification of the FCC Form 312 which is housed in the International Bureau Filing System (''MyIBFS''), an electronic filing system. In 2005, the Commission received approval from the Office of Management and Budget (OMB) for mandatory electronic filing of all satellite and earth station applications. Therefore, all certifications must be filed with the Commission electronically in MyIBFS.

This collection is used by the Commission staff in carrying out its duties concerning satellite communications as required by Sections 301, 308, 309 and 310 of the Communications Act, 47 U.S.C. 301, 308, 309, 310. This collection is also used by the Commission staff in carrying out its duties under the World Trade Organizations (WTO) Basic Telecom Agreement. The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the

authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the U.S. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–17873 Filed 10–24–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 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 of 1995 (PRA), Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the 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 PRA comments should be submitted on or before December 26, 2006. If you anticipate that you will be submitting 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 PRA comments to Les Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0749.

Title: Section 64.1509, Disclosure and Dissemination of Pay-Per-Call Information.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 25.

Estimated Time per Response: 410 hours.

Frequency of Response: Annual and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 10,250 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On July 16, 2004, the Commission released the Notice of Proposed Rulemaking (NPRM), In the Matter of Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services, and Toll-free Number Usage; Truth-in-Billing and Billing Format, CC Docket No. 98–170 and CG Docket No. 04–244, FCC 04–162, which initiated a new proceeding to review the effectiveness of the Commission's rules governing pay-per-call services, related audiotext information services, and toll-free numbers. The *NPRM* sought comment as to whether the Commission's existing rules governing billing specifically for pay-per-call services and those for charges billed through toll-free numbers are sufficient to address any current billing concerns. The *NPRM* sought comment specifically on whether the Commission should adopt a requirement that charges for presubscribed audiotext information services accessed through toll-free numbers must be displayed separately from local and long-distance telephone service.

Common carriers that assign telephone numbers to pay-per-call services must disclose to all interested parties, upon request, a list of all assigned pay-per-call numbers. For each assigned number, carriers must also make available (1) a description of the pay-per-call services; (2) the total cost per minute or other fees associated with the service; and (3) the service provider's name, business address, and telephone number. In addition, carriers handling pay-per-call services must establish a toll-free number that consumers may call to receive information about pay-per-call services. Finally, the Commission requires carriers to provide statements of pay-per-call rights and responsibilities to new telephone subscribers at the time service is established and, although not required by statute, to all subscribers annually.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–17874 Filed 10–24–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

No FEAR Act Notice

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is hereby providing notice to its employees, former employees, and applicants for federal employment about the rights and remedies that are available to them under the Federal antidiscrimination laws and whistleblower protection laws. This notice fulfills FCC's initial notification obligations under the Notification and Federal Employees Antidiscrimination and Retaliation Act (No FEAR Act), as implemented by Office of Personnel Management (OPM) regulations at 5 CFR part 724.

DATES: October 25, 2006.

FOR FURTHER INFORMATION CONTACT: P. June Taylor, Acting Director, FCC's Office of Workplace Diversity at (202) 418–1799. Additional information can be found on the FCC's Web site at *http://www.fcc.gov/owd.*

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, Title I, General Provisions, section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. See, e.g., 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (See contact information above). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov*.

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR Part 724, as well as the appropriate offices within your agency (e.g., EEO/civil rights office, human resources office or legal office). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov*.

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–17903 Filed 10–24–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011975.

Title: ''K'' Line/HMM Space Charter Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd. and Hyundai Merchant Marine Co., Ltd.

Filing Party: John P. Meade, Esq.; ''K'' Line America, Inc.; P.O. Box 9; Preston, Maryland 21655.

Synopsis: The agreement authorizes the parties to exchange space on their respective vessels in the trade between U.S. ports and ports on the East Coast of South American and in the Caribbean Sea.

Agreement No.: 201132–008.

Title: New York/New Jersey-Port Newark Container Terminal LLC Lease (Lease No. L–PN–264).

Parties: The Port Authority of New York and New Jersey and Port Newark Container Terminal LLC.

Filing Party: Patricia W. Duemig, Senior Property Representative, The Port Authority of New York and New Jersey, New Jersey Marine Terminals, 260 Kellogg Street, Port Newark, NJ 07114.

Synopsis: The amendment extends the letting of PNCT's rail facility.

Title: Hampton Road Chassis Pool II Agreement.

Parties: Virginia International Terminals, Inc., and the Ocean Carrier

Equipment Management Association, for itself and on behalf of the following of its member lines: APL Co. Pte. Ltd.; American President Lines, Ltd.; Atlantic Container Line; Australia-New Zealand Direct Line, a division of CP Ships (UK) Limited; CMA CGM, S.A.; Compania Sud Americana de Vapores, S.A.; Contship Containerlines, a division of CP Ships (UK) Limited; COSCO Containerlines Company Limited; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hamburg-Süd; Hapag-Lloyd AG; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; CP Ships USA, LLC; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; and Yangming Marine Transport Corp.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes Hapag-Lloyd name and deletes P&O Nedlloyd B.V. and P&O Nedlloyd Limited as parties to the agreement.

Dated: October 20, 2006.

By order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–17881 Filed 10–24–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder-Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission,Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

AJC Logistics, LLC dba Eagle Logistics Systems, 5188 Roswell Road, NW., Atlanta, GA 30342. Officers: Christopher Swartz, Vice President, (Qualifying Individual), Gerald L. Alliston, President.

Ben-New Shipping, Inc., 1383 Kale Drive, Lithonia, GA 30058. Officers: Dionne Newell, Director, (Qualifying Individual), Desrine Bennett, Director.

Marine Express Shipping, Inc., 2380 Massachusetts Avenue, Cambridge, MA 02140. Officer: Petrus Alesy, President, (Qualifying Individual).

Oriental Camden Inc. dba Embarque Carden, 2011 River Avenue, Camden, NJ 08105. Officers: Elpidio Alcantara, President, (Qualifying Individual), Cristiana Alcantara, Vice President.

A1 Courier, Corp., 8236 NW. 68th Street, Miami, FL 33166. Officers: Claudio Varanese, President, (Qualifying Individual), Geraldine Arevalo, Vice President.

El Siglo Shipping Corp., 1306 Morrison Avenue, Bronx, NY 10472. Officer: Luis Manuel Clander-Evans, President, (Qualifying Individual).

Pacific Road Logistics, Inc., 520 E. Carson Plaza Ct., Suite 204, Carson, CA 90746. Officers: Brendan Sheen, Treasurer, (Qualifying Individual), Yoon Yeon Jung, President.

Findlay International, Inc. dba Findlay International, 326 South Fulton Avenue, Mount Vernon, NY 10553. Officers: Andrew C. Churchill, Vice President, (Qualifying Individual), Gregory J. Mouracade, President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Austoromar Logistics USA, LLC, 1325 Mittel Blvd., Wood Dale, IL 60191. Officer: Tadeusz Andrzej Krafft, Manager, (Qualifying Individual).

KP Freight, LLC, 8399 NW 66 Street, Suite 3, Miami, FL 33166. Officer: John F. Mylott, President, (Qualifying Individual).

Pak Mail Centers of America, Inc., dba Platinum Worldwide Logistics, 7173 S. Havana Street, Suite 600, Centennial, CO 80112. Officers: Justin Andres, Vice President, (Qualifying Individual), P. Evan Lasky, CEO.

Ocean Freight Forwarder-Ocean Transportation Intermediary Applicants

KOC Enterprise Inc., 111 Lakeview Drive, Old Tappan, NJ 07675. Officer: Eock S. Oh, President, (Qualifying Individual).

World Applicances, Inc., 2822 Juniper Street, Fairfax, VA 22031. Officer: Max Llaneza, President, (Qualifying Individual).

Ocean Air Cargo and Brokerage Corp. dba Ocean Air Cargo, 16 Corning Avenue, Suite 154, Milpitas, CA 95035. Officers: Blas De Leon Caliva, General Manager, (Qualifying Individual), Antonio Alve, Director.

Dated: October 20, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–17891 Filed 10–24–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409), and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date resissued
004130NF	GSG Investment Inc., dba Worldwide Logistics Company, dba WWL dba Trade Passage, 2411 Santa Fe Avenue, Unit C, Redondo Beach, CA 90278.	August 26, 2006.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–17882 Filed 10–24–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 9, 2006.

A. Federal Reserve Bank of New York (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. Treetops Acquisition Group LP, Treetops Acquisition Group II LP, Treetops Acquisition Group Ltd., Treetops Acquisition Group II Ltd., CAM Discount Ltd., all of Georgetown, Grand Cayman, the Edgar M. Bronfman Trusts, A,B,C,D,E,F and G, all of Montreal, Canada; Israel Discount Ltd, Tel Aviv, Israel and Discount Bancorp, New York, New York; to acquire voting shares of IDB Capital Corp, New York, New York, a Securities and Exchange Commission-registered securities broker from its bank subsidiary Israel Discount Bank of New York, New York, and thereby engage in agency transactional services for customers pursuant to section 228.25(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, October 20, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–17886 Filed 10–24–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 061 0217]

Barr Pharmaceuticals, Inc. and Pliva d.d.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 20, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Barr Pharmaceuticals, File No. 061 0217,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Stephanie C. Bovee, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2083.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 20, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/10/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Barr Pharmaceuticals, Inc. (''Barr''), which is designed to remedy the anticompetitive effects of its proposed acquisition of Pliva d.d. (''Pliva''). Under the terms of the Consent Agreement, Barr is required to divest to Apotex, Inc. (''Apotex'') Barr's generic trazodone and generic triamterene with hydrochlorothiazide (''triamterene/HCTZ'') businesses. Further, the Consent Agreement requires Barr to return marketing rights to Pliva's generic nimodipine product in development to its joint venture partner, Banner Pharmacaps, Inc. (''Banner''), or in the alternative, that Barr return marketing rights to its nimodipine product in development to its development partner, Cardinal Health, Inc. (''Cardinal''). Lastly, the Consent Agreement requires Barr to divest Pliva's branded organ preservation solution, Custodiol, to New Custodiol LLC, a company formed for the purpose of marketing and selling Custodiol. The assets for each of the divestitures includes all of the relevant intellectual property, customer lists, research and development information, and regulatory materials. With these divestitures the competition that would otherwise be eliminated through the proposed acquisition of Pliva by Barr will be fully preserved.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposedConsent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (''Order'').

Pursuant to an announcement dated June 27, 2006, Barr intends to acquire all of the outstanding shares of Pliva by cash tender offer for approximately $2.5 billion. Both parties manufacture and sell generic pharmaceuticals in the United States. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the markets for the manufacture and sale of: (1) Generic trazodone hydrochloride tablets; (2) generic triamterene/HCTZ tablets; (3) generic nimodipine soft-gel capsules; and (4) organ preservation solutions. The proposed Consent Agreement remedies the alleged violations by replacing in each of these markets the lost competition that would result from the acquisition.

II. The Products and Structure of the Markets

Barr's acquisition of Pliva would reduce the number of current or future competing generic suppliers in the following three pharmaceutical products: trazodone hydrochloride tablets, triamterene/HCTZ tablets and nimodipine soft-gel capsules. The number of generic suppliers has a direct and substantial effect on generic pricing, as each additional generic supplier can have a competitive impact on the market. Because there are (or will be) multiple generic equivalents for the three products at issue here, the branded versions do not (or will not) significantly constrain the generics' pricing.

For each of the three generic products at issue here, Barr and Pliva currently are two of a small number of suppliers offering the product or are the only two future competitors.

Trazodone hydrochloride is an antidepressant. The branded product, Desyrel, is manufactured and sold by Apothecon, Inc., and typically sells for 50 times the generic price. Thus, Desyrel does not have a significant effect on pricing for generic trazodone. Sales of generic trazodone were over $53 million in 2005. Currently, Barr, Pliva, Watson Pharmaceuticals, Inc. (''Watson''), Teva Pharmaceutical Industries Ltd. (''Teva''), and United Research Laboratories/Mutual Pharmaceutical Company (''URL/Mutual'') are the only active suppliers of generic trazodone in the United States, although not all five suppliers are capable of supplying all formulations. For instance, Barr and Pliva are two of only three suppliers of the 150 mg formulation. Because many customers prefer to purchase the 50 mg, 100 mg and 150 mg formulations of generic trazodone from one supplier, the competitive significance of the other two suppliers who do not sell these formulations is limited. Moreover, the acquisition would reduce the number of suppliers of generic trazodone from five to four, and significantly increase Barr's market share to over 64 percent in all formulations.

Triamterene/HCTZ is a combination product used to treat high blood pressure. The branded traimterene/HCTZ product, Maxzide, is manufactured and sold by Mylan Laboratories, Inc. (''Mylan'') and is priced more than five times higher than its generic equivalent. Maxzide does not have a significant effect on the pricing of generic triamterene/HCTZ, while the competition between generic producers has a direct and substantial effect on generic triamterene/HCTZ pricing. Currently, Barr, Pliva, Watson, Mylan and Sandoz, Inc. (''Sandoz'') are the only active suppliers of various formulations of generic triamterene/HCTZ tablets in the United States. Furthermore, there is evidence that several of these suppliers may have a more limited competitive significance in the market than Barr and Pliva. The proposed acquisition would reduce the number of suppliers from five to four, and would increase Barr's market share to about 35 percent.

Nimodipine is used to treat symptoms resulting from a ruptured blood vessel in the brain. The branded version of this product, Nimotop, is manufactured and sold by Bayer. Although the patent for the branded version of the drug has already expired, there are no generic suppliers of nimodipine on the market. Barr, in conjunction with Cardinal, plans to introduce generic nimodipine in the fall of 2006. Pliva also has plans to introduce generic nimodipine with its partner, Banner in the same time frame. Pliva and Barr are the only firms in the process of entering this market. The acquisition would, therefore, eliminate future competition between Barr and Pliva and result in a monopoly in the generic nimodipine market.

Barr's acquisition of Pliva would also have an impact in one additional market, organ preservation solutions. These solutions are used during the harvesting of donor organs to flush and preserve the viability of the donor organ prior to transplantation. The market for organ preservation solutions in the United States is highly concentrated. Barr and Pliva have market shares of approximately 60 and 30 percent, respectively, in this $17 million market. The rest of the market is divided among several smaller, niche players. The acquisition would significantly increase concentration in this market with Barr achieving near monopoly share with approximately 90 percent of the organ preservation solution market.

III. Entry

Entry into manufacture and sale of generic trazodone, generic triamterene/HCTZ, generic nimodipine, and organ preservation solutions would not be timely, likely, or sufficient in its magnitude, character, and scope to deter

or counteract the anticompetitive effects of the acquisition. Developing and obtaining FDA approval for the manufacture and sale of each of the relevant products takes at least 2 years due to substantial regulatory, technological, and intellectual property barriers. In addition to regulatory barriers, penetrating the organ preservation solution market is further hindered by the reluctance of transplant surgeons to switch to a new organ preservation product.

IV. Effects of the Acquisition

The proposed acquisition would cause significant competitive harm to consumers in the U.S. markets for generic trazodone, generic triamterene/HCTZ, and organ preservation solutions by eliminating actual, direct, and substantial competition between Barr and Pliva, by increasing the likelihood that Barr will be able to unilaterally exercise market power, by increasing the likelihood and degree of coordinated interaction between the few remaining competitors, and by increasing the likelihood that consumers will pay higher prices. In these markets, the evidence shows that consumers have obtained lower prices due to the competitive rivalry that exists between market participants. The evidence also shows that as new rivals have entered the markets, consumers have obtained lower prices. The acquisition would also cause significant competitive harm to consumers in the U.S. market for generic nimodipine by eliminating future competition between Barr and Pliva.

V. The Consent Agreement

The proposed Consent Agreement preserves competition in the generic trazodone and triamterene/HCTZ markets by requiring that Barr divest all of the Barr assets for these two products to Apotex within 10 days after the acquisition. The proposed Consent Agreement contains several provisions designed to ensure these divestitures are successful. Barr must provide various transitional services to enable Apotex to compete against Barr immediately following the divestiture. These services include providing Apotex with existing inventory of generic trazodone and triamterene/HCTZ, supplying Apotex with generic trazodone and triamterene/HCTZ until Apotex secures FDA approval to manufacture the products for itself in its own facility, and providing Apotex with all technical assistance necessary to obtain any FDA approvals. Apotex is a reputable generic manufacturer and is well-positioned to manufacture and market the acquired products and to compete effectively in those markets. In the United States, Apotex is roughly the tenth-largest generic pharmaceutical company with over 50 products. Moreover, the acquisition by Apotex does not present competitive problems in either the generic trazodone market or the generic triamterene/HCTZ market because it does not currently compete in those markets.

The proposed Consent Agreement preserves the actual and potential competition in the generic nimodipine market by requiring Barr to divest the Pliva nimodipine assets to Banner no later than 10 days after the acquisition, or to divest its own nimodipine assets to Cardinal no later than 60 days after the acquisition. Banner and Cardinal are both reputable soft-gel capsule manufacturers and particularly well-positioned to manufacture and market generic nimodipine because they are already manufacturing generic nimodipine soft-gel capsules pursuant to their respective joint ventures with Pliva and Barr.

The proposed Consent Agreement preserves the competition in the organ preservation solution market by requiring Barr to divest the Pliva organ preservation solution business to New Custodiol LLC no later than 10 days after the acquisition. The Custodiol product is currently manufactured by a third party, Dr. Franz Kohler Chemie GmbH, who will continue to supply the product to new New Custodiol LLC. New Custodiol LLC is a company that was formed by Pliva's current head of marketing for organ preservation solutions, Mr. Allen Weber, for the purpose of acquiring, marketing and selling Custodiol in the United States. New Custodiol LLC has obtained funding from venture capitalists sufficient to allow it to manufacture and sell Custodiol effectively. The combination of Mr. Allen Weber's industry experience and venture capital backing makes New Custodiol LLC well positioned to acquire Custodiol and to restore the competition that would be lost if the proposed acquisition were to proceed unremedied. If the sale of Pliva's Custodiol is not successful, the Consent Agreement requires that Barr divest its organ preservation solution, ViaSpan, to a Commission-approved acquirer.

If the Commission determines that any of the divestitures or divestees are not acceptable, Barr must rescind the transaction(s) and divest the assets to Commission-approved buyer(s) not later than 6 months from the date the Order becomes final. If Barr fails to divest within the 6 months, the Commission may appoint a trustee to divest the assets.

The proposed remedy also allows for the appointment of an Interim Trustee, experienced in obtaining regulatory approval and the manufacture of pharmaceuticals, to oversee the technology transfer and to assist the divestees in the event of difficulties. As part of the proposed remedy, Barr is required to execute an agreement conferring all rights and powers necessary for the Interim Trustee to satisfy his responsibilities under the Order to assure successful divestitures. The Commission has appointed Mr. William Rahe to be the Interim Monitor and the divestees have consented to his selection. The monitor will ensure that the Commission remains informed about the status of the proposed divestitures and asset transfers.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–17904 Filed 10–24–06; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Privacy Act System of Records

AGENCY: General Services Administration

ACTION: Notice of proposed system of records.

SUMMARY: The General Services Administration (GSA) proposes to establish a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. This system of records notice is for the GSA Smart Card Program (GSA/CIO–1), which covers the Homeland Security Presidential Directive 12, Policy for a Common Identification Standard for Federal Employees and Contractors (HSPD–12), process after adjudication and determines if the individual can receive identification (ID) card. The records include both mandatory and optional information necessary to the request for an ID card, registration, verification, and issuance procedures, the index/database of active and invalid ID cards, and the information stored on the ID cards. The system may include records of individuals who entered and

exited Federal facilities or accessed systems.

The GSA Smart Card Program will ensure the safety and security of Federal facilities, information systems, and their occupants and users, by verifying that all persons entering Federal facilities, using Federal information resources, or accessing classified information are authorized to do so. The system also will track and control identification ID cards issued to individuals for these purposes.

DATE: The system of records will become effective on December 4, 2006 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments relating to the GSA Smart Card Program should be directed to: Director, GSA HSPD–12 Smart Card Program Management Office, Office of the Chief Information Officer, General Services Administration, 1800 F Street NW., Room G–006, Washington DC 20405–0002; telephone (202) 501–1500; fax (202) 219–5818.

FOR FURTHER INFORMATION CONTACT: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW, Washington, DC 20405; telephone (202) 501–1452.

SUPPLEMENTARY INFORMATION: The GSA notice entitled Credentials, Passes, and Licenses (GSA/HRO–8) is cancelled. However, existing GSA forms and associated databases covered by that system will continue in effect until replaced with those covered by this notice. The existing forms include: GSA Form 48, Request and Record of Identification; GSA Form 277, Employee Identification and Authorization Credential; GSA Form 277U, Temporary Pass; GSA Form 277V, Visitor Pass; GSA Form 2941 Parking Application; as well as biometric information including photo, fingerprints and signature. The new forms and databases covered by this notice will be phased in to ensure a controlled and structured process.

Dated: October 6, 2006.

Cheryl M. Paige,

Acting Director, Office of Information Management.

GSA/CIO–1

System name: GSA Smart Card Program

System location: Data are maintained in GSA Central Office databases with access from GSA regional offices. Additionally, some access control data may be located in Federal buildings and Federally-leased facilities where staffed guard stations have been established to handle the GSA Smart Card Personal Identity Verification (PIV) process as well as the physical security and computer security offices at those locations. Contact the System Manager for additional information.

Security classification: Most identity records are not classified. However, in some cases, records of certain individuals or portions of some records may be classified in the interest of national security.

Categories of individuals covered by the system: Individuals who require regular, ongoing access to agency facilities, information technology systems, or information classified in the interest of national security, including:

a. Applicants for employment or contracts

b. Federal employees

c. Contractors

d. Students

e. Interns

f. Volunteers

g. Individuals formerly in any of these positions

Also included are individuals authorized to perform or use services provided in agency facilities (*e.g.*, Credit Union, Fitness Center, Cafeteria, etc.).

The system does not apply to occasional visitors or short-term guests, to whom GSA will issue temporary identification and credentials.

Categories of records in the system:

a. Records maintained on individuals issued credentials by GSA include the following data fields:

- Full name,
- Social Security Number (SSN)
- Date of birth
- Signature
- Image (photograph)
- Fingerprints
- Hair color
- Eye color
- Height
- Organization / office of assignment
- Company / agency name
- Telephone number
- ID card issuance and expiration dates
- ID card request form
- Registrar approval signature
- ID card number
- Emergency responder designation
- Copies of documents used to verify identification or information derived from those documents such as document title, document issuing authority, document number, document expiration date, other document information

b. Records maintained on cardholders entering GSA facilities or using GSA systems may include:

- Name
- ID card number
- Date and Time of entry/exit
- Location of entry and exit
- Computer access dates, times, and locations

Authorities for maintenance of the system:

a. 5 U.S.C. 301;

b. Federal Information Security Management Act (Pub. L. 107–296);

c. E-Government Act (Pub. L. 107–347, Sec. 203);

d. Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et al.)

e. Government Paperwork Elimination Act (Pub. L. 105–277, 44 U.S.C. 3504);

f. Homeland Security Presidential Directive 12 (HSPD–12), Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; and

g. Federal Property and Administrative Services Act of 1949, as amended.

Purpose: The primary purposes of the system are:

a. To ensure the safety and security of GSA facilities, systems or information, and our occupants and users;

b. To verify that all persons entering federal facilities, using federal information resources, or accessing classified information are authorized to do so; and

c. To track and control ID cards issued to persons entering and exiting the facilities, using systems, or accessing classified information.

Routine uses of the system records, including categories of users and their purpose for using the system:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. § 552a(b), and:

a. To the Department of Justice when: (1) GSA or any component thereof; (2) any employee of GSA in his or her official capacity; (3) any employee of GSA in his or her individual capacity where GSA or the Department of Justice (DOJ) has agreed to represent the employee; or (4) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, GSA determines that the records are both relevant and necessary to the litigation, and the use of such records by DOJ is therefore deemed by GSA to be for a purpose compatible with the purpose for which GSA collected the records.

b. To a court or adjudicative body in a proceeding when: (1) GSA or any component thereof; (2) any employee of GSA in his or her official capacity; (3) any employee of GSA in his or her

individual capacity where GSA or the Department of Justice has agreed to represent the employee; or (4) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, GSA determines that the records are both relevant and necessary to the litigation, and the use of such records is therefore deemed by GSA to be for a purpose that is compatible with the purpose for which the agency collected the records.

c. Except as noted on Forms SF 85, 85–P, and 86, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate public authority, whether Federal, foreign, State, local, or tribal, or otherwise responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutorial responsibility of the receiving entity.

d. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent whose record is maintained.

e. To the National Archives and Records Administration for records management purposes.

f. To agency contractors, grantees, or volunteers who have been engaged to assist the agency in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. § 552a.

g. To a Federal, State, local, foreign, tribal, or other public authority the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

h. To the Office of Management and Budget when necessary to the review of private relief legislation pursuant to OMB Circular No. A-19.

i. To a Federal, State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947 as amended, the CIA Act of 1949 as amended, Executive Order 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders, or directives.

j. To notify another federal agency when, or verify whether, an ID card is no longer valid.

Note: Disclosures within GSA of data pertaining to date and time of entry and exit of an agency employee working in the District of Columbia may not be made to supervisors, managers or any other persons (other than the individual to whom the information applies) to verify employee time and attendance record for personnel actions because 5 U.S.C. § 6106 prohibits Federal executive agencies (other than the Bureau of Engraving and Printing) from using a recording clock within the District of Columbia, unless used as a part of a flexible schedule program under 5 U.S.C. § 6120 *et seq.*

Policies and practices for storing, retrieving, accessing, retaining, and disposing of system records:

Storage: Information may be collected on paper or electronically and may be stored on paper or on electronic media, as appropriate.

Retrievability: Records are retrievable by name, Social Security Number, other ID number, ID card number, image (photograph), and fingerprint.

Safeguards: Paper records are kept in locked cabinets in secure facilities and access to them is restricted to individuals whose role requires use of the records.

The computer servers in which records are stored are located in facilities that are secured by alarm systems and off-master key access. The computer servers themselves are password-protected. Access to individuals working at guard stations is password-protected; each person granted access by the system at guard stations must be individually authorized to use the system. A Privacy Act Warning Notice appears on the monitor screen when records containing information on individuals are first displayed. Data exchanged between the servers and the client PCs at the guard stations and badging office are encrypted. Backup tapes are stored in a locked and controlled room in a secure, off-site location. Each of the component computer servers at the GSA Regions, or at the contract Card Production and Card Management Systems has been only authorized to act when it has been Certified and Accredited in accord with GSA Information Technology Security Policy and HSPD–12 criteria. This Certification is updated periodically on a 3 year basis, or less if cause to do so has become apparent.

An audit trail is maintained and reviewed periodically to identify unauthorized access. Persons given roles in the personal identity verification process must complete training specific to their roles to ensure they are knowledgeable about how to protect individually identifiable information.

Retention and disposal: Records relating to persons covered by this system are retained in accordance with General Records Schedule 18, Item 17. Unless retained for specific, ongoing security investigations for maximum security facilities, records of access are maintained for five years and then destroyed by degaussing hard drives and shredding paper. For other facilities, records are maintained for two years and then destroyed by wiping hard drives and shredding paper. All other records relating to employees are destroyed two years after the ID card expiration date.

In accordance with HSPD–12, ID cards are deactivated within 18 hours of cardholder separation, loss of card, or expiration. The information on ID cards is maintained in accordance with General Records Schedule 11, Item 4. ID cards are destroyed by shredding 90 days after deactivation. Once notification of deactivation has been received, the ID number is placed on a revocation list within no more than 2 hours, which immediately invalidates the access privileges for that card in accord with GSA policy.

System manager and address:

Director, GSA HSPD–12 Smart Card Program Management Office

Office of the Chief Information Officer

1800 F Street NW, Room G–006

Washington DC 20405–0002

Notification procedure: An individual can determine if this system contains a record pertaining to him/her by sending a request in writing, signed, to the System Manager at the above address.

When requesting notification of or access to records covered by this notice, an individual should provide his/her full name, date of birth, agency name, and work location. An individual requesting notification of records in person must provide identity documents sufficient to satisfy the custodian of the records that the requester is entitled to access, such as a government-issued photo ID.

Record access procedures: Same as notification procedures. Requesters also should reasonably specify the record contents being sought. Rules regarding access to Privacy Act records appear in 41 CFR part 105–64. If additional information or assistance is required, contact the GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW, Washington, DC 20405; telephone (202) 501–1452.

Contesting record procedures: Same as notification procedures. Requesters also should reasonably identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the correction, along with supporting justification showing why the record is not accurate, timely, relevant, or complete. Rules regarding amendment of Privacy Act records appear in 41 CFR part 105–64. If additional information or assistance is required, contact the GSA Privacy Act Officer.

Record source categories: Employee, contractor, or applicant; sponsoring agency; former sponsoring agency; other Federal agencies; contract employer; former employer.

Exemptions claimed for the system: None.

[FR Doc. E6–17896 Filed 10–24–06; 8:45 am]

BILLING CODE 6820–34–S

OFFICE OF GOVERNMENT ETHICS

No FEAR Act Notice

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics is publishing this notice under the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is known as the No FEAR Act, to inform current employees, former employees, and applicants for OGE employment of the rights and protections available to them under Federal antidiscrimination, whistleblower protection and retaliation laws.

FOR FURTHER INFORMATION CONTACT: Vincent J. Salamone, Associate General Counsel, Office of General Counsel and Legal Policy, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; OGE Internet E-mail: *usoge@oge.gov* (for E-mail messages, the subject line should include the following reference—''No FEAR Act Notice''); Telephone: 202–482–9274; TDD: 202–482–9293; FAX: 202–482–9237. A copy of the No FEAR Act Notice will be posted on OGE's Web site (*http://www.usoge.gov*). Persons who cannot access this No FEAR Act notice through the Internet may request a paper or electronic copy by contacting Mr. Salamone at the address, E-mail address, telephone numbers, or FAX number listed above.

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, Section 101(1), 116 Stat. 566. The Act also requires this Agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform them of the rights and protections available to them under Federal antidiscrimination, whistleblower protection, and retaliation laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. *See, e.g.*, 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov.* In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with OSC at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in

the Antidiscrimination Laws and Whistleblower Protection Laws or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws, up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within your agency (*e.g.*, EEO/civil rights office, human resources office or legal office). At the Office of Government Ethics, the Equal Employment Opportunity Officer is Grace A. Clark and she may be contacted by telephone at 202–482–9225, TDD at 202–482–9293, E-mail at *gaclark@oge.gov* or by FAX at 202–482–9238.

Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov*.

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Approved: October 17, 2006.

Robert I. Cusick,

Director, Office of Government Ethics.

[FR Doc. E6–17847 Filed 10–24–06; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Biosurveillance Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the eleventh meeting of the American Health Information Community Biosurveillance Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: November 9, 2006, from 1 p.m. to 5 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/bio_main.html.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue reviewing and discussing the ''Biosurveillance Priority Area Matrix,'' and further review information on a Minimum Data Set from the Data Steering Group.

The meeting will be available via Web cast at *http://www.hhs.gov/healthit/ahic/bio_instruct.html.*

Dated: October 12, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–8858 Filed 10–24–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Confidentiality, Privacy and Security Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the fifth meeting of the American Health Information Community Confidentiality, Privacy and Security Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: November 13, 2006, from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/cps_main.html.*

SUPPLEMENTARY INFORMATION: Workgroup members will continue to discuss the issues surrounding identity proofing and user authentication in preparation for the December 12th American Health Information Community meeting.

The meeting will be available via Web cast at *http://www.hhs.gov/healthit/ahic/cps_instruct.html.*

Dated: October 17, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–8859 Filed 10–24–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–0638]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Follow-up Study of Chronic Fatigue Syndrome in Georgia—Reinstatement–0920–0638—Coordinating Center for Infectious Diseases (CCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is planning a follow-up study of Chronic Fatigue Syndrome (CFS) in metropolitan, urban and rural communities in Georgia. This is in response to Congressional recommendations that the Centers for Disease Control and Prevention (CDC) sustain efforts to identify biomarkers for CFS, educate health care providers about the diagnosis and treatment of CFS, and better inform the public about it to aid early detection and improve patient care.

In 2004, OMB approved the information collection, Survey of Chronic Fatigue Syndrome and Chronic Unwellness in Georgia, under OMB Number 0920–0638. This study provided baseline information on CFS and other unexplained fatiguing illness in metropolitan, urban, and rural regions in Georgia. Data from the proposed Follow-up Study of Chronic Fatigue Syndrome in Georgia will be used to describe the clinical course of CFS and evaluate behavioral and biochemical factors associated with outcome. This follow-up study will also determine access to and utilization of health care by persons with CFS and measure direct and indirect economic burden due to the illness. As part of a control strategy, the information from this follow-up study will be used in national and pilot regional provider education programs designed to teach health care providers how to evaluate, diagnose and manage patients with CFS.

The proposed study builds on information from the Georgia survey with the objective of collecting clinical information that will help in the treatment of CFS and will help to interpret results obtained from testing biologic specimens (*i.e.*, identify biomarkers of CFS). This follow-up study begins with a detailed telephone interview of persons who participated in the earlier survey and volunteered to be contacted again. The interview is similar (with minor modifications) to the original interview and is intended to obtain additional data on participant health status during the last twelve-month period. Eligible subjects with CFS, other fatiguing illnesses, and well controls will be asked to participate in clinical evaluations.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Telephone interview	2,870	1	30/60	1,435
Clinical Evaluation	338	1	450/60	2,535
Total				3,970

Dated: October 19, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–17853 Filed 10–24–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 71 FR 50065, dated August 14, 2006), is amended to reflect the establishment of the Healthy Aging Program within the Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, Coordinating Center for Health Promotion, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follow:

After the *Office of the Director (CUCE1), Division of Adult and Community Health (CUCE) National Center for Chronic Disease Prevention and Health Promotion (CUC)*, insert the following:

Healthy Aging Program (CUCE2). (1) Serves as an active link between public health and aging services networks to provide leadership in health promotion and disease prevention for older adults; (2) provides scientific expertise and rigor to health promoting strategies and interventions through the use of data and research; (3) disseminates prevention messages, programs, and policies; (4) contributes to the capacity of systems and organizations to improve the health of older adults; (5) administers grants, cooperative agreements, contracts, and other procurement requests to implement evidence-based health promotion interventions and disseminates health aging messages; (6) promotes expanding prevention research for older adults by supporting the Prevention Research Centers Healthy Aging Research Network (PRC–HAN); (7) administers data into action through the development of *The State of Aging and Health in America* report series; (8) collaborates with aging organizations to expand the reach to professionals, the public, and the media through the development and evaluation of web-based health promotion modules and media backgrounders on various older adult health topics; and (9) directs and disseminates the national public health and action plan for brain health as part of the Alzheimer's disease segment of the Healthy Aging Program.

Delete in its entirety the title and functional statement for the *Healthcare and Aging Studies Branch (CUCEC),* and insert the following: *Arthritis, Epilepsy and Quality of Life Branch (CUCEC).* (1) Directs and supports activities that increase the overall quality of life for people affected by arthritis; (2) directs and supports activities that improve medical care, improve communication and combat stigma, enhance self-management, support surveillance and prevention research, and increase public awareness and knowledge about

epilepsy; (3) directs and administers the development of a national, state, and local surveillance system of tracking health-related quality of life (HRQOL) among U.S. residents; (4) administers grants, cooperative agreements, contracts, and other procurement requests to implement evidence-based health promotion interventions and disseminate arthritis prevention and epilepsy education messages; (5) develops, validates, and refines HRQOL measure for use in tracking and prevention research at each life stage; (6) directs and coordinates the evaluation of community and state-based intervention programs for arthritis and epilepsy; (7) developes arthritis epidemiology capacity and other arthritis programmatic capabilities in state health department settings; and (8) disseminates health promotion and disease prevention information through national advocacy partners for arthritis and epilepsy.

Dated: October 12, 2006.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 06–8869 Filed 10–24–06; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006F–0409]

Safe Foods Corporation; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Safe Foods Corporation has filed a petition proposing that the food additive regulations be amended to expand the conditions for the safe use of cetylpyridinium chloride as an antimicrobial agent in a pre-chiller or post-chiller solution for application to raw poultry carcasses.

DATES: Submit written or electronic comments on the petitioner's environmental assessment by November 24, 2006.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Raphael Davy, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1272.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6A4767) has been filed by Safe Foods Corporation, c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, D.C. 20001. The petition proposes to amend the food additive regulations in § 173.375 *Cetylpyridinium chloride* (21 CFR 173.375) to expand the conditions for the safe use of cetylpyridinium chloride as an antimicrobial agent in a pre-chiller or post-chiller solution for application to raw poultry carcasses.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Division of Dockets Management (see **ADDRESSES**) for public review and comment. Interested persons may submit to the Division of Dockets Management written or electronic comments by (see **DATES**). Two copies of any written comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required, and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: October 17, 2006.

Laura M. Tarantino,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. E6–17834 Filed 10–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Grants for Hospital Construction and Modernization—Federal Right of Recovery and Waiver of Recovery (42 CFR Part 124, Subpart H) (OMB No. 0915–0099Extension)

The regulation known as ''Federal Right of Recovery and Waiver of Recovery,'' provides a means for the Federal Government to recover grant funds and a method of calculating interest when a grant-assisted facility under Titles VI and XVI of the Public Health Service Act is sold or leased, or there is a change in use of the facility. It also allows for a waiver of the right of recovery under certain circumstances. Facilities are required to provide written notice to the Federal Government when such a change occurs and to provide copies of sales contracts, lease agreements, estimates of current assets and liabilities, value of equipment, expected value of land on the new owner's books and remaining depreciation for all fixed assets involved in the transactions, and other information and documents pertinent to the change of status.

Estimates of annualized burden are as follows:

Reporting requirements	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Reporting requirements 124.704(b) and 707	10	1	10	1.25	12.5

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 17, 2006.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–17812 Filed 10–24–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The Jackson Heart Study (JHS)

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The Jackson Heart Study: Annual Follow-up with Third Party Respondents.

Type of Information Collection Request: Revision of a currently approved collection (OMB NO. 0925–0491).

Need and Use of Information Collection: This project involves annual follow-up by telephone of participants in the JHS study, review of their medical records, and interviews with doctors and family to identify disease occurrence. Interviewers will contact doctors and hospitals to ascertain participants' cardiovascular events. Information gathered will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in African American men and women. Recruitment of 5,500 JHS participants began in September 2000 and was completed in March 2004. 5,302 participants completed a baseline Exam 1 that included demographics, psychosocial inventories, medical history, anthropometry, resting and ambulatory blood pressure, phlebotomy and 24-hour urine collection, ECG, echocardiography, and pulmonary function. JHS Exam 2 began September 26 2005, with a more comprehensive Exam 3 beginning in February 2009. The two new exams include some repeated measures from Exam 1 and several new components, including distribution of self-monitoring blood pressure devices. The continuation of the study allows continued assessment of subclinical coronary disease, left ventricular dysfunction, progression of carotid atherosclerosis and left ventricular hypertrophy, and responses to stress, racism, and discrimination as well as new components such as renal disease, body fat distribution and body composition, and metabolic consequences of obesity.

Frequency of Response: One-time.

Affected Public: Individuals or households; Businesses or other for profit; not-for-profit institutions.

Type of Respondents: Middle aged and elderly adults; doctors and staff of hospitals and nursing homes. The annual reporting burden is as follows:

Estimated Number of Respondents: 600;

Estimated Number of Responses per Respondent: 1.0;

Average Burden Hours per Response: 0.5; and

Estimated Total Annual Burden Hours Requested: 300.

The annualized cost to respondents is estimated at $6,500. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF ANNUAL HOUR BURDEN

Type of response	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Morbidity & Mortality AFU 3rd Party/Next-of-kin decedents	200	1	0.17	34
Morbidity & Mortality AFU 3rd Party Physicians	200	1	0.25	50
Total	400	.....	.....	84

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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) 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) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Cheryl Nelson, Project Officer, NIH, NHLBI, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892–7934, or call non-toll-free number 301–435–0451 or E-mail your request, including your address to: *NelsonC@nhlbi.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: October 18, 2006.

Suzanne Freeman,

NHLBI Project Clearance Liaison, National Institutes of Health.

Dated: September 26, 2006.

Peter Savage,

Acting Director, DPPS, National Institutes of Health.

[FR Doc. E6–17898 Filed 10–24–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Director's Council of Public Representatives.

Date: November 3, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: Among the topics proposed for discussion are: (1) NIH Director's update: (2) Discussion on the Role of the Public in the Research Process; (3) Genome-Wide Association Studies Briefing; (4) NIH Foundation Activities Report; (5) Update on Biomarkers of Disease; (6) NIH Communications Update; and (6) discussion and public comment.

Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Jennifer E. Gorman, NIH Public Liaison/COPR Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 5B64, Bethesda, MD 20892, (301) 435–4448, *gormanj@od.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.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel and airport shuffles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state he purpose of their visit. Information is also available on the Institute's/Center's home page *http://www.copr.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 17, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8882 Filed 10–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given on the meeting of the President's Cancel Panel.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of information and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: December 5, 2006.

Open: December 5, 2006, 8 a.m.–4 p.m.

Agenda: Promoting Healthy Lifestyles to Reduce the Risk of Cancer.

Place: Oregon Health & Science University Cancer Institute, 3181 Southwest Sam Jackson Park Road, Portland, OR 97239.

Closed: December 5, 2006, 4 p.m.–8 p.m.

Agenda: The Panel will discuss the Promoting Healthy Lifestyles to Reduce the Risk of Cancer and discuss potential topics for the 2007/2008 series.

Place: Oregon Health & Science University Cancer Institute, 3181 Southwest Sam Jackson Park Road, Portland, OR 97239.

Contact Person: Abby Sandler, PhD, Executive Secretary, National Center Institute, National Institutes of Health, Building 6116, Room 212, 6116 Executive Boulevard, Bethesda, MD 20892, 301/451–9399.

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm*, where an agenda and any additional information for the meeting will be posted when available.

(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: October 17, 2006.

Linda Payne,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8883 Filed 10–24–06; 8:45 am]

BILLING CODE 4140–01–M

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 Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel,

Innovations in Cancer Sample Preparation (R21).

Date: October 20, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8101, Bethesda, MD 20892–8329, 301/496–7987, *lovingeg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, 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: October 17, 2006.

Linda Payne,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8884 Filed 10–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: December 6, 2006.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: To discuss sleep research, education priorities, and programs.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing Conf. Rm. 6C, Bethesda, MD 20892.

Contact Person: Michael J Twery, PhD, Acting Director, National Heart, Lung, and Blood Institute, National Institutes of Health, Division of Lung Diseases, 6701 Rockledge Drive, Suite 10116, Bethesda, MD 20892, 301–435–0202, *twerym@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8874 Filed 10–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sickle Cell Disease Advisory Committee.

Date: November 6, 2006.

Time: 8:30 a.m. to 4 p.m.

Agenda: Discussion of Programs and issues.

Place: National Institutes of Health, Rockledge 6700, 6700A Rockledge Drive, Conf. Rm. 354, Bethesda, MD 20817.

Contact Person: Robert B Moore, PhD, Health Scientist Administrator, Blood Diseases Program, Division of Blood Disease and Resources, National Heart, Lung, and Blood Institute, NIH, 6701 Rockledge Drive, Room 10162, Bethesda, MD 20892, 301/435–0050.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any addituional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8875 Filed 10–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: November 2–3, 2006.

Time: 7:30 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: Helen Lin, PhD, Scientific Review Administrator, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis,

Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8876 Filed 10–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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(b)(6), Title 5 U.S.C., as amended. The grant applications and the discussion 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 Dental and Craniofacial Research Special Emphasis Panel, 07–19, Review RFAs DE–07–001, DE–07–002.

Date: November 30, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter/zelazowski@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 07–15, Review R21s.

Date: November 30, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr, 4An 32B, Division of Extramural Research, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, 301–594–4827, *kims@email.nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 07–21, Review RFA DE–07–005.

Date: December 11, 2006.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr, 4An 32B, Division of Extramural Research, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, 301–594–4827, *kims@email.nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 07–23, Review PAR–05–031 P01s.

Date: December 15, 2006.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter.zelazowski@.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health (HHS)

Dated: October 17, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8880 Filed 10–24–06; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: November 6–8, 2006.

Time: November 6, 2006, 7 p.m. to 10 p.m.

Agenda: To review and evaluate the NIMH Intramural program.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Time: November 7, 2006, 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate the Training Fellows and Laboratories.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Time: November 7, 2006, 1 p.m. to 3 p.m.

Agenda: to review and evaluate the NIMH Intramural program and report preparation.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Time: November 7, 2006, 3 p.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Time: November 7, 2006, 7 p.m. to 10 p.m.

Agenda: To review and evaluate the NIMH Intramural program.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Time: November 8, 2006, 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate the Training Fellows, Staff Scientists, and Laboratories.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20851.

Time: November 8, 2006, 1 p.m. to 4 p.m.

Agenda: to review and evaluate the NIMH Intramural program and report preparation.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Contact Person: Susan Koester, PhD, Executive Secretary, Associate Director for Science, Intramural Research Program, National Institute of Mental Health, NIH, Building 10, Room 4N222, MSC 1381, Bethesda, MD 20892–1381, 301–496–3501.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(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: October 17, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8881 Filed 10–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Liaison and Scientific Review Office; Meeting of the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM)

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Meeting announcement and request for comment.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the SACATM on November 30, 2006 in Research Triangle Park, North Carolina. The meeting is scheduled from 8:30 a.m. to adjournment (~5 p.m.) and is open to the public with attendance limited only by the space available. SACATM advises the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), and the Director of the NIEHS regarding statutorily mandated duties of ICCVAM and activities of NICEATM. SACATM provides advice on priorities and activates related to the development, validation, scientific review, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods. Additional information about SACATM, including the charter, roster, and records of past meetings can be found at *http://ntp.niehs.nih.gov/* see ''Advisory Board & Committees'' or directly at *http://ntp.niehs.nih.gov/go/167.*

DATES: The SACATM meeting will be held on November 30, 2006. All individuals who plan to attend are encouraged to register online at the NTP Web site by November 27, 2006, at *http://ntp.niehs.nih.gov/go/7441.* In order to facilitate planning for this meeting, persons wishing to make an oral presentation are asked to notify Dr. Kristina Thayer via online registration, phone, or e-mail by November 23, 2006, (see **ADDRESSES** below). Written comments should also be received by November 23, 2006, to enable review by SACATM and NTP/NIEHS staff prior to the meeting.

ADDRESSES: The SACATM meeting will be held at the National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Rodbell Building, Research Triangle Park, NC 27709. Public comments and other correspondence should be directed to Dr. Kristina Thayer, (NIEHS, P.O. Box 12233, MD B2–01, Research Triangle Park, NC 27709; telephone: 919–541–5021 or e-mail: *thayer@niehs.nih.gov*). Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919–541–2475 voice, 919–541–4644 TTY (text telephone), through the Federal TTY Relay System at 800–877–8339, or by e-mail to *niehsoeeo@niehs.nih.gov*. Requests should be made at least 7 days in advance of the event.

SUPPLEMENTARY INFORMATION:

Preliminary Agenda and Availability of Meeting Materials

A preliminary agenda is provided below. Additional background material will be posted on the NTP Web site by November 1, 2006 at *http://ntp.niehs.nih.gov/go/7441* or available upon request (see **ADDRESSES** above). Following the meeting, summary minutes will be prepared and available at this Web site and upon request.

Preliminary Agenda, Scientific Advisory Committee on Alternative Toxicological Methods, November 30, 2006, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Rodbell Building, Research Triangle Park, NC 27709

8:30 a.m.

- Call to Order and Introductions
- ICCVAM–NICEATM Update
- ICCVAM Nominations
  - Public Comment
- Status of NTP High Throughput Screening Assays (HTS)
  - Public Comment

12 p.m.

Lunch Break

1 p.m.

- Follow Up to ICCVAM Report Recommendations
  - Public Comment
- Approach for Developing the ICCVAM 5-Year Plan
  - Public Comment
- European Centre for the Validation of Alternative Methods (ECVAM) Update
- Japanese Center for the Validation of Alternative Methods (JaCVAM) Update
- SACATM General Discussion

~5 p.m.

Adjourn

Request for Comments

Public input at this meeting is invited and time is set aside for the presentation of public comments. Each organization is allowed one time slot per public comment period. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked, if possible, to send a copy of their statement to Dr. Kristina Thayer (see **ADDRESSES** above) by November 23, 2006, to enable review by SACATM and NIEHS/NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution and to supplement the record. Written comments received in response to this notice will be posted on the NTP Web site. Persons submitting written comments should include their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) with the document.

Background Information on SACATM

The SACATM was established January 9, 2002, to fulfill section 3(d) of Public Law 106–545, the ICCVAM Authorization Act of 2000 [42 U.S.C. 285l–3(d)] and is composed of scientists from the public and private sectors (**Federal Register**: March 13, 2002: Vol. 67, No. 49, page 11358). The SACATM provides advice to the Director of the NIEHS, ICCVAM, and NICEATM regarding statutorily mandated duties of ICCVAM and activities of NICEATM. Additional information about SACATM, including the charter, roster, and records of past meetings can be found at *http://ntp.niehs.nih.gov/* see ''Advisory Board & Committees.''

Information about NICEATM and ICCVAM activities can be found at the NICEATM/ICCVAM Web site (*http://iccvam.niehs.nih.gov*) or by contacting the Director of NICEATM, Dr. William Stokes (telephone: 919–541–2384, or e-mail: *niceatm@niehs.nih.gov*).

Dated: October 17, 2006.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E6–17889 Filed 10–24–06; 8:45 am]

BILLING CODE 4140–01–P

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: Health of the Population Integrated Review Group, Health Services Organization and Delivery Study Section.

Date: October 26–27, 2006.

Time: 8 a.m. to 5: 30 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.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diet and Physical Activity Assessment Methods.

Date: October 26, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Ann Hardy, DRPH, Scientific review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892. (301) 435–0695, *hardyan@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Computational Genomics.

Date: November 1, 2006.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Psychopathology, Developmental Disabilities, Stress, and Aging.

Date: November 2, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Helix, 1430 Rhode Island Ave., NW., Washington, DC 2005.

Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champoumx@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Language and Communication.

Date: November 3, 2006.

Time: 3 p.m. to 6 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: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, A Canine Model of Cancer Pain.

Date: November 3, 2006.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eva Petrakova, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–1716, *petrakoe@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Biobehavioral Mechanisms of Emotion, Stress and Health.

Date: November 9, 2006.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Biao Tian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships—Risk Behavior Prevention and Health Behavior.

Date: November 13, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Karen Lechter, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726, *lechterk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Neurochemistry of Alcohol and Manganese.

Date: November 13, 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: Christine L. Melchoir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Analysis of Bacterial Chemotaxis.

Date: November 15–17, 2006.

Time: 8 a.m. to 11p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Oncology and Cancer Immunotherapy.

Date: November 15, 2006.

Time: 4 p.m. to 6 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: 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, *gubanics@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Religious Organizations and HIV.

Date: November 16, 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: Karen Lechter, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726, *lechterk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Coagulation.

Date: November 16, 2006.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, *tangd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visual System Small Business.

Date: November 17, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Biao Tian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology: Small Business Grant Applications.

Date: November 17, 2006.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Muscle SBIR/STTR SEP.

Date: November 17, 2006.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndhan Washington, DC, 1400 M Street, NW., Washingon, DC 20005 (Telephone Conference Call).

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: Center for Scientific Review Special Emphasis Panel, exploratory Applications in Child Psychopathology.

Date: November 20–21, 2006.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

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*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Development.

Date: November 20, 2006.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Willard InterContinental Hotel, 1401 Pennsylvania Avenue, NW., Washington, DC 20004.

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Infectious Diseases and Microbiology Fellowships.

Date: November 20–21, 2006.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: John C. Pugh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD, 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member of Conflicts.

Date: November 20, 2006.

Time: 9 a.m. to 11:30 a.m.

Agenda: To review and grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jose H. Guerrier, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cell Structure.

Date: November 20, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health of the Population SBIR Member SEP.

Date: November 21, 2006.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, 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.*

(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: October 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8877 Filed 10–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Development–1 Study Section, October 26, 2006, 8 a.m. to October 27, 2006, 5 p.m., Georgetown Suites, 1111 29th Street, NW., Washington, DC 20007, which was published in the **Federal Register** on September 29, 2006, 71 FR 57554–57556.

The meeting will be held on October 26, 2006, from 8 a.m. to 6 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8878 Filed 10–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 31, 2006, 8 a.m. to November 1, 2006, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on October 16, 2006, 71 FR 60744–60746.

The meeting will be held October 31, 2006, 7 a.m. to November 2, 2006, 7 a.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8879 Filed 10–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Center for the Evaluation of Risks to Human Reproduction (CERHR); Availability of the Draft Expert Panel Report on Hydroxyurea and Request for Public Comment on the Draft Report; Announcement of the Hydroxyurea Expert Panel Meeting—Correction to Expert Panel Roster

AGENCY: National Institute for Environmental Health Sciences; National Institutes of Health, HHS.

ACTION: Correction of Hydroxyurea Expert Panel Roster.

SUMMARY: Please be advised that the Hydroxyurea Expert Panel Roster as published in the **Federal Register** (Vol. 71, No. 199, pp. 60746–60748) on October 16, 2006 should include Francesco Marchetti, Ph.D., Lawrence Berkeley National Laboratory, Berkeley, CA. Marvin Meistrich, Ph.D. was listed as a panel member, but is not a member of the panel.

FOR FURTHER INFORMATION CONTACT: Dr. Michael D. Shelby, CERHR Director, 919–541–3455, *shelby@niehs.nih.gov.*

Dated: October 17, 2006.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E6–17887 Filed 10–24–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a Teleconference Meeting of the SAMHSA Center for Substance Abuse Prevention (CSAP) National Advisory Council on November 6, 2006.

The meeting will be open and will include discussion of the Center's policy issues and current administrative, legislative and program developments. The public is invited to attend the meeting in person or listen to the discussions via telephone. Due to limited space, seating will be on a registration-only basis. To register, contact the Council Executive Secretary, Ms. Tia Haynes (see contact information below) to obtain the teleconference call-in number and access code. Please communicate with Ms. Haynes to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained after the meeting by contacting Ms. Haynes or by accessing the SAMHSA Council Web site, *http://www.samhsa.gov/council/csap/csapnac.aspx*, as soon as possible after the meeting. The transcript for the meeting will also be available on the SAMHSA Council Web site within three weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration; Center for Substance Abuse Prevention National Advisory Council.

Date/Time: Monday, November 6, 2006, 1 p.m. to 3 p.m. (Open).

Place: 1 Choke Cherry Road, Video Teleconference Room, L–1057, Rockville, Maryland 20857.

Contact: Tia Haynes, Executive Secretary, SAMHSA/CSAP National Advisory Council, 1 Choke Cherry Road, 4–1066, Rockville, Maryland 20857, telephone: (240) 276–2436, fax: (240) 276–2430, e-mail: *tia.haynes@samhsa.hhs.gov.*

Dated: October 18, 2006.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E6–17859 Filed 10–24–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–37]

Notice of Proposed Information Collection: Comment Request; Monthly Report of Excess Income

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

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. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 26, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410 or *Lillian_Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director,Office of Multifamily Housing Assistance and Grant Administration,Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This 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 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; (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.

This Notice also lists the following information:

Title of Proposal: Monthly Report of Excess Income.

OMB Control Number, if applicable: 2502–0086.

Description of the need for the information and proposed use Agency form numbers, if applicable: Owners of projects receiving Section 236 rental assistance submit information to participate in retaining some or all of their excess rental charges (Excess Income) for project use or for non-project use, and to request a return of Excess Income remitted to HUD. HUD uses the information to determine that the project is well-maintained housing in good condition and that the owners have carried out their statutory obligations to remit to HUD all Excess Income that HUD has not authorized them to retain.

Agency form numbers, if applicable: HUD–93104.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response. The estimated total annual hours required to prepare the information collection is 41,100; the number of respondents is 3,000 generating 41,100 annual responses; the frequency of response is monthly or annually; and the estimated time needed to prepare the response varies from five to thirty minutes.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 18, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E6–17814 Filed 10–24–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary; Renewal of Trinity River Adaptive Management Working Group

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of renewal.

SUMMARY: We are publishing this notice in accordance with the requirements of the Federal Advisory Committee Act (FACA). The Secretary of the Interior, after consultation with the General Services Administration, hereby renews the Trinity River Adaptive Management Working Group (Working Group) for 2 years. The Working Group provides recommendations on all aspects of the implementation of the Trinity River Restoration Program and affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts.

FOR FURTHER INFORMATION CONTACT: Randy Brown, Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521, 707–822–7201.

SUPPLEMENTARY INFORMATION: The Working Group conducts its operations in accordance with the provisions of FACA (5 U.S.C. App.). It reports to the Trinity River Management Council and functions solely as an advisory body. The Working Group provides recommendations and advice to the Trinity Management Council on: (1) The effectiveness of management actions in achieving restoration goals and alternative hypotheses (methods and strategies) for study, (2) the priority for restoration projects, (3) funding priorities, and (4) other components of the Trinity River Restoration Program.

Working Group members represent the varied interests associated with the Trinity River Restoration Program. Members are selected from, but not limited to, Trinity County residents, recreational and commercial fishermen, commercial and recreational boaters, power/utility companies, agricultural water users, private and commercial timber producers, ranchers and people with grazing rights/permits, tribes, environmental organizations, and Federal, State, and local agencies with responsibilities in the Trinity River Basin. Members must be senior representatives of their respective constituent groups with knowledge of the Trinity River Restoration Program, including the Adaptive Environmental Assessment and Management Program.

Fifteen days after publication of this notice in the **Federal Register**, we will file a copy of the Working Group's charter with the Committee Management Secretariat, General Services Administration; Committee on Environment and Public Works, United States Senate; Committee on Resources, United States House of Representatives; and the Library of Congress.

Certification

I hereby certify that the Trinity River Adaptive Management Working Group is necessary and is in the public interest in connection with the performance of duties imposed on the Department of the Interior by Public Laws 84–386 and 96–335 (Trinity River Stream Rectification Act), 98–541 and 104–143 (Trinity River Basin Fish and Wildlife Management Act of 1984, and 102–575 (The Central Valley Improvement Act). The Working Group will assist the Department of the Interior by providing advice and recommendations on all aspects of implementation of the Trinity River Restoration Program.

Dated: October 17, 2006.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. E6–17831 Filed 10–24–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018–0121; Depredation Orders for Double-Crested Cormorants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on October 31, 2006. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before November 24, 2006.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203

(mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at one of the addresses above or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0121.

Title: Depredation Orders for Double-Crested Cormorants, 50 CFR 21.47 and 21.48.

Service Form Number: None.

Type of Request: Revision of a currently approved collection.

Affected Public: Aquaculture producers, State fish and wildlife agencies, tribes, and Federal agencies.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency of Collection: Annually for reports; ongoing for recordkeeping.

Activity/requirement	Annual number of respondents	Total annual responses	Completion time per response (hours)	Total annual burden hrs	Total burden cost to public ($30/hr)
Report take of MB species other than DCCOs (21.47(d)(7) & 21.48(d)(7))	1	1	1	1	$30
Report take of species protected under ESA (21.47(d)(8) & 21.48(d)(8))	1	1	1	1	30
Written notice of intent to conduct control activities (21.48(d)(9))	12	12	3	36	1,080
Report of Control Activities (21.48(d)(10) & (11))	12	12	20	240	7,200
Report Effects of Management Activities (21.48(d)(12))	9	9	100	900	27,000
DCCO Depredation Order Recordkeeping (21.47(d)(9))	500	500	7	3,500	105,000
Totals	535	535		4,678	140,340

Abstract: This information collection is associated with regulations implementing the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*). Under the MBTA, it is unlawful to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, migratory birds or their parts, nests, or eggs, except as authorized by regulations implementing the MBTA. In 2003, we promulgated regulations to authorize the take of double-crested cormorants (DCCOs) under certain circumstances. The regulations at 50 CFR 21.47 (Aquaculture Depredation Order) authorize aquaculture producers in 13 States to take DCCOs when the birds are found committing or about to commit depredations on commercial freshwater aquaculture stocks. The regulations at 50 CFR 21.48 (Public Resource Depredation Order) authorize State fish and wildlife agencies, the U.S. Department of Agriculture (APHIS-Wildlife Services), and federally recognized tribes in 24 States to take DCCOs to prevent depredations on the public resources of fish, wildlife, plants, and their habitats.

Both 50 CFR 21.47 and 21.48 impose reporting and recordkeeping requirements on those operating under the depredation orders. We use the information collected to:

(1) Help assess the impact of the depredation orders on DCCO populations.

(2) Protect nontarget migratory birds or other species.

(3) Ensure that agencies and individuals are conforming to the terms, conditions, and purpose of the orders.

(4) Help gauge the effectiveness of the orders at mitigating cormorant-related damages.

Comments: On April 19, 2006, we published in the **Federal Register** (71 FR 20120) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited public comments for 60 days, ending on June 19, 2006. We received two comments.

The first commenter noted opposition to the killing of cormorants but, for the most part, did not specifically address the information collection except to say that ''this paperwork * * * is ineffectual in even recording the actual numbers killed.'' We believe that the reporting provides valid information about the number of birds killed.

Following are comments by the second commenter and our responses:

Comment: The information will have practical utility only if it is freely accessible to other individuals to assess the accuracy and predictability of the outcomes.

Response: We have found the information useful and it is available upon request.

Comment: The accuracy of the burden estimate for this collection of information is only valid if cross-validation is allowed and reassessment of the data by another is conducted without knowledge of the outcome (blind tests).

Response: The accuracy of the estimate might be enhanced, but we believe it is of sufficient quality as reported.

Comment: The quality, utility, and clarity of the information collected must have transparency, ground truthing, and redundancy by collaborators and outside entities.

Response: We do not believe that ground truthing or other confirmation of the limited data collected is necessary.

We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

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

(4) Ways to minimize the burden of the collection of information on respondents. Comments submitted in response to this notice are a matter of public record.

Dated: August 28, 2006.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E6–17826 Filed 10–24–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Information Collection Under the Paperwork Reduction Act; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the

Bureau of Indian Affairs (BIA) invites comments on an information collection request which will be renewed. The collection is: Gaming on Trust Lands Acquired after October 17, 1988, OMB Control Number 1076–0158.

DATES: Submit your comments and suggestions on or before December 26, 2006 to be assured of consideration.

ADDRESSES: Comments should be sent to: George Skibine, Bureau of Indian Affairs, Office of Indian Gaming Management, Mail Stop 3657–MIB, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may get copies of the information collection requests without charge by contacting George Skibine at 202–219–4066 or facsimile number 202–273–3153.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. The Bureau of Indian Affairs, Office of Indian Gaming Management, is proceeding with this public comment period as the first step in getting a normal information collection clearance from the Office of Management and Budget (OMB).

Please note that we will not sponsor nor conduct, and you need not respond to, a request for information unless we display the OMB control number and the expiration date.

Gaming on Trust Lands Acquired After October 17, 1988

Type of review: Renewal.

OMB Control Number: 1076–0158.

Title: Gaming on Trust Lands Acquired after October 17, 1988, 25 CFR 292.

Summary: The collection of information will ensure that the provisions of IGRA, the relevant provisions of State laws, Federal law and the trust obligations of the United States are met when federally recognized tribes seek a secretarial determination that a gaming establishment would be in the best interest of the tribe and would not be detrimental to the surrounding community. Section 292.8 specifies the information collection requirement. An Indian tribe must ask the Secretary to make a determination that a gaming establishment would be in the best interest of the tribe and would not be detrimental to the surrounding community. The information to be collected includes: name of the tribe, tribal documents, description of the land to be acquired, proof of ownership, distance of land from the Indian tribe's reservation or trust lands and other documents deemed necessary. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0158). All information is collected when the tribe submits a request for a secretarial determination that a gaming establishment would be in the best interest of the tribe and would not be detrimental to the surrounding community. Annual reporting and record keeping burden for this collection of information is estimated to average 1,000 hours each for approximately 2 respondents, including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, thus, the total annual reporting and record keeping burden for this collection is estimated to be 2,000 hours.

Frequency of Collection: Annually.

Description of Respondents: Federally recognized tribes.

Total Respondents: 2.

Response Hours per Application: 1,000.

Total Annual Burden Hours: 2,000 hours.

Request for Comments

The Bureau of Indian Affairs solicits comments in order to:

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

(2) Evaluate the bureau'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 the information on those who are to respond.

Any public comments received will be addressed in the Bureau of Indian Affairs' submission of the information collection request to the Office of Management and Budget.

All comments will be available for public review during regular business hours. There may be an instance when we decide to withhold information, but if you wish us to withhold your name and address, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowed by law. We will not consider anonymous comments, and we will make public all comments from businesses and from individuals who represent businesses.

Dated: October 16, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–17813 Filed 10–24–06; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–KC–P; F–40315]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Bering Straits Native Corporation. The lands are in the vicinity of the village of Mary's Igloo, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 2 S., R. 30 W.,
Tract C.
Containing 7,492.68 acres.

T. 3 S., R. 30 W.,
Tracts M to Q, inclusive;
Tracts U and X.
Containing 1,085.83 acres.

Notice of the decision will also be published four times in the Nome Nugget.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until November 24, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device

(TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Renee Fencl,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E6–17884 Filed 10–24–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–KC–P; F–14955–A, F–14955–B, F–14955–C, and F–14955–D]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Wales Native Corporation. The lands are in the vicinity of Wales, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 1 N., R. 43 W.,
Secs. 26, 27, 28, 34, 35, and 36.
Containing approximately 2,425.56 acres.

T. 2 N., R. 43 W.,
Secs. 20, 21, and 22;
Secs 27 to 30, inclusive.
Containing approximately 4,464.08 acres.

T. 3 N., R. 43 W.,
Secs. 1, 12, and 19.
Containing approximately 1,889.28 acres.

T. 3 N., R. 44 W.,
Secs. 13, 23, and 24.
Containing approximately 1,920 acres.

T. 2 N., R. 45 W.,
Secs. 5 and 23; Tract 40.
Containing approximately 20.969 acres.

Aggregating approximately 10,720.889 acres.

The subsurface estate in these lands will be conveyed to Bering Straits Native Corporation when the surface estate is conveyed to Wales Native Corporation. Notice of the decision will also be published four times in the Nome Nugget.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until November 24, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

D. Kay Erben,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E6–17883 Filed 10–24–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on October 12, 2006, a proposed Consent Decree with Burns Iron & Metal Company, Inc (''Consent Decree'') in *United States* v. *A–L Processors, f.k.a. Atlas-Lederer Co., et al.,* Civil Action No. C–3–91–309 was lodged with the United States District Court for the Southern District of Ohio.

In this action the United States sought reimbursement of response costs in connection with the United Scrap Lead Superfund Site in Troy, Miami County, Ohio (''the Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* The Consent Decree resolves the United States' claims against Defendant Burns Iron & Metal Company (''BIMCO'') for response costs incurred as a result of the release or threatened release of hazardous substances at the Site. This is an ''ability-to-pay'' settlement based on financial analyses conducted by the Department's Antitrust Corporate Finance Unit. BIMCO will pay the United States $312,000. In addition, some of the present and former shareholders of BIMCO will pay the United States $49,500 under a stipulated settlement in a related action of *United States* v. *Larry Katz et al.,* Case No. 3:05 CV 0058 (S.D. Ohio). The United States' remaining outstanding costs exceed $9,000,000 and are being sought from the remaining defendant in this case and in the related action. The Consent Decree also resolves the United Scrap Lead Respondent Group's (''Respondent Group'') CERCLA claims against BIMCO for response costs incurred by the Respondent Group in cleaning up the Site under an earlier Consent Decree. BIMCO will pay the Respondent Group $88,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *A–L Processors, f.k.a. Atlas-Lederer Co., et al.,* D.J. Ref. 90–11–3–279B.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Ohio, Federal Building Room 601, 200 West Second Street, Dayton, Ohio, or at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site at *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of *$8.75* (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–8885 Filed 10–24–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on October 13, 2006, a proposed Consent Decree with Martin Marietta Materials, Inc. Jane C. Sullivan and Hilda C. Dill in *United States* v. *Martin Marietta Materials, Inc. et al.*, No. 7:06–cv–00154–FL, was lodged with the United States District Court for the Eastern District of North Carolina. In this action, brought pursuant to Sections 106(a) and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606(a) and 9607, the United States seeks injunctive relief to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at the Reasor Chemical Company Site (''Site'') in Castle Hayne, New Hanover County, North Carolina. The United States also seeks to recover unreimbursed costs incurred, and to be incurred, for response activities at the Site, Under the proposed Consent Decree, defendants agree to undertake remedial work at the Site, to reimburse $650,000 of the United States' past response costs, and to pay future costs.

The Department of Justice will receive for a period of thrity (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Martin Marietta Materials, Inc., et al.,* (E.D.N.C.) DJ Ref #90–11–3–08268.

The Consent Decree may be examined at the office of the United States Attorney, Eastern District of North Carolina, 310 New Bern Avenue, Suite 800, Raleigh, North Carolina. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *United States* v. *Martin Marietta Materials, Inc., et al.,* (E.D.N.C.), DJ Ref #90–11–3–08268, and enclose a check in the amount of $12 (excluding exhibits) or $66 (including exhibits) (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–8886 Filed 10–24–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1461]

Hearing of the Review Panel on Prison Rape

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of hearing.

SUMMARY: The Office of Justice Programs (OJP) is announcing the first hearing of the Review Panel on Prison Rape (Panel), which will be held in Represa, California, on November 14–15, 2006. The hearing times and location are noted below. The purpose of the hearing is to identify common characteristics, not only of victims and perpetrators of prison rape, but also of prisons and prison systems with a high incidence of prison rape and those that have been successful in deterring prison rape.

DATES: The hearing schedule is as follows:

1. Tuesday, November 14, 2006, 9 a.m. to 4 p.m.
2. Wednesday, November 15, 2006, 9 a.m. to 4 p.m.

ADDRESSES: The hearing will take place at the California State Prison, Sacramento on Prison Road in Represa, California 95671.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Severens, Designated Federal Official, OJP, *Kathleen.Severens@usdoj.gov*, or 202–514–8827. [**Note:** This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Review Panel on Prison Rape, which was established pursuant to the Prison Rape Elimination Act of 2003, Public Law 108–79, 117 Stat. 972 (codified as amended at 42 U.S.C. 15601–15609 (2006)), will hold its initial hearing on November 14–15, 2006, to carry out the review functions specified at 42 U.S.C. 15603(b)(3)(A). Results from this hearing will assist the Panel in formulating the questions that it will ask various facilities (including prisons, jails, and lockups at locations throughout the United States) at future hearings of the Review Panel to discern the best practices for deterring prison rape.

The Panel chose to hold its initial hearing at the California State Prison in Sacramento because the California Department of Corrections and Rehabilitation (CDCR) is a large system. The Panel seeks to learn the following information from large prison systems similar to the CDCR:

- The factors in a prison environment conducive to deterring sexual assaults;
- The prison system protocols and policies requiring examination by the Panel;
- The staff persons in large systems that could be potential key witnesses at future Panel hearings;
- Useful methods for evaluating prison rape training of correctional officers and medical staff;
- Likely barriers to reporting, investigation, and deterrence of prison rape; and
- Useful methods for assessing the role of correctional officers' unions in deterring prison rape.

The Panel's decision to hold its initial hearing at the California State Prison in Sacramento is not based upon any ranking or finding by the Bureau of Justice Statistics (BJS) concerning the incidence of prison rape in any facility of the CDCR. The BJS rankings of all State and federal facilities (both adult and juvenile) by incidence of prison rape are expected to be completed by June 30, 2007.

Members of the public who wish to attend the hearing must present photo identification upon entrance to the facility. Pursuant to CDCR rules and regulations, additional identification documentation may be required. Space is limited. Special needs requests should be made to Kathleen M. Severens, Designated Federal Official, OJP, *Kathleen.Severens@usdoj.gov* or 202–514–8827, at least one week prior to the hearing.

Dated: October 18, 2006.

Michael Alston,

Office of Justice Programs.

[FR Doc. E6–17815 Filed 10–24–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,190]

Cooper Power Tools, Inc., Dayton Operations, Dayton, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 3, 2006 in response to a petition filed by a company official and the United Worker Union, Local 1040 on behalf of workers at Cooper Power Tools, Inc., Dayton Operations, Dayton, Ohio.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of October 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–17865 Filed 10–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of October 9 through October 13, 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must beSatisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–60,165; Emerson Climate Technologies, A Business of Emerson Electric, Emerson Heating Products Division, Murfreesboro, TN: September 18, 2005.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,985; River City Trucking, Old Town, ME: August 28, 2005.

TA–W–60,119; Brite Star Manufacturing, A Subsidiary of J. Kinderman and Sons, Philadelphia, PA: September 22, 2006.

TA–W–60,168; Korn Industries, A Subsidiary of Chromcraft Revington, Sumter, SC: September 20, 2005.

TA–W–59,930; Shaw Mudge and Company, Shelton, CT: August 18, 2005.

TA–W–60,048; Pure Flo, LLC, A Subsidiary of ITT Corp., Kenosha, WI: September 8, 2005.

TA–W–60,081; Alma Products Company, Automotive Clutch and Disc Assembly, Alma, MI: September 12, 2005.

TA–W–60,127; Penn-Elkco Spring Co., St. Marys, PA: September 18, 2005.

TA–W–60,151; CEP Products, A Subsidiary of the Reserve Group, Lapeer, MI: September 15, 2005.

TA–W–60,057; Citywear Production, Inc., New York, NY: September 9, 2005.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,820; Airfoil Technologies International-Ohio, Mentor, OH: July 21, 2005.

TA–W–60,082; Northern Diecast Corp., Harbor Springs, MI: September 12, 2005.

TA–W–60,102; Sematic USA, Inc., Tyler Elevator Products, Valley View, OH: September 13, 2005.

TA–W–60,150; Celestica Corp., Westminster, CO: September 25, 2005.

TA–W–60,155; Technicolor Videocassette of Michigan, A Subsidiary of Thomson, Livonia, MI: September 23, 2005.

TA–W–60,179; Tenneco, Elastomers Division, Napoleon, OH: October 2, 2005.

TA–W–60,193; Ilpea, Inc., Division 26, A Subsidiary of Ilpea Spa, Ft. Smith, AR: September 29, 2005.

TA–W–60,195; Walter Kidde Residential Equipment, Kidde Residential and Commercial Division, Mebane, NC: October 1, 2005.

TA–W–60,191; Hamilton Beach/Proctor-Silex, Inc., Commercial Division, Southern Pines, NC: August 13, 2006.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,021; Elite Cushions, Inc., Dudley Shoals Division, Granite Falls, NC: September 7, 2005.

Negative Determinations for Alternative Trade Adjustment Assistance

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–60,165; Emerson Climate Technologies, A Business of Emerson Electric, Emerson Heating Products Division, Murfreesboro, TN.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Since the workers of the firm are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–60,181; Custom Fashions, Inc., Tupelo, MS.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,115; Modine Manufacturing, Automotive Division, Richland Plant, Blythewood, SC.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–59,992; Aimsworth Engineered, USA LLC, Bemidji, MN.

TA–W–59,992A; Aimsworth Engineered, USA LLC, Cook, MN.

TA–W–60,034; Visteon Systems LLC, North Penn Electronics Facility, Lansdale, PA.

TA–W–60,088; DuPont Performance Coatings, Automotive System Division, Troy, MI.

TA–W–60,116; Journal Sentinel Inc., Production Plant, West Milwaukee, WI.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–60,042; Mattel, Inc., Boys' Entertainment Design Unit, El Segundo, CA.

TA–W–60,108; XPEDX, A Division of International Paper, Greensboro, NC.

TA–W–60,109; Agere Systems, Assembly and Test Support, Allentown, PA.

TA–W–60,184; Bellsouth Corporation, Bellsouth Telecommunications, Inc., Division, Paducah, KY.

I hereby certify that the aforementioned determinations were issued during the period of October 9 through October 13, 2006. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 19, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–17862 Filed 10–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,207]

Lego Systems, Inc., Enfield, CT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 5, 2006 in response to a worker petition filed by a company official on behalf of workers of Lego Systems, Inc., Enfield, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of October 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–17866 Filed 10–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,148]

Monadnock Specialty Coatings, LLC, Also Known as Monadnock Specialty Coatings, Binghamton, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 27, 2006 in response to a worker petition filed by a company official on behalf of workers of Monadnock Specialty Coatings, LLC, also known as Monadnock Specialty Coatings, Binghamton, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of October 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–17863 Filed 10–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,222]

Textile, Inc., Ronda, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 10, 2006 in response to a petition filed by a company official on behalf of workers at Textile Inc., Ronda, North Carolina. The workers at the subject facility produce woven throw blankets.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–17867 Filed 10–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,156]

Thermo Electron RMSI, Environmental Instruments Division, Santa Fe, NM; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 27, 2006 in response to a petition filed by a company official on behalf of workers at Thermo Electron RMSI, Environmental Instruments Division, Santa Fe, New Mexico.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of October 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–17864 Filed 10–24–06; 8:45 am]

BILLING CODE 4510–30–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal AdvisoryCommittee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* November 2, 2006.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Literature, submitted to the Division of Preservation and Access at the July 25, 2006 deadline.

2. *Date:* November 2, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 12, 2006 deadline.

3. *Date:* November 6, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 12, 2006 deadline.

4. *Date:* November 7, 2006.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for World Studies II, submitted to the Division of Preservation and Access at the July 25, 2006 deadline.

5. *Date:* November 8, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for Humanities Projects in Libraries/Special Projects, submitted to the Division of Public Programs at the September 12, 2006 deadline.

6. *Date:* November 9, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 12, 2006 deadline.

7. *Date:* November 28, 2006.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Visual Art/Architecture, submitted to the Division of Preservation and Access at the July 25, 2006 deadline.

8. *Date:* November 29, 2006.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Faculty Humanities Workshops, submitted to the Division of Education Programs at the September 15, 2006 deadline.

9. *Date:* November 30, 2006.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Faculty Humanities Workshops, submitted to the Division of Education Programs at the September 15, 2006 deadline.

10. *Date:* November 30, 2006.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American Studies, submitted to the Division of

Preservation and Access at the July 25, 2006 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. E6–17841 Filed 10–24–06; 8:45 am]

BILLING CODE 7536–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54618; File No. SR–Amex–2006–98]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Codification of Exchange Policy Regarding Specialist Commissions

October 18, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 4, 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, II, and III below, which Items have been prepared by the Exchange. 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 Exchange proposes to amend Amex Rule 154 to codify policies regarding specialist commissions. The text of the proposed rule change is available on the Exchange's Web site (*http://www.amex.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has a long-standing business policy, which describes the circumstances under which specialists may charge members and member organizations a commission for executing orders. Until recently, this policy had been posted on the Exchange's Web site so that both members and the investing public could know the types of orders for which they could be charged a specialist commission. According to the Exchange, the policy has been removed from the Web site since as a business policy it was not enforceable as a rule of the Exchange, which caused confusion among members and the public. The Exchange therefore proposes to codify in Amex Rule 154 its policy regarding the types of equity orders for which specialists can charge a commission. The Exchange believes that codifying this business policy in a rule would allow the policy to be enforceable across all specialist firms; would provide consistency and clarity to all members and the public that orders sent to the Amex would not be subject to excessive or arbitrary costs; and would preserve the cost competitiveness of the Exchange. The proposed rule, as described more fully below, would apply to equity securities only.

The Exchange proposes to codify in new subparagraph (b) to Amex Rule 154 its policies regarding situations where specialists may charge a commission for trades that are executed in whole or in part. Proposed Amex Rule 154(b) would prohibit specialists from charging a commission on off-floor orders that are electronically delivered to the specialist except in cases of orders that require special handling by the specialist or the specialist provides a service. The proposed rule would prohibit specialists from billing for electronically delivered orders that are executed automatically by the Exchange's order processing facilities upon receipt. Orders executed on an opening or reopening would not be ''billable.'' In addition, proposed Amex Rule 154(b) would reference Amex Rule 152(c), which prohibits specialists from charging a commission where they act as principal in the execution of an order entrusted to them as agent. The proposed rule also would set forth the types of orders specialists would be allowed (but not required) to bill a commission.

In general, ''routine'' orders are not subject to specialist commissions, while orders that require special handling or for which the specialist provides a service may be subject to a commission. Thus, proposed Amex Rule 154(b) would provide that specialists may (but are not required to) bill for limit orders that remain on the book for more than two minutes,[3] market on close or limit on close orders, tick sensitive orders (*e.g.*, an order to sell short in a security subject to the Commission's ''tick-test''), orders for non-regular way settlement, stop or stop limit orders, orders stopped at one price and executed at a better price, fill-or-kill, and immediate-or-cancel orders, and orders for the account of a competing market maker.

Specialist commissions increase the cost of doing business on the Exchange. The Exchange believes that these increased costs weaken the Exchange's competitive position relative to other markets as other markets do not need to compete as aggressively with the Exchange to cut their prices to investors. The Exchange consequently believes that the proposed rule would benefit investors if implemented and would strengthen the Exchange's competitive position.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act[5] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with the provisions of section 6(b)(4) of the Act,[6] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] According to the Exchange, the NYSE's rules are similarto the Exchange's policy in this area. NYSE Rule 123B(b)(1) and Supplementary Material .10 generally prohibit NYSE specialists from charging a commission on orders sent to them electronically unless the order remains on the book for more than five minutes.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed fee change will not 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 Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from Exchange participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–98 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–2006–98. 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 publicly available. All submissions should refer to File NumberSR–Amex–2006–98 and should be submitted on or before November 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–17836 Filed 10–24–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54625; File No. SR–Amex–2006–95]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Vanguard Emerging Markets Stock Index Fund

October 18, 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 September 29, 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 the Amex. On October 17, 2006, the Amex filed Amendment No. 1 to the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons and is simultaneously approving the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to substitute the index tracked by a class of exchange-traded securities (formerly referred to as Vanguard Emerging Market VIPERs, the ''ETF Shares'') issued by the Vanguard Emerging Markets Stock Index Fund (''Fund'').[3] The complete filing 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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. 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

On August 12, 2004, the Commission approved the Exchange's proposal to list and trade the ETF Shares under Amex Rules 1000A *et seq.*[4] Amex Rules 1000A *et seq.* provide standards for the listing and trading of Index Fund Shares [5] issued by registered open-end investment companies, such as the Fund. In approving the ETF Shares for Exchange trading, the Exchange states that the Commission thoroughly

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In addition to the ETF Shares, the Fund offers a class of shares that are not exchange-traded, which are referred to as ''Investor Shares.''

[4] *See* Securities Exchange Act Release No. 50189, 69 FR 51723 (August 20, 2004) (SR–Amex–2004–05) (''Original Approval Order'').

[5] Amex Rule 1000A defines ''Index Fund Shares'' as securities based on a portfolio of stocks or fixed income securities that seek to provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index.

considered the structure of the Fund, the usefulness of the ETF Shares to investors and to the markets, and the Amex rules that govern their trading.[6]

The ETF Shares originally sought to track, as closely as possible, the performance of the Select Emerging Markets Index (''Select Index''), a regional index compiled by Morgan Stanley Capital International Inc. (MSCI®)[7] (''MSCI''). Pursuant to the Fund's prospectus for the ETF Shares and the Original Approval Order, the Exchange states that the Fund has the right to substitute a different index for the Select Index, provided, that the reason for the substitution is determined in good faith, the substitute index measures the same general market as the Select Index, and investors are notified of the index substitution.[8] On August 23, 2006, The Vanguard Group, Inc., as investment adviser to the Fund (''Vanguard''), announced that the Fund had substituted the Select Index with the MSCI Emerging Markets Index (formerly known as the MSCI Emerging Markets (Free) Index) (''Emerging Markets Index'').[9] In accordance with the Original Approval Order, the purpose of this filing is to obtain the Commission's approval for the listing and trading of the ETF Shares on the Exchange now that the Fund is based on the Emerging Markets Index.[10]

The Select Index[11] is modeled on the more expansive Emerging Markets Index with certain adjustments designed to reduce risk, including the exclusion of countries because of concerns about illiquidity, repatriation of capital, or entry barriers to those markets. As of June 13, 2006, Colombia, Egypt, Jordan, Malaysia, Morocco, Pakistan, Russia, Sri Lanka, and Venezuela were excluded from the Select Index due to the above concerns. As specific emerging markets such as Russia and Malaysia have become more liquid and accessible, Vanguard believes that additional emerging markets countries now warrant inclusion in the Fund. The Exchange states that the addition of these emerging markets to the Select Index would result in a benchmark that is effectively the same as the Emerging Markets Index and, as a result, the Exchange proposes that the substitution of the Emerging Markets Index for the Select Index be approved.

The Emerging Markets Index provides exposure to 25 emerging market countries, whereas the Select Index only provides exposure to 18 emerging market countries. As of August 24, 2006, the Emerging Markets Index was comprised of 848 constituents with the top five constituents representing the following weights: 4.07%, 2.84%, 2.1%, 1.84% and 1.77%. As of June 30, 2006, the average market capitalization of the constituents was approximately $2.18 billion. Countries represented in the Emerging Markets Index include Argentina, Brazil, Chile, China, Colombia, the Czech Republic, Egypt, Hungary, India, Indonesia, Israel, Jordan, Malaysia, Mexico, Morocco, Pakistan, Peru, the Philippines, Poland, Russia, South Africa, South Korea, Taiwan, Thailand, and Turkey. The Exchange states that MSCI periodically adjusts the list of included countries to keep pace with the evolution in world markets (such adjustments are made on a forward-looking basis, so past performance of the Emerging Markets Index always reflects actual country representation during the relevant period).

The Exchange states that MSCI exclusively administers the Emerging Markets Index. Similar to the Select Index, the Emerging Markets Index is a capitalization-weighted index whose component securities are adjusted for available float and must meet objective criteria for inclusion in the Index. The Emerging Markets Index aims to capture 85% of the publicly available total market capitalization in each emerging market included in the Emerging Markets Index. The Emerging Markets Index is rebalanced quarterly, calculated in U.S. dollars on a real time basis, and disseminated every 60 seconds during market trading hours. The Commission has previously approved the listing and trading on the Amex of an exchange-traded fund based on the Emerging Markets Index.[12]

The Fund's investment objectives, policies and methodology, MSCI's index maintenance procedures and standards, and the dissemination of index information as described in the Original Approval Order will not be affected by the index substitution. For example, the Fund will continue to employ a ''representative sampling'' methodology to track the Emerging Markets Index, which means that the Fund invests in a representative sample of securities in the Emerging Markets Index that have a similar investment profile as the Emerging Markets Index.[13] The Exchange believes that the Fund's investment policies will continue to prevent the Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in the ETF Shares could become a surrogate for trading in unregistered securities. The Exchange also expects that the expense ratios of the ETF Shares will remain at 0.30%, and the Fund will not generate any capital gains as a result of the substitution.

The Exchange has reviewed the Emerging Markets Index and believes that sufficient mechanisms exist that would provide the Exchange with adequate surveillance and regulatory information with respect to the Emerging Markets Index. Specifically, the Exchange represents that it will rely on existing surveillance procedures governing Index Fund Shares. In addition, the Exchange, Vanguard, and MSCI have a general policy prohibiting the distribution of material, non-public information by their employees. Due to MSCI's role as a broker-dealer that maintains the Emerging Markets Index, MSCI has represented that a functional separation, such as a firewall, exists between its trading desk and the research persons responsible for maintaining the Emerging Markets Index.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

[6] *See supra,* note 4.

[7] MSCI® is a service mark of Morgan Stanley & Co. Incorporated.

[8] *See supra,* note 4.

[9] *See http://onlinepressroom.net/vanguard/.*

[10] *See supra,* note 4.

[11] The Select Index includes approximately 668 common stocks of companies located in Argentina, Brazil, Chile, China, Czech Republic, Hungary, India, Indonesia, Israel, Korea, Mexico, Peru, Philippines, Poland, South Africa, Taiwan, Thailand, and Turkey.

[12] *See* Securities Exchange Act Release No. 44900 (October 25, 2001), 66 FR 55712 (November 2, 2001) (SR–Amex–2001–45), as corrected by Securities Exchange Act Release No. 44990 (October 25, 2001), 66 FR 56869 (November 13, 2001).

[13] As of August 24, 2006, the Fund was comprised of 851 constituents. The aggregate percentage weighting of the top 5, 10, and 20 constituents in the Fund were 11.07%, 18.17%, and 28.09%, respectively.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on 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 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–2006–95 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–Amex–2006–95. 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-2006–95 and should be submitted on or before November 15, 2006.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5) of the Act.[16] In particular, the Commission finds that the Amex's proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange has requested that the Commission approve the proposal on an accelerated basis. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[17] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposal is consistent with the listing and trading standards in Amex Rule 1000A *et seq.* (Index Fund Shares). Furthermore, in the Original Approval Order, the Commission approved a similar product based on a substantially similar index covering the same general market. The Commission has also previously approved the listing and trading on the Amex of an exchange-traded fund based on the Emerging Markets Index.[18] The Exchange represents that the Fund's investment objectives, policies and methodology, MSCI's index maintenance procedures and standards, and the dissemination of index and other information as described in the Original Approval Order will not be affected by the index substitution. The Exchange also represents that its representations in the Original Approval Order with regard to the adequacy of its surveillance procedures and trading rules applicable to this product continue to be in effect. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[19] to approve the proposed rule change, as amended, on an accelerated basis.[20]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change, as amended (SR–Amex–2006–95), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Nancy M. Morris,

Secretary.

[FR Doc. E6–17845 Filed 10–24–06; 8:45 am]

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[16] 15 U.S.C. 78f(b)(5). In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2).

[18] *See supra,* note 12.

[19] 15 U.S.C. 78s(b)(5).

[20] The Commission's approval of the Exchange's listing and trading of the ETF Shares based on the Emerging Markets Index is not retroactive in effect.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54621; File No. SR–BSE–2006–43]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees and Charges

October 18, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 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, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Exchange as establishing or changing a due, fee, or other charge under section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) 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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a change to the Minimum Activity Charge (''MAC'') contained in the Fee Schedule for the Boston Options Exchange (''BOX''). The Exchange proposes to review the MAC

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

across all classes rather than only those assigned to the Market Maker. The text of the proposed rule change is available on the Exchange's Web site (*http://www.bse.com*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the MAC which is contained in the Fee Schedule for BOX. Currently, in order to determine if a Market Maker has reached its MAC, volume in their assigned classes is charged a flat fee, which is then compared to the MAC. In addition, any activity outside a Market Maker's appointments is charged a flat fee separately. Since trading in classes outside of a Market Maker's appointment consumes a similar amount of technological resources as those in a Market Maker's assigned volume, the Exchange proposes to have this unassigned activity included in the volume accumulation that is used to determine if a Market Marker has reached its MAC. This proposed rule change would aid BOX in its continuing effort to reduce total fees incurred by Participants.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,[5] in general, and section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members. The Exchange believes that it is appropriate to review the MAC across all classes rather than only those assigned to the Market Maker, in the interest of fair pricing for all Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange 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 proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder[8] because it changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules.sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2006–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BSE–2006–43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules.sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at 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 should submit only information that you wish to make available publicly. All submissions should refer to the file number in the caption above and should be submitted on or before November 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–17833 Filed 10–24–06; 8:45 am]

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[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54437A; File No. SR–CHX–2005–06]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to a Proposed Rule Change Relating to Disciplinary and Delisting Procedures; Correction

October 18, 2006.

In FR Doc. No. E6–15588, beginning on page 55037 for Wednesday, September 20, 2006, the sentence in Part V on page 55042 contained an error. Release No. 34–54437 (the ''Release'') approved a proposed rule change filed by the Chicago Stock Exchange, Inc., in File No. SR–CHX–2005–06. Part V of the Release identified the filing being

approved as SR–CBOE–2005–06, rather than SR–CHX–2005–06. Accordingly, Part V of the Release should be revised to read as follows:

''*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[1] that the proposed rule change (SR–CHX–2005–06), as amended, is approved.''

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Nancy M. Morris,

Secretary.

[FR Doc. E6–17846 Filed 10–24–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54619; File No. SR–FICC–2006–07]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating To Providing Certain Reports to its Members

October 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 21, 2006, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on June 2, 2006, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FICC. 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 proposed rule change would clarify the frequency of certain reports that FICC will provide to its members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to further harmonize the rules of The Depository Trust & Clearing Corporation's clearing agency subsidiaries. In this filing, FICC proposes to conform the rules of both its divisions, the Government Securities Division and the Mortgage Backed Securities Division (''MBSD''), regarding providing FICC's financial reports to members to the equivalent rule of The Depository Trust Company (''DTC'').[3] The revised rules would state that quarterly unaudited financial statements would only be provided to members for the first three quarters of the calendar year.[4] In addition, although FICC would delete the time frames for providing the financial reports from its rules (in conformity to DTC's rule), FICC would nevertheless continue to make its annual audited financial statements available to its members within 60 days of the fiscal year end and would continue to make its quarterly unaudited financial statements available within 30 days of the quarter end.[5]

FICC also proposes to change the time frame in Article V, Rule 5, Section 3 of MBSD's Clearing Rulebook and EPN Rulebook regarding its providing to its members with the independent auditors' annual study and evaluation of MBSD's internal accounting controls. While FICC proposes to delete these rule provisions in their entirety, FICC would make this study and evaluation available to its members within a reasonable time after it receives it from its independent accountants, which is exactly the practice for DTC.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder because it is a change that does not adversely affect the safeguarding of securities or funds in the custody or control of FICC or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–FICC–2006–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–FICC–2006–07. 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/*

[1] 15 U.S.C. 78s(b)(2).

[2] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] DTC Rule 15.

[4] An annual audited financial statement is provided to members after the last calendar quarter of each year.

[5] FICC will post the information on its website within the requisite time frames.

[6] 15 U.S.C. 78q–1.

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at FICC's principal office and on FICC's Web site at *http://www.ficc.com/gov/gov.docs. jsp?NS-query=*. 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 submission should refer to File No. SR–FICC–2006–07 and should be submitted on or before November 15, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–17837 Filed 10–24–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54617; File No. SR–NASD–2006–118]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Date by Which Eligible Registrants Must Complete Firm-Element Continuing Education To Qualify To Engage in a Security Futures Business

October 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD filed the proposed rule change pursuant to paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon filing with the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend NASD Rule 1022 (Categories of Principal Registration) and NASD Rule 1032 (Categories of Registered Representatives) to extend to December 31, 2009 the date by which eligible registrants must complete a firm-element continuing education to qualify to engage in a security futures business. Below is the text of the proposed rule change. The text of the proposed rule change is available at the Commission's Public Reference Room, at NASD, and at *http://www.nasd.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2003, NASD modified the following registration categories to include the activities of engaging in and supervising securities futures: (1) Registered Options and Security Futures Principal (the Series 4); (2) Limited Principal—General Securities Sales Supervisor (Series 9/10); (3) General Securities Representative (Series 7), and (4) Limited Representative—Options and Security Futures Series (Series 42). NASD also required that persons currently registered or becoming registered in these categories complete a firm-element continuing education requirement addressing security futures before they conducted any security futures business. NASD instituted this continuing education requirement to ensure that registered personnel, who may not be familiar with risks, trading characteristics, terms and nomenclature of these products, or the fact that they are subject to the joint jurisdiction of the SEC and the Commodity Futures Trading Commission, receive the necessary training.

NASD initially considered replacing the firm-element continuing education requirement with revised qualification examinations for these categories that addressed security futures. However, there are no revision plans at present. Accordingly, NASD intends to continue to require eligible registrants to complete the mandated continuing education requirement before engaging in any security futures business. Thus, NASD proposes to amend NASD Rule 1022 (Categories of Principal Registration) and NASD Rule 1032 (Categories of Representative Registration) to change the date by which eligible registrants must complete the firm-element continuing education requirement to engage in a security futures business from December 31, 2006 to December 31, 2009.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is necessary to continue to allow eligible registrants to complete a firm-element continuing education that will qualify them to engage in a security futures business.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] NASD gave the Commission written notice of its intention to file the proposed rule change on October 10, 2006.

[5] 15 U.S.C. 78o–3(b)(6).

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 and Rule 19b–4(f)(6) thereunder.[6]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number NASD–2006–118 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 NASD–2006–118. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–118 and should be submitted on or before November 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E6–17844 Filed 10–24–06; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54624; File No. SR–NYSE–2006–87]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 13 (Definitions of Orders)

October 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2006, the New York Stock Exchange LLC (''NYSE'' 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 Exchange. The proposed rule change has been filed by the NYSE as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act,[3] 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to make a clarifying amendment to NYSE Rule 13 (''Definitions of Orders'') as it relates to Stop Limit Orders (P3) which was part of the pilot (''Pilot'')[4] to put into operation certain rule changes pending before the Commission to coincide with the Exchange's implementation of Phase 3 of the NYSE HYBRID MARKET℠ (''Hybrid Market'').[5]

The text of the proposed rule is available on the NYSE's Web site at *http://www.nyse.com*, at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 5, 2006, the Exchange proposed a Pilot to, among other things, make operative certain proposed modifications to Exchange Rules that are the subject of pending rule filings[6] before the Commission to coincide with the Exchange's implementation of Phase 3 of the Hybrid Market. The Pilot commenced following Commission approval, on October 5, 2006 and is

[4] *See* Securities Exchange Act Release No, 54578 (October 5, 2006), 71 FR 60216 (October 12, 2006) (SR–NYSE–2006–82).

[5] *See* Securities Exchange Act Release Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE\2004–05).

[6] *See* Securities Exchange Act Release Nos. 54504 (September 26, 2006), 71 FR 57011 (NYSE–2006–76) (Notice) (proposing to amend the specialist stabilization requirements set forth in Exchange Rule 104.10) (''Stabilization Filing''); 54520 (September 27, 2006), 71 FR 57590 (September 29, 2006) (NYSE–2006–65) (Notice) (proposing to amend several Exchange Rules to clarify certain definitions and systemic processes) (''Omnibus Filing''); and SR–NYSE–2006–73 (filed on September 13, 2006) (proposing to amend Exchange Rule 127 which governs the execution of a block cross transaction at a price outside the prevailing NYSE quotation) (''Block Cross Filing'').

scheduled to terminate on the close of business October 31, 2006.[7]

Pursuant to the Pilot, the Exchange proposed the elimination of Stop Limit orders as an acceptable order type on the Exchange in securities that are subject to the Pilot. The Exchange seeks to clarify that the elimination of Stop Limit orders during the Pilot relates to all securities on the Exchange. Accordingly, the Exchange seeks to amend NYSE Rule 13(P3) Stop Limit Orders to state that Stop Limit orders are not a valid order type for all securities traded on the Exchange commencing October 16, 2006 and continuing during the Hybrid Phase 3 Pilot.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1),[10] in that it seeks to assure economically efficient execution of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6), thereunder.[12] Because the forgoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, as least five business days prior to the date of filing of the proposed rule change, or shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6), thereunder.[14]

The Exchange requests that the Commission waive the five-day pre-filing notice requirement and the 30-day delayed operative date of Rule 19b–4(f)(6)(iii). Under Rule 19b–4(f)(6)(iii), a proposed ''non-controversial'' rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time.

The Commission believes that the waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[15] The Exchange has decided to eliminate the Stop Limit order type because it is no longer used. The Exchange represented that it had notified members that this order type would no longer be accepted as of October 16, 2006 to coincide with other changes that are being implemented in the Pilot. To minimize confusion as to acceptable order types, the Exchange has proposed to eliminate stop limit orders in all securities, not just securities eligible for the Pilot. Accordingly, the Commission believes it is consistent with the protection of investors and the public interest to implement this change immediately.

The Commission designates the proposed rule change to be effective and operative upon its filing with the Commission. The Commission also waives the five-business day pre-filing requirements. As 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.

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2006–87 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy N. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–87. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSE–2006–87 and should be submitted on or before November 15, 2006.

[7] *See supra* note 4.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For the purposes only of accelerating the operative day of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–17832 Filed 10–24–06; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

[Public Notice 5587]

List of September 20, 2006, of Participating Countries and Entities (Hereinafter Known as ''Participants'') under the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: In accordance with sections 3 and 6 of the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003, the Department of State is identifying all the Participants eligible for trade in rough diamonds under the Act, and their respective Importing and Exporting Authorities, and revising the previously published list of October 26, 2005 (Volume 70, Number 206) 61875–6 to include New Zealand.

FOR FURTHER INFORMATION CONTACT: Sue Saarnio, Special Advisor for Conflict Diamonds, Bureau of Economic and Business Affairs, Department of State, (202) 647–1713.

SUPPLEMENTARY INFORMATION: Section 4 of the Clean Diamond Trade Act (the ''Act'') requires the President to prohibit the importation into, or the exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme (KPCS). Under section 3(2) of the Act, ''controlled through the Kimberley Process Certification Scheme'' means an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is either (i) carried out in accordance with the KPCS, as set forth in regulations promulgated by the President, or (ii) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the KPCS. The referenced regulations are contained at 31 CFR part 592 (''Rough Diamonds Control Regulations'') (69 FR 56936, September 23, 2004).

Section 6(b) of the Act requires the President to publish in the **Federal Register** a list of all Participants, and all Importing and Exporting Authorities of Participants, and to update the list as necessary. Section 2 of Executive Order 13312 of July 29, 2003 delegates this function to the Secretary of State. Section 3(7) of the Act defines ''Participant'' as a state, customs territory, or regional economic integration organization identified by the Secretary of State. Section 3(3) of the Act defines ''Exporting Authority'' as one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate a Kimberley Process Certificate. Section 3(4) of the Act defines ''Importing Authority'' as one or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regarding imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

List of Participants

Pursuant to section 3 of the Clean Diamond Trade Act (the Act), Section 2 of Executive Order 13312 of July 29, 2003, and Delegation of Authority No. 294 (July 6, 2006), I hereby identify the following entities as of September 20, 2006, as Participants under section 6(b) of the Act. Included in this List are the Importing and Exporting Authorities for Participants, as required by section 6(b) of the Act. This list revises the previously published list of October 26, 2005 (Volume 70, Number 206) 61875–6.

Angola—Ministry of Geology and Mines.
Armenia—Ministry of Trade and Economic Development.
Australia—Exporting Authority—Department of Industry, Tourism and Resources; Importing Authority—Australian Customs Service.
Belarus—Department of Finance.
Botswana—Ministry of Minerals, Energy and Water Resources.
Brazil—Ministry of Mines and Energy.
Bulgaria—Ministry of Finance.
Canada—Natural Resources Canada.
Central African Republic—Ministry of Energy and Mining.
China—General Administration of Quality Supervision, Inspection and Quarantine.
Democratic Republic of the Congo—Ministry of Mines
Croatia—Ministry of Economy.
European Community—DG/External Relations/A.2.
Ghana—Precious Minerals and Marketing Company Ltd.
Guinea—Ministry of Mines and Geology.
Guyana—Geology and Mines Commission.
India—The Gem and Jewellery Export Promotion Council.
Indonesia—Directorate General of Foreign Trade of the Ministry of Trade.
Israel—The Diamond Controller.
Ivory Coast—Ministry of Mines and Energy.
Japan—Ministry of Economy, Trade and Industry.
Republic of Korea—Ministry of Commerce, Industry and Energy.
Laos—Ministry of Finance.
Lebanon—Ministry of Economy and Trade
Lesotho—Commissioner of Mines and Geology.
Malaysia—Ministry of International Trade and Industry.
Mauritius—Ministry of Commerce.
Namibia—Ministry of Mines and Energy.
New Zealand—Ministry of Foreign Affairs and Trade.
Norway—The Norwegian Goldsmiths' Association.
Romania—National Authority for Consumer Protection.
Russia—Gokhran, Ministry of Finance.
Sierra Leone—Government Gold and Diamond Office.
Singapore—Singapore Customs.
South Africa—South African Diamond Board.
Sri Lanka—National Gem and Jewellery Authority.
Switzerland—State Secretariat for Economic Affairs.
Taiwan—Bureau of Foreign Trade.
Tanzania—Commissioner for Minerals.
Thailand—Ministry of Commerce.
Togo—Ministry of Mines and Geology.
Ukraine—State Gemological Centre of Ukraine.
United Arab Emirates—Dubai Metals and Commodities Center.
United States of America—Importing Authority—UnitedStates Bureau of Customs and Border Protection; Exporting Authority—Bureau of the Census.
Venezuela—Ministry of Energy and Mines.
Vietnam—Ministry of Trade.
Zimbabwe—Ministry of Mines and Mining Development.

This notice shall be published in the **Federal Register**.

R. Nicholas Burns,

Under Secretary for Political Affairs, Department of State.

[FR Doc. E6–17894 Filed 10–24–06; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–2006–23898]

Application of Pacific Airways, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2006–10–10).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Pacific Airways, Inc., fit, willing, and able, and

[16] 17 CFR 200.30–3(a)(12).

awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than November 2, 2006.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–2006–23898, and addressed to U.S. Department of Transportation, Docket Operations (M–30, Room PL–401), 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ronâle Taylor, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: October 19, 2006.

Andrew B. Steinberg,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. E6–17850 Filed 10–24–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Certain Properties From All Terms, Conditions, Reservations and Restrictions of a Quitclaim Deed Agreement Between the Sarasota Manatee Airport Authority and the Federal Aviation Administration for the Sarasota Bradenton International Airport, Sarasota, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release certain airport properties 7.8392 Acres at the Sarasota Bradenton International Airport, Sarasota, FL from the aeronautical use restriction as contained in a Quitclaim Deed agreement between the United States of America, acting through the War Assets Administrator and the Sarasota Manatee County Airport Authority, dated December 16, 1947. The release of property will allow the Sarasota Manatee County Airport Authority to lease the property for other than aeronautical purposes. The property is located in the Northeast quarter of Section 1, Township 36 South, Range 17 East, Sarasota County, Florida. The parcel is currently designated as aeronautical use. The property use designation will change to non-aeronautical use for the purpose of revenue generation. The fair market value of the property has been determined by appraisal to be between $0.17 and $0.18 per square foot. The airport will receive fair market value for the property, which will be subsequently reinvested in the operating and maintenance of the airport.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Sarasota Bradenton International Airport and the FAA Airports District Office.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

DATES: November 24, 2006.

ADDRESSES: Documents are available for review at the Sarasota Brandenton International Airport, and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Krystal G. Hudson, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

FOR FURTHER INFORMATION CONTACT: Krystal G. Hudson, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 06–8852 Filed 10–24–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2005–22842]

Notice of Opportunity To Participate, Criteria Requirements and Application Procedure for Participation in the Military Airport Program (MAP); Correction

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

ACTION: Notice of criteria and application procedures for designation or redesignation, for the fiscal year 2006 MAP; Correction.

SUMMARY: The FAA is issuing a correction to the Notice of Opportunity To Participate, Criteria Requirements and Application Procedure for Participation in the Military Airport Program (MAP), which was published in the **Federal Register** on October 16, 2006 (71 FR 60791). That Notice announced the criteria, application procedures, and schedule to be applied by the Secretary of Transportation in designating or redesignating, and funding capital development annually for up to 15 current (joint-use) or former military airports seeking designation or redesignation to participate to the Military Airport Program (MAP). These corrections change the year from ''2006'' to ''2007'' and change available slots from ''6 slots'' to ''4 slots''.

DATES: Applications must be received on or before November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Ball (*Kendall.Ball@faa.gov*), Airports Financial Assistance Division (APP–500), Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–7436.

Correction

In FR Doc. 06–8686 published on October 16, 2006 (71 FR 60791) make the following corrections:

1. On page 60791, in the ACTION line correct ''fiscal year 2006'' to read ''fiscal year 2007''.

2. On page 60792, in the paragraph in the first column under the heading ''Number of Airports'', in the second sentence, correct ''6 slots'' to read ''4 slots'' and correct ''FY 2006'' to read ''FY 2007''.

3. On page 60793, in the eighth line from the top of the second column, correct ''FY 2006'' to read ''FY 2007''.

Issued in Washington, DC on October 19, 2006.

Dennis E. Roberts,

Director, Office of Airport Planning and Programming.

[FR Doc. 06–8844 Filed 10–24–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186: Automatic Dependent Surveillance–Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

DATES: The meeting will be held November 7–10, 2006 starting at 9 a.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting.

- November 7:
- ASSAP Subgroup.
- CDTI Subgroup.
- November 8:
- ASSAP Subgroup.
- CDTI Subgroup.
- November 9:
- Opening Plenary Session (Chairman's Introductory Remarks, Review of Meeting Agenda, Review/Approval of the Thirty-Eighth Meeting Summary, RTCA Paper No. 222–06/SC–186–241, Date, Place and Time of Next Meeting).
- STP MOPS—Review Status.
- Final Review/Approval-Proposed Final Draft Change 1 to DO–242A—Minimum Aviation System Performance Standards for Automatic Dependent Surveillance-Broadcast (ADS–B), RTCA Paper No. 230–06/SC–186–243.
- Final Review/Approval-Proposed Final Draft Change 2 to DO–260A—Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Services-Broadcast (TIS–B), RTCA Paper No. 231–06/SC–186–244.
- Final Review/Approval-Proposed Final Draft Change 1 to DO–282A—Minimum Operational Performance Standards for Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast, RTCA Paper No. 232–06/SC–186–245.
- Final Review/Approval-Proposed Final Draft Change 1 to DO–289—Minimum Aviation System Performance Standards (MASPS) for Aircraft Surveillance Applications (ASA), RTCA Paper No. 233–06/SCI–186–246.
- Discussion—TIS–B Management Messages/TIS–B MOPS.
- Closing Plenary Session (New Business, Other Business, Review Action Items/Work Program, Adjourn).
- ASSAP Subgroup.
- CDTI Subgroup.
- November 10:
- ASSAP & CDTI Subgroups—Joint Session.

Note: AD–Application Development
ASAS–Aircraft Surveillance Applications System
ASSAP–Airborne Surveillance & Separation Assurance Processing
CDTI–Cockpit Display of Traffic Information
MOPS–Minimum Operational Performance Standards
NRA–Non-Radar Airspace
RFG–Requirements Focus Group
STP–Surveillance Transmit Processing

Attendance is open to the interested public but limited to space availability. with the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, October 11, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–8851 Filed 10–24–06; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Wednesday,
October 25, 2006

Part II

Department of the Treasury

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 40, 41, 44, and 45
Tax Classification of Cigars and Cigarettes (2006R–276P); Proposed Rule
Total Reducing Sugars Analytical Method; Notice

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 40, 41, 44, and 45

[Notice No. 65]

RIN 1513–AB34

Tax Classification of Cigars and Cigarettes (2006R–276P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury and the Alcohol and Tobacco Tax and Trade Bureau are proposing changes to the regulations that govern the classification and labeling of cigars and cigarettes for Federal excise tax purposes under the Internal Revenue Code of 1986. The proposed regulatory changes contained in this document address concerns that TTB has regarding the adequacy of the current regulatory standards for distinguishing between cigars and cigarettes. The document also summarizes and responds to three petitions received by TTB requesting rulemaking action regarding the classification of cigars and cigarettes, with particular reference to the distinction between little cigars and cigarettes. The proposals contained in this document clarify the application of existing statutory definitions and update and codify administrative policy in order to provide clearer and more objective product classification criteria. These clarifications are intended to reduce possible revenue losses through the misclassification of cigarettes as little cigars. In addition, these clarifications should facilitate the determination of payments under the Master Settlement Agreement.

DATES: We must receive your written comments on or before December 26, 2006.

ADDRESSES: You may send comments to any of the following addresses:

- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, (Attn: Notice No. 65), P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/tobacco/tobacco_rulemaking.shtml* (An online comment form is posted with this notice on our Web site).
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the related rulemaking petitions, and any comments we receive on this proposed rule by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of this notice and any comments we receive on this proposal online at *http://www.ttb.gov/tobacco/tobacco_rulemaking.shtml.*

FOR FURTHER INFORMATION CONTACT: Linda Wade Chapman, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20220; telephone 202–927–8210; or e-mail *Linda.Chapman@ttb.gov.*

SUPPLEMENTARY INFORMATION:

Background

Statutory Provisions

Chapter 52 of the Internal Revenue Code of 1986 (IRC) sets forth the Federal excise tax and related provisions that apply to tobacco products manufactured in, or imported into, the United States. Section 5702(c) of the IRC (26 U.S.C. 5702(c)) defines the term ''tobacco products'' as ''cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.'' In addition, sections 5702(a) and (b) of the IRC define the terms ''cigar'' and ''cigarette'' as set forth below:

> Sec. 5702. Definitions.
> When used in this chapter—
> (a) Cigar.
> ''Cigar'' means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (b)(2)).
> (b) Cigarette.
> ''Cigarette'' means—
> (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and
> (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1).

The distinction between cigars and cigarettes is important for Federal tax purposes because the rate of tax varies from one product class to another. Section 5701 of the IRC (26 U.S.C. 5701) prescribes the following rates of tax for cigars and cigarettes:

> Sec. 5701. Rate of tax.
> (a) Cigars.
> On cigars, manufactured in or imported into the United States, there shall be imposed the following taxes:
> (1) *Small cigars.* On cigars, weighing not more than 3 pounds per thousand, $1.828 cents per thousand ($1.594 cents per thousand on cigars removed during 2000 or 2001);
> (2) *Large cigars.* On cigars weighing more than 3 pounds per thousand, a tax equal to 20.719 percent (18.063 percent on cigars removed during 2000 or 2001) of the price for which sold but not more than $48.75 per thousand ($42.50 per thousand on cigars removed during 2000 or 2001).
> Cigars not exempt from tax under this chapter which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.
> (b) Cigarettes.
> On cigarettes, manufactured in or imported into the United States, there shall be imposed the following taxes:
> (1) *Small cigarettes.* On cigarettes, weighing not more than 3 pounds per thousand, $19.50 per thousand ($17 per thousand on cigarettes removed during 2000 or 2001).
> (2) *Large cigarettes.* On cigarettes, weighing more than 3 pounds per thousand, $40.95 per thousand ($35.70 per thousand on cigarettes removed during 2000 or 2001); except that, if more than 61/2 inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 23/4 inches, or fraction thereof, of the length of each as one cigarette.

Section 7805 of the IRC (26 U.S.C. 7805) gives the Secretary of the Treasury the general authority to issue regulations to carry out the provisions of the IRC. In addition, section 5722 of the IRC (26 U.S.C. 5722) gives the Secretary authority to require from manufacturers or importers of tobacco products reports containing such information, in such form and at such times, as the Secretary may prescribe by regulations. Finally, section 5723(a) of the IRC (26 U.S.C. 5723(a)) gives the Secretary authority to prescribe regulatory standards for the packaging of tobacco products. Further, section 5723(b) of the IRC gives the Secretary the authority to prescribe regulations requiring marks, labels, and notices on every package of tobacco products.

Regulatory Provisions

Regulations implementing the tobacco product provisions of Chapter 52 of the IRC are contained in 27 CFR parts 40 (manufacture of tobacco products and cigarette papers and tubes), 41 (importation of tobacco products and cigarette papers and tubes), 44 (exportation of tobacco products and cigarette papers and tubes, without payment of tax, or with drawback of tax), and 45 (removal of tobacco products and cigarette papers and tubes, without payment of tax, for use of the United States). These regulations are administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB).

Sections 40.11, 41.11, 44.11, and 45.11 of the TTB regulations (27 CFR 40.11, 41.11, 44.11, and 45.11) include definitions of cigars and cigarettes that follow the statutory definitions without further elaboration. The tax rates imposed on cigars under the IRC are reflected in §§ 40.21 and 41.31 of the TTB regulations (27 CFR 40.21 and 41.31) and the IRC tax rates imposed on cigarettes are reflected in §§ 40.23 and 41.32 of the TTB regulations (27 CFR 40.23 and 41.32).

The TTB regulations that set forth notice requirements for packages of cigars are found at 27 CFR 40.214, 41.73, 44.186, 44.253, and 45.44. These regulations provide that before removal subject to tax (§§ 40.214 and 41.73) or before removal from a factory (§ 44.186) or before withdrawal from a customs warehouse (§ 44.253) or before removal (§ 45.44), every package of cigars must have adequately imprinted on it, or on a label securely affixed to it, the designation ''cigars'', the quantity of cigars contained in the package, and for small cigars, the classification of the product for tax purposes (that is, either ''small'' or ''little''). The TTB regulations that set forth cigarette notice requirements are found at 27 CFR 40.215, 41.74, and 45.45. These regulations provide that before removal subject to tax (§§ 40.215 and 41.74) or before removal (§ 45.45), every package of cigarettes must have adequately imprinted on it, or on a label securely affixed to it, the designation ''cigarettes,'' the quantity of cigarettes in the package, and the classification for tax purposes (that is, for small cigarettes, either ''small'' or ''Class A'', and for large cigarettes, either ''large'' or ''Class B'').

Current Standards and Methods Used To Differentiate Between Little Cigars and Cigarettes for Excise Tax Purposes

In connection with the administration of Chapter 52 of the IRC, TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), published ATF Ruling 73–22 and Procedures 73–5 and 76–2 to provide the tobacco industry and the public at large with the Agency's official interpretation and guidance with regard to the classification of cigars and cigarettes for excise tax purposes. A ruling published by ATF or TTB represents an Agency interpretation of applicable statutes or regulations or other statement of Agency policy. A published procedure provides technical guidance on how to fulfill a regulatory requirement, for example by providing detailed analytical criteria that the Agency uses to assess compliance with the regulation in question. The ruling and two procedures in question, and TTB's adherence to them, are discussed below.

ATF Ruling 73–22

ATF Ruling 73–22 was published in 1973 to update the criteria for determining whether a tobacco product wrapped in a ''substance containing tobacco'' is a cigar or cigarette for tax purposes. This ruling restated the basic provisions of, and superseded, Revenue Ruling 69–198, C.B. 1969, pg. 1,359 (Internal Revenue). Specifically, Ruling 73–22 amplified the three fundamental factors that govern the classification of little cigars: the wrapper, the filler, and the product packaging and labeling.

With regard to the wrapper material used to manufacture cigars, Ruling 73–22 states the following:

> The legislative history concerning Public Law 89–44 indicates the terms ''substance containing tobacco'' as used in 26 U.S.C. 5702 and ''reconstituted tobacco'' were used synonymously. In the trade and in general terminology, ''reconstituted tobacco'' is ground or pulverized tobacco mixed with various adhesive agents and/or cellulose fibers derived from tobacco or other sources and formed into sheets.
>
> For a wrapper material to be considered a ''substitute [sic] containing tobacco'' as used in 26 U.S.C. 5702(a), the finished wrapper must (1) be approximately two-thirds or more tobacco which did not in the reconstitution process lose its tobacco character (*e.g.*, taste, aroma, identifiable chemical components), and (2) be of a color consistent with that of the natural leaf tobaccos traditionally used as a wrapper for American cigars.

Ruling 73–22 states that a combination of other factors must be considered in determining whether a product wrapped in a ''substance containing tobacco'' is a cigar or a cigarette. With regard to the filler tobacco, the ruling goes on to state:

> For a product to be a cigar the filler must be substantially of tobaccos unlike those in ordinary cigarettes and must not have any added flavorings which would cause the tobaccos to have the taste or aroma generally attributed to cigarettes. The inclusion of flue-cured or aromatic (Oriental) tobaccos—which traditionally have been the primary constituents of cigarette filler—can contribute significantly to making a product cigarette-like, and if the product also is of the typical cigarette size and shape, has a typical cigarette-type filter, and is in a cigarette-type package, the inclusion of these tobaccos could cause the product to be classified as a cigarette rather than a cigar. Conversely, if a product is made predominantly of cigar-type tobaccos with distinctive cigar taste and aroma, if it does not resemble a cigarette (such as most large cigars do not), and if it is not to be marketed in a cigarette-type package, it would probably be classified as a cigar.

Ruling 73–22 states the following with reference to the issue of whether the product is likely to be offered to, or purchased by, consumers as a cigarette:

> Two other factors which are relevant under the Code in determining the tax category of a product are whether the product is likely to be offered to, or purchased by, consumers as a cigarette. It is, therefore, important that the package for a product to be offered as a cigar conspicuously declare it to be a cigar and that all marketing materials and advertising clearly present the product to the consumer as a cigar and not as a cigarette. There must be no representations or implications on the package or in other merchandising or advertising materials which tend to negate the tax declaration that the product is a cigar. If the package for a cigar product is comparable to the traditional 20-cigarette soft (cup) pack or the similar hard pack, the declaration ''cigars'', ''small cigars'', or ''little cigars'' must appear in direct conjunction with, parallel to, and in substantially the same conspicuousness of type and background as the brand name each time the brand name appears. A conspicuous ''cigar'' declaration must appear on the front, back, and bottom panels of such a typical cigarette-type package even if the brand name does not appear on any of these panels. Cartons must similarly declare the product to be a cigar in conjunction with the brand name and a conspicuous cigar declaration must appear on each panel of the carton which is likely to be visible in a retail sale display.

TTB continues to apply the principles reflected in Ruling 73–22 in preparing responses to requests from manufacturers, importers and other parties for advance rulings or other advice on the tax classification of cigars and cigarettes.

Ruling 73–22 is available on the TTB Web site at *http://www.ttb.gov.*

ATF Procedure 73–5

In 1973, ATF published Procedure 73–5, the purpose of which was to set forth some basic analytical methods for use by ATF in determining if specific reconstituted tobacco material is acceptable as a cigar wrapper, and to determine if a product wrapped in such material is a cigar or cigarette for tax purposes. Specifically, Procedure 73–5 established analytical examinations and tests to provide objective information for use with other relevant factors in: (1) Distinguishing between those materials that contained sufficient tobacco to be classified as reconstituted tobacco and those that did not, (2) differentiating between the filler tobaccos typically used in cigars and those generally used in cigarettes, and (3) determining if a smoking product wrapped in reconstituted tobacco is taxable as a cigar or as a cigarette under the IRC.

The examinations and tests provided in Procedure 73–5 are as follows:

WRAPPER EXAMINATIONS AND TESTS

Color	Visual examination with general description and statement as to whether it is in the range of natural leaf tobaccos traditionally used as a wrapper for American cigars.
Composition	Microscopic examination for tobacco particles, vegetable fibers, mineral particles, adhesives, other substances.
Cellulose Fibers	Microscopic examination may be reported as none, few, numerous; or chemical tests may be used.
Texture	Microscopic examination described as rough, smooth, etc.
Tensile Strength	Instrumentation can be used, but usually only a physical manipulation of stretching, tearing, etc. Generally reported as degree of dry and wet tensile strength.
Paper-like Qualities	Subjective evaluation based on appearance, tensile strength, number of fibers, general visual character, and evaluation of chemical composition as shown later.
Taste	Degree of tobacco-like character.
Burning	Described as more characteristic of tobacco or of paper.
Fragments of Tobacco	Microscopic examination, described as large, small, pulverized, none, etc.

Percent moisture.
Percent total ash.
Percent acid insoluble ash.
Percent sodium.
Percent potassium.
Percent calcium.
Other elements may be determined.
pH of water extract.
Percent nicotine.
Sequential Differential Solvent Extractions as described in Section 7.08.

FILLER EXAMINATIONS AND TESTS

Composition	Microscopically observed character of filler, expressed as relative proportions of basic tobacco types.
Taste	Tobacco character, described as heavily fermented type, fire-cured type, etc., and other descriptives such as added menthol, etc.
Odor before smoking	Expressed as to kind of tobacco product character, such as mild cigar-like, etc.
Odor when smoking	Expressed as to kind of tobacco product character such as mentholated cigarette-like, etc.

Percent moisture.
Percent total ash.
Percent acid insoluble ash.
Percent sodium.
Percent potassium.
Percent calcium.
Other elements may be determined.
pH of water extract.
Percent nicotine.
Sequential Differential Solvent Extractions as described in Section 7.08.

PRODUCT EXAMINATIONS AND TESTS

Diameter	In millimeters to the nearest tenth.
Length (Including filter)	In millimeters to the nearest tenth.
Weight of 1,000 (Including filters)	In pounds to nearest hundredth.

Added distinctive flavorings not otherwise reported, such as any included in the filter.
pH of smoke.
Opinions of cigarette smokers.

Procedure 73–5 is available in its entirety on the TTB Web site at *http://www.ttb.gov.*

ATF Procedure 76–2

ATF Procedure 76–2 was published in 1976 to supersede, in part, ATF Procedure 73–5.

Specifically, this procedure sets forth an updated sequential solvent extraction method to replace the one contained in Procedure 73–5. The updated method was essentially the same as the method it replaced except that the instructions were amplified and the standards were redetermined on a residue-free solvent basis. The decision to update the method was based in part on information received from some industry members to the effect that the method contained in Procedure 73–5 was not sufficiently specific for it to be effectively employed in their laboratories. In addition, it was noted that the extractive procedure used in the method did not account for the possibility of varying residues from the solvents themselves, thus leading to erroneous test results. The solvents used in the sequential solvent extraction method under Procedure 76–2 are as follows:

- Petroleum Ether;
- Tetrahydrofuran;
- Acetonitrile;
- 95% Ethanol; and
- Dioxane—20% Water.

Procedure 76–2 is available in its entirety on the TTB Web site at *http://www.ttb.gov*.

Current Analytical Procedures

TTB has in recent years supplemented most of the methodologies contained in ATF Procedures 73–5 and 76–2 with other more efficient methodologies. In particular, TTB no longer uses the sequential solvent extraction method to test tobacco products. With regard to analyzing the filler tobaccos used in cigars and cigarettes, TTB has adopted a less labor intensive analytical method that does not require use of the toxic solvents used in the sequential solvent extraction method. Although this method, titled ''Characterization of Tobacco Products by High-Performance Anion Exchange Chromatography-Pulsed Amperometric Detection,'' was published in the Journal of Agricultural and Food Chemistry in 1996, it has not been published as an Agency procedure. The published abstract for this method is as follows:

A simple and reproducible method has been developed for the classification of cigarette versus cigar tobacco. Although the tobacco used for both cigars and cigarettes may be of the same natural origin, tobacco types and processing parameters alter the relative amounts of natural constituents (*e.g.*, carbohydrates). In this method, carbohydrates are obtained by water extraction. The extracts are then analyzed using high-performance anion exchange chromatography followed by pulsed amperometric detection. The relative amounts of glucose, fructose, and sucrose between cigarette and cigar tobaccos are used for their characterization. Complete analysis of a tobacco product is achieved in less than 60 min.[1]

In addition to the method mentioned above, ATF developed a method to determine the quantity of nicotine in tobacco products, specifically in cigar and cigarette wrapper materials. This method was not published as an Agency procedure, but was published in the Journal of AOAC International under the title ''Quantitation of Nicotine in Tobacco Products by Capillary Electrophoresis,'' in 2002. The published abstract for this method is as follows:

A simple and rapid capillary electrophoresis (CE) method was developed for the quantitation of nicotine in commercial tobacco products. The method involves a 6 min run at 30 kV, using a 50mM phosphate buffer (pH 2.5), paraquat as internal standard, and UV detection at 260 nm. Nicotine was extracted from tobacco products in <15 min. Recoveries from spiked extracts were >95%, and the extraction efficiencies of water, 1M HCl, 1M acetic acid, 5mM phosphate buffer (pH 2.5), and 1% triethanol amine were similar. Nicotine concentrations in 67 samples of cigarettes, cigars, and bidis varied between 0.37 and 2.96% (w/w). An established gas chromatography/mass spectrometry method using toluene extraction consistently yielded lower nicotine values than the CE method. Experimental evidence suggests that this is due to insufficient extraction of nicotine by toluene.[2]

Total Reducing Sugars Study

Over the last several years, TTB has seen an increase in the number of tobacco products labeled ''Little Cigars'' submitted to the Agency by members of the U.S. tobacco industry, importers, and other Federal agencies requesting letter rulings or other advice regarding the proper classification of the products under the IRC. In light of this increased interest in the tax classification of little cigars, and because of a desire to improve the efficacy of the analytical standards discussed above, TTB decided to explore other analytical avenues that might provide a more reliable standard for distinguishing between cigars and cigarettes.

We found that U.S. manufacturers conduct analyses of their tobacco products with a flow analyzer, which has been specifically designed, developed, and validated for analysis of target tobacco components, including total reducing sugars and nicotine (''total reducing sugars'' encompasses all monosaccharides and disaccharides). Since this instrument has become a widely used and accepted analytical tool within the tobacco industry, we concluded that it would be appropriate for our inquiry.

Accordingly, in 2005, TTB obtained an Astoria 2 + 2 Flow Analyzer from Astoria-Pacific International in order to conduct a study of cigar and cigarette samples obtained for testing. Our study was grounded on the fact that cigars and cigarettes contain different blends of tobacco'cigarettes are made primarily from flue-cured or light air-cured (burley) and oriental (Turkish) tobaccos, whereas cigars are usually made from air-cured and fermented tobaccos. Many of the significant chemical differences between cigar and cigarette tobaccos are related to the curing and/or fermentation processes used to manufacture them.

One of the most significant chemical differences between cigars and cigarettes is the level of total reducing sugars, which varies significantly depending on the processing of the filler material. Flue-cured tobaccos, which are high in reducing sugars, are predominant in cigarettes sold in the U.S. market.[3] Furthermore, sugar is often added directly to cigarette filler tobaccos to ''balance'' smoke flavor.[4] In contrast, cigars are manufactured from processed tobaccos that contain relatively low levels of sugars. Therefore, TTB surmised that comparing the sugar content in the filler tobacco used in cigars to the sugar content in the filler tobacco used in cigarettes might yield a clear and objective line of distinction between these two classes of tobacco products.

In the study, TTB analyzed 93 products labeled either as ''cigars'' (large cigars and little or small cigars) or as ''cigarettes.'' The products were analyzed to determine the quantity of total reducing sugars in each product using an Astoria 2 + 2 Flow Analyzer. In the study, sucrose was converted to a monosaccharide in order to result in a total reducing sugars value for each product.

Products were chosen for the study based largely on recent sales history in the domestic market. For cigarettes, products were obtained of the five largest manufacturers whose combined market share totals approximately 90 percent of the domestic market. Approximately 140 cigarette products were collected for analysis, and to date, 47 have been analyzed for total reducing sugars. For cigars, products were also obtained of the manufacturers with the most significant domestic presence. In all, 190 cigars and little cigar products were obtained, of which 46, to date, have been analyzed for total reducing sugars.

The 93 analyzed samples were selected to provide a robust representative sample of the domestic marketplace for both cigars and cigarettes. Specifically, samples of ''cigarettes'' were chosen to ensure that the most common brand descriptors were represented (full flavor, mild, light, ultra light, menthol) as well as some of the less common descriptors, such as natural cigarettes. The tested ''cigars'' were chosen to reflect the diversity of the product lines (flavored, machine rolled, premiums, and little cigars). In addition, the little cigars used in the study were those that closely resembled cigarettes in length, diameter, and uniformity of the cylinder and in having a filter. While it is anticipated

[1] Zook, C., Patel, P., LaCourse, W., & Ralapati, S., J. Agric. Food Chem., Vol. 44, No. 7, 1996, Characterization of Tobacco Products by High-Performance Anion Exchange Chromatography-Pulsed Amperometric Detection.

[2] Clarke, M., J.AOAC International, Vol. 85, No. 1, 2002, Quantitation of Nicotine in Tobacco Products by Capillary Electrophoresis.

[3] Abdallah, F. ''Blending Concepts. ABC Blend Development and Maintenance'', Tobacco Reporter, April 2003, pp. 72–78.

[4] Leffingwell, J. ''Chemical Constituents of Tobacco Leaf and Differences among Tobacco Types'', February 2001.

that future additions to the data set will provide greater insight into the chemical differences among these products, it is not expected that more data will significantly alter the overall results of the study.

Each tobacco product was prepared for analysis by separating the wrapper material from the filler and drying the filler at 90° C for one hour in a convection oven. The filler was then ground into a coarse powder using a Wiley Mill equipped with a 20 mesh screen and transferred to airtight containers. Approximately 100 mg of the ground fill material was accurately weighed into a flask and mixed with 100 milliliters of a 1% acetic acid solution. Extraction of sugars from the ground fill material was facilitated by agitation using a wrist action shaker for ½ hour. The mixture was then filtered (to remove the remaining solid material) using Whatman 114V pleated filter paper and poured into sample vials. Three sample vials were prepared for each tobacco sample.

The total reducing sugars results obtained for each tobacco sample were the average of nine injections into the flow analyzer (three injections for each of the three sample vials prepared for each tobacco sample). The results obtained by using this method were reported as percent by weight. Further, the method accurately reports the percentage weight of reducing sugars in each sample at levels from 2% to 40% by weight. As expected, the cigar samples showed levels below 2%. Because the values for reducing sugars found in cigars are below 2%, the TTB laboratory could not report those values with the exactitude reportable for values within the 2% to 40% range. Consequently, any value below 2% for total reducing sugars will be reported as ''<2%.'' However, even though 2% is the smallest percentage of total reducing sugars that can be quantitatively determined with suitable precision and accuracy using this method, the values obtained for cigars are still valid for the purpose of distinguishing cigars from cigarettes using total reducing sugars. Statistical analyses of the results of the study are summarized in the table below.

Sample	Range (% by weight)	Mean (% by weight)	Interval @ 99%
Cigars	Below 2	Below 2	*n/a
Little cigars	Below 2	Below 2	*n/a
Cigarettes	7.47 to 17.94	11.85	±0.85

*n/a = not applicable.

The results obtained for total reducing sugars for the cigars tested differed greatly from the results obtained for cigarettes tested. The data obtained from the study is listed in the chart below according to tax class and sample number.

TOTAL REDUCING SUGARS (TRS) STUDY RESULTS

Sample number	TRS (percent by weight)
Large Cigars	
1	0.4
2	0.5
3	0.6
4	0.8
5	0.8
6	0.6
7	0.7
8	0.6
9	0.6
10	0.3
11	0.5
12	0.7
13	0.9
14	0.7
15	0.5
16	0.7
17	0.6
18	0.5
19	0.6
20	0.5
21	0.4
22	0.4
23	0.8
24	0.7
25	0.6
26	0.3
27	0.3
28	0.5
29	0.5
Little Cigars	
31	1.2
32	1.3
33	1.1
34	0.8
35	1.0
36	1.0
37	1.2
38	0.5
39	0.7
40	1.4
41	0.6
42	0.8
43	0.8
44	1.5
45	0.5
46	1.6
47	1.0

TOTAL REDUCING SUGARS (TRS) STUDY RESULTS—Continued

Sample number	TRS (percent by weight)	Uncertainty (+/−)
Cigarettes		
51	7.47	0.12
52	8.38	0.41
53	7.61	0.15
54	7.71	0.14
55	9.19	0.15
56	9.82	0.09
57	9.80	0.15
58	10.06	0.09
59	11.09	0.08
60	11.31	0.41
61	10.42	0.16
62	10.64	0.23
63	10.89	0.45
64	10.90	0.15
65	10.31	0.16
66	9.43	0.14
67	11.38	0.12
68	11.93	0.18
69	11.28	0.18
70	11.14	0.17
71	13.51	0.26
72	13.75	0.16
73	12.63	0.22
74	13.74	0.19
75	13.41	0.21
76	12.43	0.17
77	12.06	0.09
78	11.49	0.21
79	11.28	0.07
80	11.57	0.16
81	11.50	0.16
82	11.40	0.22
83	13.52	0.12
84	11.21	0.28
85	12.73	0.10
86	11.86	0.21
87	13.57	0.15
88	12.27	0.22
89	13.74	0.25
90	13.76	0.10
91	12.61	0.23
92	16.44	0.24
93	11.74	0.30
94	14.46	0.73
95	14.44	0.32
96	17.21	0.26
97	17.94	0.36

The following is a graphical representation of the study results listed above.

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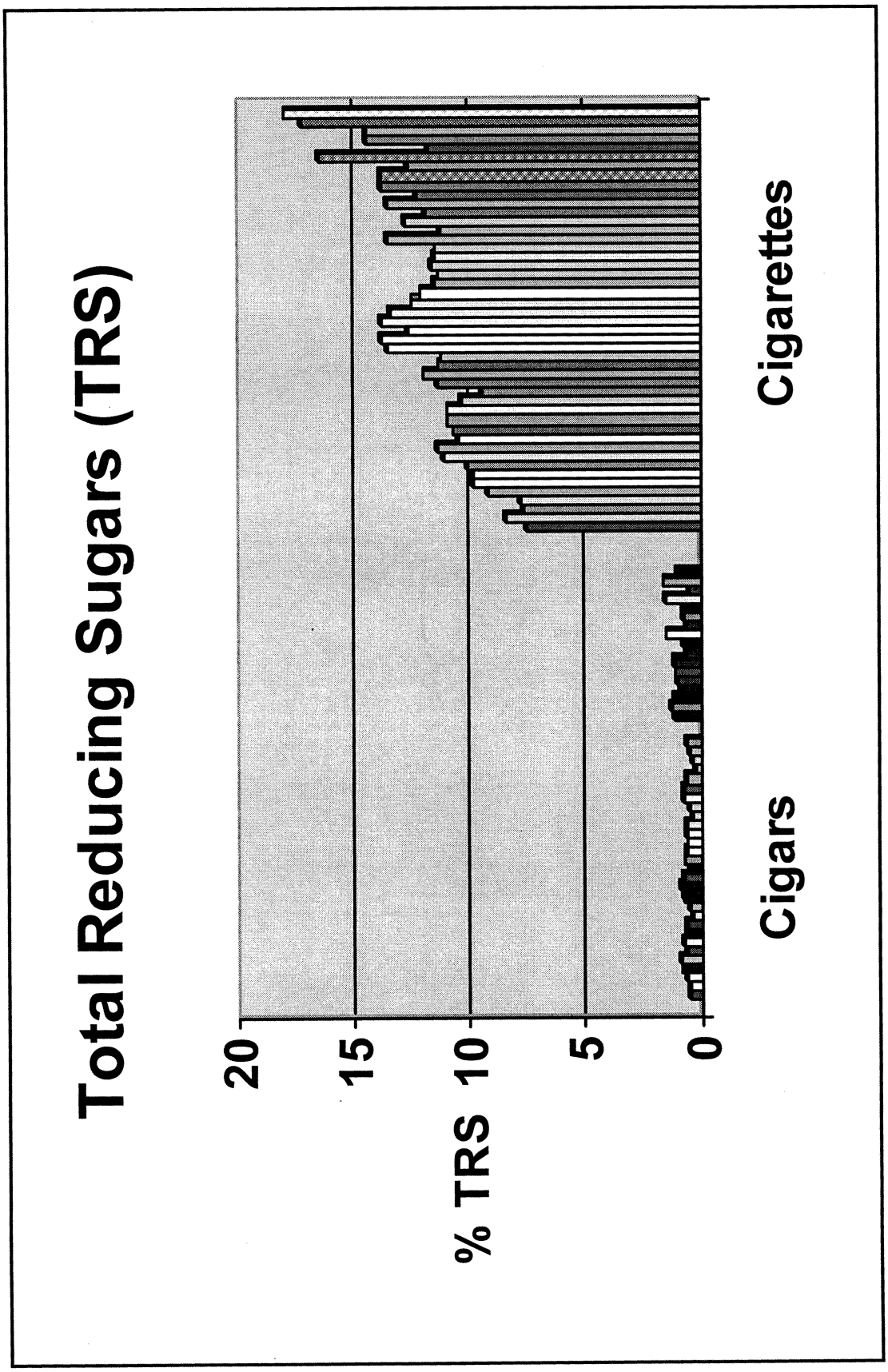

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Petitions for Rulemaking

After TTB began developing a plan to clarify and amplify its regulations pertaining to the classification of cigars and cigarettes, the Agency received three petitions for rulemaking concerning this issue. One petition, including a later follow-up to that petition, was submitted by the Cigar Association of America, Inc. (CAA). Another petition came from the Lorillard Tobacco Company (Lorillard) and the R.J. Reynolds Tobacco Company (RJR). The third petition, which included a later amendment to that petition, was submitted by 39 States and one U.S. territory.

CAA Petition

On December 19, 2005, the CAA submitted a petition to TTB specifically requesting rulemaking on little cigars in order to ''maintain the integrity of the little cigar class.'' In this petition, the CAA urged TTB to expedite its proposed rule to distinguish between cigars and cigarettes due to what the CAA believes is widespread confusion within the tobacco industry concerning how to classify little cigars and cigarettes for Federal regulatory and tax purposes.

In their petition, the CAA stated that since the signing of the Master Settlement Agreement (MSA) by the several States and the cigarette companies in 1998, it has witnessed a proliferation of new brands of domestic and imported little cigars entering the U.S. market. Further, the CAA stated that there is confusion in many of the States, whose attorneys general believe that little cigars are cigarettes in disguise, specifically designed to circumvent the provisions of the MSA. Hence, the CAA stated that the distinction between little cigars and cigarettes is an issue requiring Federal action and that TTB should assume the leadership role in this area.

Lorillard-RJR Petition

The Lorillard-RJR petition, dated January 9, 2006, requested that TTB amend its regulations regarding the classification of little (small) cigars. The petitioners stated that they propose these changes because current regulatory and interpretive ruling standards ''do not adequately focus the resources of TTB on the many new products that have entered the marketplace.'' The petitioners went on to state:

> Lorillard and R.J. Reynolds believe that changes in the regulations governing little cigars are necessitated by the increased differential between tobacco product categories with respect to taxes, fees and assessments paid. The relative burden faced by cigarettes has increased by a far greater amount than cigars in recent years, creating an economic advantage for the little cigar classification. In addition, companies participating in the ''Master Settlement Agreement'' (''MSA'') must make payments to the States based on sales of cigarettes, not cigars. As a result of these and other factors, since the signing of the MSA a number of tobacco products have been introduced into the domestic market and are being improperly packaged, labeled, and classified as little cigars in order to bypass federal and state tax burdens, reporting requirements, and MSA payments.
>
> In a few short years, the tobacco market has changed substantially. A large number of products have been introduced and marketed as ''little cigars,'' yet they are packaged like cigarettes, and in many cases have the look, taste, flavorings, and characteristics of cigarettes. Yet they are much less expensive, avoiding the taxes and MSA burdens imposed upon cigarettes.

The petitioners highlighted several reasons why they believe that it is important for TTB to update its regulations governing the classification of little cigars and cigarettes. They noted the following regarding the changes in domestic invoice volume for little cigars and cigarettes:

> In 1998, the domestic invoice volume for little cigars was 1,638,000,000 units. By 2004, this volume had risen to 2,702,000,000 units, an increase of 64.96%. By contrast, domestic cigarette volume was 22,755,000,000 packs in 1998. By 2004, domestic volume had fallen to 18,922,000,000 packs, a decrease of 16.84%.

The petitioners further stated:

> In recent years, lines have been blurred in the marketing of cigarettes and little cigars. For example, little cigars are increasingly sold in packs of 20, much like cigarettes, with packs that are similar in size to a pack of cigarettes.

In addition to the decrease in domestic sales of cigarettes, the petitioners stated that the monetary obligations provided in the MSA have increased the financial burden on cigarette makers whereas little cigar makers are unaffected since cigars, little and large, are not covered under the MSA. The petitioners noted in this regard that the financial impact of compliance with the MSA has been estimated to be 50 cents per pack.

Further, the petitioners state that State excise taxes on cigarettes have increased significantly over the last several years. These tax increases, when combined with MSA payments, have driven up the cost of cigarettes, thus further widening the cost differential between little cigars and cigarettes. To rectify the problems identified in the petition and highlighted above, the petitioners request that TTB initiate a number of specific actions.

The first action requested is that TTB publish a notice of proposed rulemaking to update the existing regulations that pertain to the classification of little cigars and cigarettes. The petitioners request several specific regulatory changes described in more detail below.

The petitioners urged TTB to take steps beyond ATF Ruling 73–22 to strengthen the reporting requirements placed on manufacturers and importers of little cigars. The petitioners stated:

> ATF Ruling 73–22 specifically allows the TTB to ''reappraise and update the criteria'' for defining cigars or cigarettes due to ''[c]hanging technology and merchandising methods.'' Therefore, the ruling provides the TTB with the explicit authority to amend the regulations governing cigars in light of changes in the marketplace. While we believe that the factors in ATF Ruling 73–22 continue to provide a logical basis for the classification of little cigars and cigarettes, we also believe that the non-binding and voluntary nature of the reporting requirements under this Ruling are no longer effective in the current marketplace.
>
> We think a more targeted approach by TTB will better serve to promote effective enforcement and reduce current market confusion of little cigars. This approach, outlined below, should include an additional disclosure requirement for new brands that may be contributing to potential consumer confusion.

In addition, the petitioners requested that TTB distinguish between little cigar brands marketed prior to the signing of the MSA and those that appeared on the market only after the MSA, by creating a presumption ''in favor of those little cigar brands marketed prior to the existence of the financial disincentives created by the MSA.'' While those brands would still be subject to monitoring and challenge as under existing regulations, there would be a rebuttable presumption that such brands continue to comply with all TTB requirements, and are likely to be offered to, and purchased by, consumers as little cigars.

Further, the petitioners urged TTB to establish a certification procedure for post-MSA little cigar brands. The petitioners proposed the following in this regard:

> For those little cigar brands initially marketed after the signing of the MSA (November 23, 1998), a certification requirement should be created. Such certification would require each manufacturer (under 27 CFR Part 40) or importer (under 27 CFR Part 41) to certify to the TTB that each of the factors set forth in ATF Ruling 73–22 have been satisfied with respect to such brand. For enforcement purposes, each of the seven conditions currently required for an advanced ruling

should be included in the certification submission to TTB.

We recommend that this certification be made a one time requirement for post-MSA brands. In addition, any material change in the appearance, type of tobacco used in the filler, and packaging and labeling of the product would trigger a recertification process. New brands marketed after the completion of the rulemaking would also be required to comply with the certification process.

However, we do not recommend that the certification process include any affirmative action by the TTB in order for the brand to be eligible for entering into commerce. In other words, there would not be a pre-approval process prior to the marketing of a post-MSA brand. Rather, the certification submissions would form the basis for an initial level of TTB analysis and review, focusing on those products in the marketplace where the most significant classification issues are likely to exist.

The petitioners also requested that TTB amend the regulations to provide for a third party challenge procedure. This procedure would be open to any party to demonstrate that tobacco products introduced into commerce as ''small'' or ''little'' cigars do not meet the regulatory criteria established by TTB.

Finally, the petitioners requested that any efforts to modernize the TTB regulations be done in conjunction with the U.S. Customs and Border Protection as they relate to tobacco product imports. In addition, the petitioners recommended the inclusion of post-MSA presumption and certification requirements in 27 CFR part 41.

CAA Petition Follow-Up

On February 21, 2006, the CAA submitted a letter with reference to its December 19, 2005, petition. This letter is directed to certain issues raised in the Lorillard-RJR petition.

The CAA states in this letter that the Lorillard-RJR proposal does not offer much in the way of establishing standards for distinguishing between little cigars and cigarettes, but instead focuses on compliance and enforcement issues pertaining to these two products. The CAA further states that the Lorillard-RJR proposal would impose regulatory requirements on one small segment of the tobacco industry that would exceed those imposed on the rest of the industry. The CAA notes in this regard that the domestic sales volume figures for little cigars and cigarettes provided in the Lorillard-RJR petition are misleading because the petition uses ''units,'' or individual sticks, for little cigars and ''packs'' for cigarettes, which suggests that the cigarette industry is ten times the size of the little cigar industry when, in fact, it is over 200 times the size.

The CAA goes on to state:

> The cigarette company proposal also fundamentally mischaracterizes the little cigar industry by suggesting incorrectly that little cigars are a recent phenomenon. Little cigars have been on the market for almost 40 years and, because they were first made on old cigarette machines, have always had a superficial resemblance to cigarettes. Little cigars, however, have always differed from cigarettes, in both composition and marketing. They are made of cigar—not cigarette—tobacco, they are wrapped in leaf tobacco or in reconstituted tobacco (the material approved by BATF/TTB for use on cigar making equipment), and they are clearly labeled and promoted as little cigars. While it is true that there are new entrants in the little cigar market since the finalization of the MSA, it is unreasonable to suggest that all little cigars, or even all those introduced since 1998, are suspect.

For two reasons, the CAA opposes the Lorillard-RJR proposal for a compliance and enforcement approach. First, the proposal does not provide any new guidance on how to distinguish between little cigars and cigarettes but rather suggests that the factors in ATF Ruling 73–22 continue to provide a logical basis for the classification of these products. The CAA argues that Ruling 73–22 needs to be supplemented and that, until this is done, it is premature to consider compliance and enforcement procedures.

The CAA then states:

> Second, even with new guidance in place, the cigarette company proposal for compliance and enforcement is unacceptable. It would create a ''presumption'' in favor of little cigars marketed prior to the Master Settlement Agreement of November 23, 1998. This ''presumption,'' however, is meaningless, since pre-MSA brands would ''still be subject to monitoring and challenge as under existing regulations.'' More importantly, the unstated corollary to the favorable presumption for pre-MSA little cigars is that there will be a presumption against little cigars first marketed after the MSA. The implication is that any such product will be presumed to be a cigarette unless the manufacturer can demonstrate otherwise. The tax, customs, MSA and other implications of this presumption are unstated but the results would certainly include chaos and confusion, as products move between categories. This negative presumption would apparently apply to pre-MSA brands as to which there is any material change in appearance, type of tobacco used in the filler, or packaging and labeling of the product. A change in any one of these characteristics would reverse the favorable presumption, temporarily re-classifying a little cigar as a cigarette.

The CAA also opposes the Lorillard-RJR proposal that TTB create a certification procedure for post-MSA little cigar brands, arguing that it is premature to discuss ''certification'' of a product as a little cigar without knowing what test is to be used. Under the Lorillard-RJR proposal, all of the seven conditions specified in ATF Ruling 73–22 for an advance ruling would have to be included in the certification, which would also apply to pre-MSA brands if there is any material change in the product or packaging. The CAA asserts that such an approach is tantamount to a pre-approval scheme, as it would result in immediate review and inspection of a product coming to market, without any basis for such action.

Finally, the CAA takes issue with the Lorillard-RJR proposal for a ''third party challenge procedure,'' arguing that such a procedure would be an invitation to those with a variety of interests to force little cigar manufacturers to continually defend their products from unwarranted and unjustified attack. In addition, the CAA noted that because under Federal statute the tax status of any particular product must be held in confidence by TTB, Federal legislation would be required for TTB to create and implement such a third party challenge procedure.

The 23 States Joint Petition and Amendment

On April 24, 2006, the States of Montana, Wisconsin, Oklahoma, Utah, Oregon, South Dakota, Vermont, California, Louisiana, Delaware, New York, Arizona, Arkansas, Nebraska, West Virginia, New Mexico, Rhode Island, Wyoming, Nevada, Kentucky, Idaho, Hawaii, and Pennsylvania (the petitioner States) submitted a petition to TTB requesting the repeal of the definitions of ''cigar'' and ''cigarette'' as provided in 27 CFR 40.11, 41.11, 44.11, and 45.11. The petitioner States also propose new rules defining ''cigar'' and ''cigarette'' as used in 26 U.S.C. 5702 and new procedural rules for cigar and cigarette rulings. The petitioner States say that they take an active role in protecting the health and safety of their citizens. They also state that they find that the tax classification of cigars and cigarettes allows products that are actually cigarettes to be taxed and sold as cigars. Further, the petitioner States maintain that this is a growing trend and that it endangers the integrity of the Federal and State tax systems in addition to the MSA. They also state that the trend places the health and safety of U.S. citizens, especially youths, at risk. Specifically, the petitioner States address the following topics in their petition:

- Public Health;

- Federal Definition of Cigar and Cigarette;
- Lost Tax Revenues;
- Evasion of MSA Payments;
- Evasion of State Escrow and Cigarette Directory Laws;
- Health Warnings and Ingredient Reporting;
- Confusion in the Marketplace; and
- Proposed New Rules.

Public Health

The petitioner States address several concerns regarding the effect that little cigars have on public health. They state that young people are beginning to smoke little cigars at a higher rate than they smoke cigarettes. Thus, the petitioner States are afraid that this increase will reverse the gains they have made in lowering the rate of cigarette smoking in this segment of the population. They also allege that young people have greater access to little cigars than cigarettes, because in many states cigarettes are required to be sold in packages of 20 sticks or more, whereas there is no such requirement for little cigars. The petitioner States assert that little cigars that are sold in packages of less than 20 sticks, such as packages of eight sticks, five sticks, or one stick, would be less expensive and thus more accessible for younger buyers than a package of 20 sticks. They also note that the flavors such as strawberry, cherry, and vanilla used in some little cigars make these products attractive to the young.

The petitioner States also address the general health effects of cigars. Specifically, they state that ''[C]igar smokers face a risk of death from laryngeal, oral or esophageal cancer that is 4 to 10 times greater than the risk faced by nonsmokers.''

The petitioner States argue that sales of little cigars are on the increase and that in some instances the marketing of these products can be misleading. Specifically, they state that ''[L]ittle Cigar makers have encouraged smokers to identify Little Cigars as cigarettes through their marketing practices.''

Federal Definition of Cigar and Cigarette

The petitioner States included the following points concerning the evolution of the Federal definitions of cigar and cigarette:

Traditionally cigars have been wrapped in a leaf of tobacco. Cigars are made of air-cured tobacco that is aged and subjected to a multi-step fermentation process that reduces sugar content. Traditionally, cigars are also unflavored. Cigar smoke is not intended to be inhaled, so traditionally cigars do not have integrated filters. Sometimes, however, cigars have a mouthpiece made of plastic or wood that is intended to keep stray pieces of tobacco out of the mouth. In the United States, cigars come in many styles and sizes. Small cigars generally have straight bodies and weigh between 1.3 and 2.5 grams each. Large cigars vary greatly in size and shape. They can contain from 5 to 17 grams of tobacco.

Traditionally cigarettes have been wrapped in paper. Cigarettes are made of flue-cured tobaccos, not fermented tobaccos. Cigarette smoke is intended to be inhaled into the lungs, consequently some cigarettes have cellulose acetate filters or other integrated filters that are intended to filter some of the tar out of the smoke. Cigarette manufacturers often add sugar to enhance the flavor of the cigarette smoke. They generally range from 68–121 mm. in length and are generally of less than 28 ring gauge.

Prior to 1965, ''Cigar'' as used in 26 U.S.C. 5702 was defined as ''any roll of tobacco wrapped in tobacco'' and ''Cigarette'' was defined as ''any roll of tobacco, wrapped in paper or any substance other than tobacco.'' 26 U.S.C.S. 5702.

With the advent of reconstituted tobacco, it became possible to machine wrap cigars in a mixture of paper and tobacco. Reconstituted tobacco is ground tobacco mixed with various adhesives and cellulose fibers. This blurred the line between a cigar and a cigarette. In 1965, Congress enacted Public Law 89–44 which amended the definitions of cigar and cigarette to those we have today. The legislative history of Public Law 89–44 describes how technology created the problem of distinguishing between cigars and cigarettes.

The petitioner States also included the following statement from the legislative history of Public Law 89–44 to describe the nature of the problem of distinguishing between cigars and cigarettes that led to the legislation:

The introduction of reconstituted (homogenized) tobacco for use as a wrapper for rolls of tobacco had created problems regarding the existing distinction between a cigar and a cigarette. Reconstituted tobacco can be used to wrap rolls of tobacco that closely resemble cigarettes. Moreover, it possesses many of the properties of paper, including suitability for use in high-speed cigarette manufacturing machinery.

The petitioner States further argued as follows based on the legislative history and the wording of the amended definitions: ''Clearly Congress intended that ''cigarette'' would include a product wrapped in something that contains tobacco if it was likely to be sold as or purchased as a cigarette.''

The petition noted the issuance of Revenue Ruling 69–198, which was subsequently superseded by ATF Ruling 73–22. The petition then stated the following regarding the difficulties with Ruling 73–22:

There are several difficulties with Rev. Rul. 73–22. The Ruling assumes that products that are likely to be sold as or purchased as cigarettes will not be if they are labeled as cigars. This has led to rolls of tobacco that are filtered, appear to be cigarettes in brown wrapper and packaged in a traditional cigarette pack, are being taxed and sold to consumers as cigars because they are labeled as little cigars. But recent surveys on youth use of little cigars and the manufacturers' own statements show that ''Little Cigars'' are being purchased in lieu of cigarettes. ''Little Cigars'' are advertised to consumers as cigarette alternatives and consumers are self-identifying ''Little Cigars'' as cigarettes. Consumers recognize that a product that looks like a cigarette, is filtered to be inhaled like a cigarette, and is packaged like a cigarette is, in fact, a cigarette. Unscrupulous manufacturers have exploited the loopholes in Ruling 73–22 by self-classifying cigarettes as cigars. This intentional, unscrupulous misclassification of cigarettes as cigars has resulted not only in damage to the public health but also in significant lost revenues and confusion in the marketplace.

Lost Tax Revenues

The petitioner States allege in their petition that the Federal government and the States are losing significant tax revenues because cigarettes are improperly taxed as cigars. On the Federal front, with the excise tax rate for small cigars at 4 cents per pack or 40 cents per carton and that the rate for cigarettes at 39 cents per pack or $ 3.90 per carton, there is tax difference of $3.50 per carton. Further, the petitioner States suggest the following with regard to lost Federal tax revenue:

From 1999 to 2005, the total little cigars sales (domestic, PR & imported) increased by over 1.7 billion sticks, or 79%. During this same time period cigarette sales decreased by over 20%. The States believe that consumers are buying the cigarettes that are intentionally misclassified as much cheaper ''Little Cigars'' in order to avoid the high cigarette prices. If we assume that this increase is all due to the improperly labeled products, the federal excise taxes lost total $34 million, based upon the applicable tax rate of $3.90 per carton.

Almost as much federal excise taxes are lost even if the shorter time period, from 2002 to 2005, is selected. From 2002 to 2005, ''Little Cigar'' sales increased over 1.6 billion sticks, or 69%. The federal excise taxes lost on this increase, at $3.90 per carton, total $32 million.

Evasion of MSA Payments

The petitioner States point out that the MSA payments to the States are based on the sales of cigarettes and not cigars. Further, they state that because MSA payments are calculated based on the Federal excise taxes paid for cigarettes, little cigars are not included in the calculation of MSA payments. The petitioner States argue that this creates a financial incentive to shift a product classification from a cigarette to a cigar to avoid making MSA payments.

They note that the MSA payment for 2005 was $4.25 per carton.

Evasion of State Escrow and Cigarette Directory Laws

The petitioner States point out that the tobacco product manufacturers that did not join the MSA (referred to as non-participating manufacturers) still must make annual payments into escrow accounts held by the MSA signatory States; in 2005 the escrow amount per carton was $4.16. The payments are based on the manufacturer's sales of products stamped as cigarettes in each State, and the State Directory laws list the names of the manufacturers who make escrow payments and thus are allowed to sell their products in the State. However, cigars are not subject to the escrow requirements. Therefore, the petitioner States allege that when a cigarette manufacturer is sanctioned for failing to make escrow payments, the manufacturer simply repackages its cigarettes as ''Little Cigars'' and continues to sell them in the State.

Health Warnings and Ingredient Reporting

The petitioner States state that the Federal Cigarette Labeling and Advertising Act (FCLAA) administered by the Federal Trade Commission (FTC) requires health warning labels and ingredient reporting for cigarettes but that no such requirement exists for cigars. The petitioner States further note that in 2000 the FTC and the seven largest cigar manufacturers entered into an agreement to place warning labels on their cigars. They argue that one of the warning labels included in the 2000 settlement, ''Cigar smoking can cause cancers of the mouth and throat, even if you do not inhale'', would be highly misleading if the product in question were actually a cigarette and not a cigar because the warning in question assumes that the consumer will not inhale when smoking the product.

Confusion in the Marketplace

The petitioner States point out that several States have looked at ''Little Cigars'' and have determined that they are cigarettes as defined by the State for state tax purposes. The petitioner States further contend that ''[i]f the States change their tax definitions without a corresponding change in the TTB regulations, the inconsistencies between the two definitions cause tremendous confusion in the marketplace.'' To clear up this confusion, the petitioner States propose that TTB revise its definitions of cigar and cigarette so that the products can be treated consistently under both State law and Federal law. Further, they suggest that TTB ''take the lead to establish clear, objective, non-lab dependent standards that create a clear federal regulatory framework into which the states may integrate their laws.''

The States' Proposed New Rules

The petitioner States included three proposed new rules designed to: (1) Preserve the integrity of the cigar classification, (2) fairly define cigarettes based upon their design characteristics, and (3) set forth a procedure for determining if a product is a cigar or a cigarette under Federal law. The States' proposed new rules were outlined in the petition as follows:

Proposed New Rule I—Cigar.

A cigar is a roll of tobacco that:

1. Is wrapped in 100% natural leaf tobacco; or

2. (a) Is wrapped in any substance that contains 75 percent or more tobacco which did not in the reconstitution process lose its tobacco character (taste, aroma, identifiable chemical components) and is of a color consistent with that of the natural leaf tobaccos traditionally used as a wrapper for American cigars; and

(b) Is not a cigarette within the meaning of [New Rule II].

Proposed New Rule II—Cigarette.

A cigarette is a roll of tobacco that:

1. Is wrapped in paper or any substance not containing tobacco; or

2. Is wrapped in a substance containing tobacco, and is likely to be offered to, or purchased by, consumers as a cigarette. A roll of tobacco wrapped in a substance containing tobacco (other than 100 percent natural tobacco leaf) shall be considered to be likely to be offered to, or purchased by, consumers as a cigarette if any of the following are true:

a. It has a cellulose acetate or other integrated filter;

b. The tobacco used in the filler contains flue-cured or unfermented tobaccos or has flavor additives;

c. The tobacco in the filler, binder, or wrapper contains any sucrose;

d. The packaging does not clearly and conspicuously declare that the product is a cigar;

e. The appearance, packaging and/or labeling of the product meets three or more of the following criteria:

i. The product is sold in packs containing twenty or twenty-five sticks;

ii. The product is available for sale in cartons of 10 packs;

iii. The product is sold in soft packs, hard packs, flip-top boxes, clam shells, or other cigarette-type boxes;

iv. The product weighs less than three pounds per thousand sticks; or

v. The product is the diameter and length of a commercially-manufactured cigarette;

f. The product is marketed or advertised to consumers as a cigarette or cigarette substitute; or

g. It contains any other indicia that the product fits within the definition of cigarette in 26 U.S.C. 5702(b).

Proposed New Rule III—Procedure.

1. A manufacturer shall request an advance ruling from the bureau as to any product a manufacturer or importer wishes to market as a cigar.

2. The bureau shall make an advance ruling as to whether a product is a cigar within the meaning of 26 U.S.C. 5702(a), using the criteria above and the characteristics of the tobacco product, its packaging and labeling, and the totality of the circumstances.

3. Along with a request for determination, the manufacturer shall submit the following:

a. The package and any larger consumer container such as the carton, or the detailed graphics for these if they have not been printed;

b. A statement of the merchandising theme and copies of all advertising that mentions or depicts the product and point of sale merchandising material for the product;

c. A statement under penalty of perjury that the merchandising and advertising materials submitted are of the exact, actual advertising that will be used in the United States;

d. A statement under penalty of perjury that the manufacturer will obtain a new ruling from the Bureau if any material modifications are made to the marketing or advertising of the product prior to any change in the existing marketing or advertising;

e. A statement of composition of the wrapper including the type, geographic origin, treatment, age, and percentage of each tobacco used;

f. 2,500 square inches (17 square feet) of the wrapper material;

g. A statement of all the materials, chemicals, and additives and proportion of each used in the binder, and the production process;

h. 400 sticks of the finished product (if weighing not more than 10 pounds a thousand), or 200 sticks of the finished product (if weighing more than 10 pounds a thousand);

i. A statement under penalty of perjury of all the materials, chemicals, and additives and proportion of each used in the filler and the production process, including, but not limited to, the proportion of fermented air-cured tobacco, flue-cured tobacco and unfermented tobacco;

j. A statement under penalty of perjury that the samples submitted are of the exact, actual product that will be sold in the United States; and

k. A statement under penalty of perjury that the manufacturer will obtain a new ruling from the Bureau if any modifications are made to the composition or ingredients of the product prior to sales of any modified product.

4. If the manufacturer requests a ruling, the manufacturer shall submit all other relevant evidence required to enable the bureau to make a ruling. Pending a ruling by the Bureau, the manufacturer may only sell its product as a cigarette and comply with all laws applicable to cigarettes; such sales may

occur only after the manufacturer notifies the revenue departments of the states where the product will be sold that a ruling by the Bureau is still pending.

5. Not later than January 1, 2007, the Bureau shall develop and publish on its Internet Web site a directory listing of all rulings by the Bureau regarding the classification of a tobacco product as a cigar or as a cigarette, including the name and address of the manufacturer requesting the product classification, the product brand family and if the trademark for the brand family is not owned by the manufacturer, the name and address of the owner of the trademark.

On May 18, 2006, the Assistant Attorney General for the State of Montana, Kelly M. O'Sullivan, submitted an amendment to the petition submitted by the 23 States on April 24, 2006. The amendment was submitted to add an additional 16 States and one territory to the original petition, bringing the supporters of this petition to 39 States and one territory, as follows: Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, and Guam.

In addition, the petition amendment included more recent information pertaining to the consumption of little cigars and cigarettes. Specifically, the petition amendment states:

> Since the States filed our petition with the TTB, the following official information from the United States government, U.S. Department of Agriculture, Tobacco Outlook has come to our attention. While cigarette consumption has continued to decline, small cigar consumption increased significantly in 2005 over 2004. ''Consumption of little cigars reached 4,037 million cigars, compared with 2,917 million in 2004. Popularity of little cigars increased in part due to lower tax rates than cigarettes and because Master Settlement Agreement payments are not assessed on small cigars as they are with cigarettes.'' [U.S. Dep't of Agriculture, Tobacco Outlook. Wash., DC: U.S. Dep't of Agric., Econ. Res. Serv., 2005, p. 2. The Tobacco Outlook and accompanying tables are available at: *usda.mannlib.cornell.edu/reports/erssor/specialty/tbs-bb/2006/tbs260.pdf.*] Data compiled from reports of the Bureau of Alcohol, Tobacco and Firearms, and the Bureau of the Census indicate that per capita consumption of small cigars increased from 10.4 small cigars per person in 2003 to 12.1 small cigars in 2004 and 17.2 small cigars in 2005, an increase of 65% since 2003 and an increase of 42% in the most recent year.
>
> The petition amendment concludes with the following statement:
>
> We believe it is obvious that the majority of this astonishing growth is due to the fact that cigarettes are being passed off as ''little cigars'' and that, absent effective action by this agency, this dangerous and illegal activity will only intensify * * * The States urge the TTB to act now to adopt new rules and regulations that clearly classify as a cigarette through specific, objective criteria, products that are properly a cigarette—namely ''any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.'' The States also request that TTB adopt policies and procedures for classification which prevent manufacturers from self-classifying their cigarettes as cigars in order to avoid the attendant federal and state regulations, laws, taxes and payments.

The Need for Regulatory Changes

Based on the considerations that led to the total reducing sugars study discussed above, and in light of the uncertainties and other problems outlined in the three petitions summarized above, TTB believes that a pressing need for regulatory improvements exists. TTB notes in this regard that the only extant regulatory standard for distinguishing between cigars and cigarettes consists of the definitions of these terms, which merely repeat the statutory definitions. The only other published source for guidance in this area is ATF Ruling 73–22, which does not have the same force and effect as a regulation.

We also must emphasize that tax administration under the IRC is the only appropriate basis for the regulatory changes proposed in this document. Although the CAA, Lorillard-RJR, and the petitioner States petitions stress the significance of the signing of the Master Settlement Agreement (MSA), in particular regarding the alleged effect of the MSA on the marketing of little cigars, we note that TTB has no jurisdiction to act under the MSA. Similarly, although the petitioner States cited a number of public health issues in their petition, such issues are clearly outside the scope of Chapter 52 of the IRC. Accordingly, the proposed regulatory amendments contained in the document are directed only to enforcing the provisions of Chapter 52 of the IRC.

Basic Interpretative Principles

TTB recognizes that the statutory definitions of ''cigar'' and ''cigarette'' are controlling and are not susceptible to modification by regulation. Accordingly, we must operate within those definitions in amending the regulations to clarify the distinction between cigars and cigarettes for tax purposes. This being said, TTB has authority to interpret those definitions and determine how they are applied to specific products. Several basic interpretations of those definitions underlie the regulatory changes proposed in this document.

One interpretation concerns the effect of the usage of the terms ''leaf tobacco'' and ''substance containing tobacco'' in these definitions. It is the position of TTB that a ''roll of tobacco'' that is wrapped in ''leaf tobacco'' must be classified as a cigar and never as a cigarette. This position is based on the fact that whereas both definitions include a reference to a ''substance containing tobacco'' when referring to the wrapper material, the term ''leaf tobacco'' appears as a wrapper reference only in the ''cigar'' definition. The terms ''leaf tobacco'' and ''substance containing tobacco'' were introduced when the definitions were amended in 1965 (prior to that amendment, the cigar definition referred to a roll of tobacco wrapped in ''tobacco'' and the cigarette definition referred to a roll of tobacco wrapped in ''paper or any substance other than tobacco''). The fact that Congress chose not to use the new wrapper term ''leaf tobacco'' in the cigarette definition is evidence of an intent to restrict it to a cigar wrapper context.

As a corollary to the rule stated above, a distinction must be made between ''leaf tobacco'' and a ''substance containing tobacco.'' This is necessary both because the statutory definition of ''cigar'' uses both terms in the disjunctive (thus making an implicit distinction between them) and because including leaf tobacco within the meaning of ''substance containing tobacco'' would allow a ''cigarette'' to have a wrapper consisting of leaf tobacco, contrary to the rule stated above.

Similarly, it is the position of TTB that a ''roll of tobacco'' that is wrapped in a ''substance not containing tobacco'' must be classified as a cigarette and never as a cigar. This position is based on two factors: (1) The presence of tobacco in the wrapper (either as ''leaf tobacco'' or in a ''substance containing tobacco'') is a prerequisite to classification as a cigar under the cigar definition; and (2) only the first of the two cigarette definitions refers to a ''substance not containing tobacco.''

Finally, and most important, it is the position of TTB that, in the case of a ''roll of tobacco'' that is wrapped in a ''substance containing tobacco,'' the statutory definition of ''cigar'' requires a

threshold determination of whether the product in question is a cigarette; if it is, it must be treated as a cigarette for tax purposes. We note in this regard that a ''roll of tobacco'' wrapped in a ''substance containing tobacco'' is potentially classifiable either as a cigar or as a cigarette, because those words are used both in the ''cigar'' definition and in the second ''cigarette'' definition. However, the words ''other than any roll of tobacco which is a cigarette within the meaning of subsection (b)(2)'' in the statutory definition of ''cigar'' require the reader first to determine whether it is described by the second definition of ''cigarette.'' If it is so described, it must be classified as a cigarette notwithstanding the fact that it also meets the description of a ''roll of tobacco * * * wrapped in any substance containing tobacco'' contained in the definition of ''cigar.''

Issues Raised in the Petitions

TTB has carefully reviewed the comments and recommendations made in the three submitted petitions. In addition to our general agreement with all of the petitioners regarding the need for regulatory action to clarify the distinction between cigars and cigarettes, we note the following with regard to the tax-related points made in the petitions.

Creation of an MSA-Based Presumption

TTB does not concur with the Lorillard-RJR petition suggestion to create a (rebuttable) presumption in favor of those little cigar brands marketed prior to the MSA, for two reasons. First, the adoption of such a presumption would give the MSA an inappropriate role in tax classification. As indicated above, TTB's regulatory authority proceeds from the IRC, not the MSA. TTB also agrees with the observation made by the CAA in its response to the Lorillard-RJR petition that such a presumption could lead to confusion, particularly as products move from one category to another or are subjected to a material change in composition or presentation.

Certification for Post-MSA Brands

TTB does not agree with the Lorillard-RJR suggestion to require a one-time certification for post-MSA brands, for the same reason that an MSA-based presumption would not be appropriate. However, TTB does not agree with the CAA assertion that it would be premature to consider the certification concept because it is not known what ''test'' is to be used. For reasons set forth in more detail below, we believe that, with the adoption of improved, objective regulatory standards for distinguishing between cigars and cigarettes, a properly designed certification procedure could provide a workable solution for manufacturers, importers, and TTB.

Third Party Challenge Procedure

TTB agrees with the CAA that the third party product classification challenge procedure suggested in the Lorillard-RJR petition would be unworkable. Such a challenge procedure would put TTB in the position of having to mediate a dispute involving private parties, a position that TTB should not occupy. Moreover, any role that TTB might perform in such a dispute would inevitably involve the issue of disclosure of tax return information, which in most cases is prohibited under 26 U.S.C. 6103. We should point out, however, that any person, including a competitor, may refer information to us about a manufacturer's or importer's improperly classified tobacco product.

Coordination With Customs and Border Protection

TTB agrees with the suggestion in the Lorillard-RJR petition regarding coordination with Customs and Border Protection (CBP) on regulatory changes as they affect imported products. We consulted with CBP in connection with the drafting of this document, and we will continue to closely coordinate with CBP on our regulatory and related actions as they relate to import transactions falling under the jurisdiction of CBP.

Proposed New Rules To Define Cigars and Cigarettes

While TTB agrees with the suggestion of the petitioner States that specific new rules are necessary to clarify the distinction between cigars and cigarettes, we do not agree with their proposed new definitions approach, because, as noted above, the IRC definitions control and cannot be changed by regulatory action. Rather, we believe that the proper approach is to set forth specific rules that interpret and apply the IRC definitions for tax classification purposes. The acceptability of the specific rules suggested by the petitioner States is addressed below in the discussion of the proposed regulatory texts set forth in this document.

Proposed Advance Ruling Procedure

TTB is opposed to the new advance ruling procedure proposed by the petitioner States, because this would improperly shift the burden of tax compliance from the taxpayer to the Government. We believe that the following statement from ATF Ruling 73–22 continues to reflect the proper agency position on this issue:

> Manufacturers and importers have the initial responsibility for (1) determining whether material intended for use as a wrapper for rolls of tobacco is a ''substance containing tobacco,'' (2) determining whether a roll of tobacco wrapped in such material has the characteristics of a cigar or a cigarette, (3) knowing whether the product is likely to be offered to or purchased by consumers as a cigar or a cigarette, and (4) paying the tax at the proper rate.

However, we no longer believe that the advance ruling procedure referred to in ATF Ruling 73–22 is the best way to ensure compliance. Rather, we believe that a procedure involving the advance submission of a written tax classification certification to TTB is the best approach because it places the initial responsibility where it lies under the IRC, that is, with the manufacturer or importer. The certification procedure that TTB proposes is discussed in more detail later in this document.

Status of ATF Ruling 73–22 and ATF Procedures 73–5 and 76–2

With the exception of the reference to the advance ruling procedure, TTB is in substantial agreement with the standards and statements contained in ATF Ruling 73–22. However, as noted above, it is preferable to have tax classification standards reflected in the text of a regulation rather than in a guidance document that was not the subject of public notice and comment procedures. Accordingly, we propose to incorporate the substance of ATF Ruling 73–22 in the regulations, with the result that ATF Ruling 73–22 will be superseded in its entirety upon adoption of the proposed regulatory changes as a final rule.

With regard to ATF Procedures 73–5 and 76–2, TTB notes that the tobacco industries in the United States and abroad have changed the way they manufacture and market their products, and this may be especially true for little cigars. As a result of these changes and in view of the technological advances made with regard to the analytical instrumentation used to examine tobacco products, TTB believes it will be necessary to update the analytical standards it uses to evaluate these products. Moreover, the new standards proposed in this document rely in part on the results of the total reducing sugars study discussed above, which requires an analytical approach not covered by the existing Procedures. We are publishing elsewhere in this issue of

the **Federal Register** a notice describing the analytical methodology that TTB uses to determine the total reducing sugar content of tobacco products.

Discussion of the Proposed Amendments

We are proposing to amend parts 40, 41, 44, and 45 to clarify the tax classification of cigars and cigarettes, with particular emphasis on the adoption of standards in the regulations to distinguish between these two classes of products. The proposed amendments, which are essentially the same for each part, involve:

(1) The addition of two new definitions in §§ 40.11, 41.11, 44.11, and 45.11 and, in each current definition of ''cigar'' and ''cigarette,'' the inclusion of a cross-reference to the new clarifying classification provisions.

(2) The addition of two new sections in each part (§§ 40.12 and 40.13, 41.12 and 41.13, 44.12 and 44.13, and 45.12 and 45.13), the first one of which in each part sets forth the clarifying classification rules and the second of which requires a cigar manufacturer or importer to submit a classification certification to TTB; and

(3) The addition of a new paragraph (b) setting forth additional notice requirements for cigars in §§ 40.214, 41.73, 44.186, 44.253, and 45.44.

The following specific points are noted regarding the proposed regulatory amendments.

New Definitions

The two new definitions cover two terms, ''substance containing tobacco'' and ''substance not containing tobacco,'' the first of which appears in the existing statutory and regulatory definitions of ''cigar'' and ''cigarette'' and the second of which is only in the ''cigarette'' definition. We included both because including only one of them would not in all cases clarify the meaning (scope) of the other defined term. The ''substance containing tobacco'' definition refers specifically (but not exclusively) to ''reconstituted tobacco'' based on the significance of this material in this context, as discussed earlier in this document.

The two definitions incorporate the two-thirds rule, rather than the 75 percent standard proposed by the petitioner States (see the description of the two-thirds rule in the discussion of ATF Ruling 73–22 earlier in this preamble). We note in this regard that the two-thirds rule is familiar to the trade and has been the standard since ATF Ruling 73–22 was issued, and our experience since 1973 does not support any change in this standard.

The proposed definitions do not include the additional two criteria in ATF Ruling 73–22 requiring that the reconstituted tobacco not lose its tobacco character (e.g. taste, aroma, identifiable chemical components) and be of a color consistent with that of the natural tobacco leaf tobaccos traditionally used as a wrapper for American cigars. This criterion was also reflected in the superseded Revenue Ruling 69–198 that was issued after the 1965 statutory amendments to the definitions of cigars and cigarettes in order to help implement those changes to the law. TTB believes that these standards are too subjective and should not be included in the proposed definitions, which aim to establish an objective standard.

Finally, the two definitions refer to ''leaf or other fibrous material from the plant *Nicotiana tabacum* or the plant *Nicotiana rustica*'' because the former is the plant most commonly associated with ''tobacco'' (see, for example, Webster's Third New International Dictionary of the English Language, unabridged, 1993, Merriam Webster, Inc. Springfield, MA) and because we understand that the latter is also used in tobacco products on a more limited scale.

Classification of Cigars and Cigarettes

The ''classification of cigars and cigarettes'' section added to each part reflects the classification principles that we outlined earlier in this document. In addition, it incorporates a ''3.0 percent by weight of total reducing sugars'' standard as a dividing line between the two classes of products, with cigars at or below that level and cigarettes above it. This reflects the results of our total reducing sugar study, which yielded a clear, objective criterion to distinguish between these products that we believe is more complete than the ''contains any sucrose'' standard for a cigarette suggested by the petitioner States because, as explained earlier, sucrose is captured in the total reducing sugar values disclosed in the study. The proposed standards for classification as a cigarette also incorporate some specific criteria from both the petitioner States petition and ATF Ruling 73–22.

The ''cigar certification'' section added to each part requires a manufacturer or importer of cigars to have filed with TTB's National Revenue Center a certification that the product in question meets the rules for classification as a cigar prior to removal of the product. This certification reflects the principle stated in ATF Ruling 73–22, and reaffirmed in this document, that it is the legal obligation of the taxpayer to initially determine the tax status of a tobacco product. TTB believes that, with the adoption of the classification standards proposed in this document, manufacturers will be in a much better position to do that. Manufacturers will also be able to assess more readily whether a change in the formulation or manufacturing process for their products results in a change in their tax classification. The new section in each case also requires the submission of a new certification if there is a change to a previously certified product.

Notice Requirements for Cigars

Finally, the new paragraph (b) added to the cigar notice requirements in the four parts reflects primarily the terms of ATF Ruling 73–22. These additional notice requirements are intended to ensure that a cigar is fully and clearly marked as such, so that it would not be ''likely to be offered to, or purchased by, consumers as a cigarette'' within the meaning of the second cigarette definition.

Effective Date Considerations

In addition to soliciting comments on the proposed regulatory text amendments set forth below and on the position of TTB on the issues discussed in the preamble of this document, we invite comments on whether, and if so for what period, a delayed effective date should apply to any final rule action on this matter. Noting in particular the proposed new pre-removal cigar certification procedure, we are interested in knowing whether a delayed effective date would be needed to afford manufacturers and importers sufficient time to obtain all of the facts necessary to execute and file a proper certification.

Public Participation

Comments Sought

TTB requests comments on the proposed amendments to our regulations discussed in this notice from anyone interested. Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number (Notice No. 65) and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

Submitting Comments

You may submit comments in one of five ways:

• *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.

• *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5- by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

• *E-mail:* You may e-mail comments to *nprm@ttb.gov*. Comments transmitted by electronic mail must—

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5- by 11-inch paper.

• *Online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/tobacco/tobacco_rulemaking.shtml*. Select the ''Send comments via e-mail'' link under this notice number.

• *Federal e-rulemaking portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Public Disclosure

You may view copies of this notice, the related rulemaking petitions, and any comments we receive on this proposal by appointment at the TTB Information Resource Center at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- by 11-inch page. Contact the TTB information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments.

We will post this notice and any comments we receive on this proposal on the TTB Web site. All name and address information submitted with comments, including e-mail addresses, will be posted. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Information Resource Center. To access the online copy of this notice and the submitted comments, visit *http://www.ttb.gov/tobacco/tobacco_rulemaking.shtml*. Select the ''View Comments'' link under this notice number to view the posted comments.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The current information collections are in §§ 40.214, 44.186, 44.253, and 45.44, which was approved under OMB control number 1513–0101 and included notice requirements for all cigars. The estimated average burden for the current information collections is one hour. The new information collection requirements are in new §§ 40.214(b), 41.73, 44.186(b), 44.253(b), and 45.44(b) and involves notice requirements for all exported cigars and additional notice requirements for all small cigars. This information is required to ensure proper excise payment of taxes on tobacco products. The likely respondents are businesses or other for-profit institutions, including partnerships, associations, and corporations.

The notice information currently required to be displayed on cigar labels is minimal. It is information that is maintained by manufacturers as part of cost and quality control measures. Cigar manufacturers and importers do not expend significant time or expense collecting or providing the notice information. Accordingly, the new collection of information will not result in an increased burden on respondents.

Comments on the collection of information may be sent by e-mail to OMB at *Alexander_T._Hunt@omb.eop.gov*, or by paper mail to Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to TTB by any of the methods previously described.

Comments should be submitted within the time frame that comments are due regarding the substance of the regulation.

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the information collection burden; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimate of capital or start up costs and costs of operations, maintenance, and purchase of services to provide information.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), we certify that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The proposed regulations primarily codify and clarify existing administrative tax classification principles and practices. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code of 1986, we will submit this notice of proposed rulemaking to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory analysis.

Drafting Information

The principle author of this document is Linda Wade Chapman, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 40

Cigars and cigarettes, Claims, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

27 CFR Part 41

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

27 CFR Part 44

Aircraft, Armed forces, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

27 CFR Part 45

Administrative practice and procedure, Authority delegations (Government agencies), Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Tobacco.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, we propose to amend 27 CFR parts 40, 41, 44, and 45 as set forth below.

PART 40—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

1. The authority citation for part 40 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

2. In § 40.11, a new sentence is added at the end of the definition of ''Cigar,'' a new sentence is added at the end of paragraph (2) in the definition of ''Cigarette,'' and new definitions of ''Substance containing tobacco'' and ''Substance not containing tobacco'' are added in alphabetical order, to read as follows:

§ 40.11 Meaning of terms.

* * * * *

Cigar. * * * For classification rules applicable to cigars, see § 40.12.

Cigarette. * * *

(2) * * * For classification rules applicable to cigarettes, see § 40.12.

* * * * *

Substance containing tobacco. Reconstituted tobacco sheet or any other material, other than leaf tobacco, at least two-thirds by weight of which consists of tobacco leaf or other fibrous material from the plant *Nicotiana tabacum* or the plant *Nicotiana rustica.*

Substance not containing tobacco. Paper or any other material of which less than two-thirds by weight consists of tobacco leaf or other fibrous material from the plant *Nicotiana tabacum* or the plant *Nicotiana rustica.*

* * * * *

3. New §§ 40.12 and 40.13 are added to read as follows:

§ 40.12 Classification of cigars and cigarettes.

The rules set forth in this section control in determining whether a tobacco product is classified as a cigar or as a cigarette for purposes of this part.

(a) *Classification of cigars.* (1) *General.* A tobacco product is classified as a cigar if:

(i) It consists of a roll of tobacco wrapped in leaf tobacco; or

(ii) It consists of a roll of tobacco that contains no more than 3.0 percent by weight of total reducing sugars and that is wrapped in a substance containing tobacco, and it is not classifiable as a cigarette under paragraph (a)(2) of this section.

(2) *Cigarette classification precedence.* A tobacco product consisting of a roll of tobacco wrapped in a substance containing tobacco is classified as a cigarette rather than as a cigar if it is described in paragraph (b)(2) or (b)(3) of this section.

(b) *Classification of cigarettes.* A tobacco product is classified as a cigarette if:

(1) It consists of a roll of tobacco wrapped in paper or in any substance not containing tobacco;

(2) It consists of a roll of tobacco that contains more than 3.0 percent by weight of total reducing sugars and that is wrapped in a substance containing tobacco; or

(3) It consists of a roll of tobacco wrapped in a substance containing tobacco; and—

(i) It is put up in a package that bears a product designation or tax classification specified in § 40.215;

(ii) It has a typical cigarette size and shape, has a cellulose acetate or other cigarette-type integrated filter, or is put up in a traditional cigarette-type package that does not bear all of the notice requirements for cigars specified in § 40.214; or

(iii) It has a filler primarily consisting of flue-cured, burley, oriental, or unfermented tobaccos or has a filler material yielding the smoking characteristics of any of those tobaccos.

§ 40.13 Cigar certification.

(a) *Submission.* In the case of a tobacco product classified as a cigar under § 40.12(a)(1)(ii), the manufacturer must have filed a tax classification certification with TTB before removal of the product subject to tax. The manufacturer must sign, date, and file the certification with the National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau, 550 Main Street, Cincinnati, Ohio 45202. The certification must be in the following form:

I, _____ _____ ____ (name of person executing certification) of _____ (name and address of manufacturer) hereby certify under penalty of perjury that the product designated _____ (brand and style of product) ____ complies with ____ does not comply with (check one) the rules for classification as a cigar set forth in 27 CFR 40.12.

_____ (Signature and Date).

(b) *Change in product.* If, after the filing of a certification for a product under paragraph (a) of this section, there is any change in the composition or presentation of that product, the manufacturer must file a new certification that:

(1) The product complies with the rules for classification as a cigar; or

(2) The product does not comply with the rules for classification as a cigar.

4. Section 40.214 is revised to read as follows:

§ 40.214 Notice for cigars.

(a) *General.* Before removal subject to tax, every package of cigars shall have adequately imprinted on it, or on a label securely affixed to it:

(1) The designation ''cigars'';

(2) The quantity of cigars contained in the package; and

(3) For small cigars, the classification of the product for tax purposes (i.e., either ''small'' or ''little'').

(b) *Additional notice for small cigars.* In addition to the notice required under paragraph (a) of this section, the following notice requirements apply to small cigars put up in a package that is comparable to a traditional cigarette-type package:

(1) The declaration ''cigars'', ''small cigars'', or ''little cigars'' must appear in direct conjunction with, parallel to, and in substantially the same conspicuousness of type and background as the brand name each time the brand name appears;

(2) A conspicuous ''cigars'', ''small cigars'', or ''little cigars'' declaration must appear on the front, back, and bottom panels of the package even if the brand name does not appear on one or more of these panels; and

(3) A carton containing multiple packages must bear the declaration ''cigars'', ''small cigars'', or ''little cigars'' in conjunction with the brand

name and on each panel of the carton that is likely to be visible in a retail sale display.

PART 41—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

5. The authority citation for part 41 continues to read as follows:

Authority: 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721–5723, 5741, 5754, 5761–5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

6. In § 41.11, a new sentence is added at the end of the definition of ''Cigar,'' a new sentence is added at the end of paragraph (2) in the definition of ''Cigarette,'' and new definitions of ''Substance containing tobacco'' and ''Substance not containing tobacco'' are added in alphabetical order, to read as follows:

§ 41.11 Meaning of terms.

* * * * *

Cigar. * * * For classification rules applicable to cigars, see § 41.12.

Cigarette. * * *

(2) * * * For classification rules applicable to cigarettes, see § 41.12.

* * * * *

Substance containing tobacco. Reconstituted tobacco sheet or any other material, other than leaf tobacco, at least two-thirds by weight of which consists of tobacco leaf or other fibrous material from the plant *Nicotiana tabacum* or the plant *Nicotiana rustica.*

Substance not containing tobacco. Paper or any other material of which less than two-thirds by weight consists of tobacco leaf or other fibrous material from the plant *Nicotiana tabacum* or the plant *Nicotiana rustica.*

* * * * *

7. New §§ 41.12 and 41.13 are added to read as follows:

§ 41.12 Classification of cigars and cigarettes.

The rules set forth in this section control in determining whether a tobacco product is classified as a cigar or as a cigarette for purposes of this part.

(a) *Classification of cigars.* (1) *General.* A tobacco product is classified as a cigar if:

(i) It consists of a roll of tobacco wrapped in leaf tobacco; or

(ii) It consists of a roll of tobacco that contains no more than 3.0 percent by weight of total reducing sugars and that is wrapped in a substance containing tobacco, and it is not classifiable as a cigarette under paragraph (a)(2) of this section.

(2) *Cigarette classification precedence.* A tobacco product consisting of a roll of tobacco wrapped in a substance containing tobacco is classified as a cigarette rather than as a cigar if it is described in paragraph (b)(2) or (b)(3) of this section.

(b) *Classification of cigarettes.* A tobacco product is classified as a cigarette if:

(1) It consists of a roll of tobacco wrapped in paper or in a substance not containing tobacco;

(2) It consists of a roll of tobacco that contains more than 3.0 percent by weight of total reducing sugars and that is wrapped in a substance containing tobacco; or

(3) It consists of a roll of tobacco wrapped in a substance containing tobacco, and—

(i) It is put up in a package that bears a product designation or tax classification specified in § 41.74;

(ii) It has a typical cigarette size and shape, has a cellulose acetate or other cigarette-type integrated filter, or is put up in a traditional cigarette-type package that does not bear all of the notice requirements for cigars specified in § 41.73; or

(iii) It has a filler primarily consisting of flue-cured, burley, oriental, or unfermented tobaccos or has a filler material yielding the smoking characteristics of any of those tobaccos.

§ 41.13 Cigar certification.

(a) *Submission.* In the case of a tobacco product classified as a cigar under § 41.12(a)(1)(ii), the importer must have filed a tax classification certification with TTB before removal of the product subject to internal revenue tax. The importer must sign, date, and file the certification with the National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau, 550 Main Street, Cincinnati, Ohio 45202. The certification must be in the following form:

I, _____ (name of person executing certification) of _____ (name and address of importer) hereby certify under penalty of perjury that the product designated _____ (brand and style of product) __ complies with __ does not comply with (check one) the rules for classification as a cigar set forth in 27 CFR 41.12. _____ (Signature and Date).

(b) *Change in product.* If, after the filing of a certification for a product under paragraph (a) of this section, there is any change in the composition or presentation of that product, the importer must file a new certification that:

(1) The product complies with the rules for classification as a cigar; or

(2) The product does not comply with the rules for classification as a cigar.

8. Section 41.73 is revised to read as follows:

§ 41.73 Notice for cigars.

(a) *General.* Before removal subject to internal revenue tax, every package of cigars, except as provided in § 41.75, shall have adequately imprinted on it, or on a label securely affixed to it:

(1) The designation ''cigars'';

(2) The quantity of cigars contained in the package; and

(3) For small cigars, the classification of the product for tax purposes (i.e., either ''small'' or ''little'').

(b) *Additional notice for small cigars.* In addition to the notice required under paragraph (a) of this section, the following notice requirements apply to small cigars put up in a package that is comparable to a traditional cigarette-type package:

(1) The declaration ''cigars'' , ''small cigars'', or ''little cigars'' must appear in direct conjunction with, parallel to, and in substantially the same conspicuousness of type and background as the brand name each time the brand name appears;

(2) A conspicuous ''cigars'', ''small cigars'', or ''little cigars'' declaration must appear on the front, back, and bottom panels of the package even if the brand name does not appear on one or more of these panels; and

(3) A carton containing multiple packages must bear the declaration ''cigars'', ''small cigars'', or ''little cigars'' in conjunction with the brand name and on each panel of the carton that is likely to be visible in a retail sale display.

PART 44—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

9. The authority citation for part 44 is revised to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5706, 5711–5713, 5721–5723, 5731, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

10. In § 44.11, a new sentence is added at the end of the definition of ''Cigar,'' a new sentence is added at the end of paragraph (b) in the definition of ''Cigarette,'' and new definitions of ''Substance containing tobacco'' and ''Substance not containing tobacco'' are added in alphabetical order, to read as follows:

§ 44.11 Meaning of terms.

* * * * *

Cigar. * * * For classification rules applicable to cigars, see § 44.12.

Cigarette. * * *

(b) * * * For classification rules applicable to cigarettes, see § 44.12.

* * * * *

Substance containing tobacco. Reconstituted tobacco sheet or any other material, other than leaf tobacco, at least two-thirds by weight of which consists of tobacco leaf or other fibrous material from the plant *Nicotiana tabacum* or the plant *Nicotiana rustica.*

Substance not containing tobacco. Paper or any other material of which less than two-thirds by weight consists of tobacco leaf or other fibrous material from the plant *Nicotiana tabacum* or the plant *Nicotiana rustica.*

* * * * *

11. New §§ 44.12 and 44.13 are added to read as follows:

§ 44.12 Classification of cigars and cigarettes.

The rules set forth in this section control in determining whether a tobacco product is classified as a cigar or as a cigarette for purposes of this part.

(a) *Classification of cigars.* (1) *General.* A tobacco product is classified as a cigar if:

(i) It consists of a roll of tobacco wrapped in leaf tobacco; or

(ii) It consists of a roll of tobacco that contains no more than 3.0 percent by weight of total reducing sugars and that is wrapped in a substance containing tobacco, and it is not classifiable as a cigarette under paragraph (a)(2) of this section.

(2) *Cigarette classification precedence.* A tobacco product consisting of a roll of tobacco wrapped in a substance containing tobacco is classified as a cigarette rather than as a cigar if it is described in paragraph (b)(2) or (b)(3) of this section.

(b) *Classification of cigarettes.* A tobacco product is classified as a cigarette if:

(1) It consists of a roll of tobacco wrapped in paper or in any substance not containing tobacco;

(2) It consists of a roll of tobacco that contains more than 3.0 percent by weight of total reducing sugars and that is wrapped in a substance containing tobacco; or

(3) It consists of a roll of tobacco wrapped in a substance containing tobacco, and—

(i) It has a typical cigarette size and shape, has a cellulose acetate or other cigarette-type integrated filter, or is put up in a traditional cigarette-type package that does not bear all of the notice requirements for cigars specified in § 44.186 or § 44.253; or

(ii) It has a filler primarily consisting of flue-cured, burley, oriental, or unfermented tobaccos or has a filler material yielding the smoking characteristics of any of those tobaccos.

§ 44.13 Cigar certification.

(a) *Submission.* In the case of a tobacco product classified as a cigar under § 44.12(a)(1)(ii), the manufacturer must have filed a tax classification certification with TTB before removal. The manufacturer must sign, date, and file the certification with the National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau, 550 Main Street, Cincinnati, Ohio 45202. The certification must be in the following form:

I, _____ (name of person executing certification) of _____ (name and address of manufacturer) hereby certify under penalty of perjury that the product designated _____(brand and style of product) __complies with__ does not comply with (check one) the rules for classification as a cigar set forth in 27 CFR 44.12.

_____(Signature and Date).

(b) *Change in product.* If, after the filing of a certification for a product under paragraph (a) of this section, there is any change in the composition or presentation of that product, the manufacturer must file a new certification that:

(1) The product complies with the rules for classification as a cigar; or

(2) The product does not comply with the rules for classification as a cigar.

12. Section 44.186 is revised to read as follows:

§ 44.186 Tax classification for cigars.

(a) *General.* Before removal from a factory under this subpart, every package of cigars shall have adequately imprinted on it, or on a label securely affixed to it:

(1) The designation ''cigars'';

(2) The quantity of cigars contained in the package; and

(3) For small cigars, the classification of the product for tax purposes; (i.e., either ''small'' or ''little'').

(b) Additional notice for small cigars. In addition to the notice required under paragraph (a) of this section, the following notice requirements apply to small cigars put up in a package that is comparable to a traditional cigarette-type package:

(1) The declaration ''cigars'', ''small cigars'', or ''little cigars'' must appear in direct conjunction with, parallel to, and in substantially the same conspicuousness of type and background as the brand name each time the brand name appears;

(2) A conspicuous ''cigars'', ''small cigars'', or ''little cigars'' declaration must appear on the front, back, and bottom panels of the package even if the brand name does not appear on one or more of these panels; and

(3) A carton containing multiple packages must bear the declaration ''cigars'', ''small cigars'', or ''little cigars'' in conjunction with the brand name and on each panel of the carton that is likely to be visible in a retail sale display.

13. Section 44.253 is revised to read as follows:

§ 44.253 Tax classification for cigars.

(a) *General.* Before withdrawal of cigars from a customs warehouse under this subpart, every package of cigars shall have adequately imprinted on it, or on a label securely affixed to it:

(1) The designation ''cigars'';

(2) The quantity of cigars contained in the package; and

(3) For small cigars, the classification of the product for tax purposes (i.e., either ''small'' or ''little'').

(b) *Additional notice for small cigars.* In addition to the notice required under paragraph (a) of this section, the following notice requirements apply to small cigars put up in a package that is comparable to a traditional cigarette-type package:

(1) The declaration ''cigars'', ''small cigars'', or ''little cigars'' must appear in direct conjunction with, parallel to, and in substantially the same conspicuousness of type and background as the brand name each time the brand name appears;

(2) A conspicuous ''cigars'', ''small cigars'', or ''little cigars'' declaration must appear on the front, back, and bottom panels of the package even if the brand name does not appear on one or more of these panels; and

(3) A carton containing multiple packages must bear the declaration ''cigars'', ''small cigars'', or ''little cigars'' in conjunction with the brand name and on each panel of the carton that is likely to be visible in a retail sale display.

PART 45—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, FOR USE OF THE UNITED STATES

14. The authority citation for part 45 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

15. In § 45.11, a new sentence is added at the end of the definition of

''Cigar,'' a new sentence is added at the end of paragraph (2) in the definition of ''Cigarette,'' and new definitions of ''Substance containing tobacco'' and ''Substance not containing tobacco'' are added in alphabetical order, to read as follows:

§ 45.11 Meaning of terms.

* * * * *

Cigar. * * * For classification rules applicable to cigars, see § 45.12.

Cigarette. * * *

(2) * * * For classification rules applicable to cigarettes, see § 45.12.

* * * * *

Substance containing tobacco. Reconstituted tobacco sheet or any other material, other than leaf tobacco, at least two-thirds by weight of which consists of tobacco leaf or other fibrous material from the plant *Nicotiana tabacum* or the plant *Nicotiana rustica.*

Substance not containing tobacco. Paper or any other material of which less than two-thirds by weight consists of tobacco leaf or other fibrous material from the plant *Nicotiana tabacum* or the plant *Nicotiana rustica.*

* * * * *

16. New §§ 45.12 and 45.13 are added to read as follows:

§ 45.12 Classification of cigars and cigarettes.

The rules set forth in this section control in determining whether a tobacco product is classified as a cigar or as a cigarette for purposes of this part.

(a) *Classification of cigars.* (1) *General.* A tobacco product is classified as a cigar if:

(i) It consists of a roll of tobacco wrapped in leaf tobacco; or

(ii) It consists of a roll of tobacco that contains no more than 3.0 percent by weight of total reducing sugars and that is wrapped in a substance containing tobacco, and it is not classifiable as a cigarette under paragraph (a)(2) of this section.

(2) *Cigarette classification precedence.* A tobacco product consisting of a roll of tobacco wrapped in a substance containing tobacco is classified as a cigarette rather than as a cigar if it is described in paragraph (b)(2) or (b)(3) of this section.

(b) *Classification of cigarettes.* A tobacco product is classified as a cigarette if:

(1) It consists of a roll of tobacco wrapped in paper or in any substance not containing tobacco;

(2) It consists of a roll of tobacco that contains more than 3.0 percent by weight of total reducing sugars and that is wrapped in a substance containing tobacco; or

(3) It consists of a roll of tobacco wrapped in a substance containing tobacco, and—

(i) It is put up in a package that bears a product designation or tax classification specified in § 45.45;

(ii) It has a typical cigarette size and shape, has a cellulose acetate or other cigarette-type integrated filter, or is put up in a traditional cigarette-type package that does not bear all of the notice requirements for cigars specified in § 45.44; or

(iii) It has a filler primarily consisting of flue-cured, burley, oriental or unfermented tobaccos or has a filler material yielding the smoking characteristics of any of those tobaccos.

§ 45.13 Cigar certification.

(a) *Submission.* In the case of a tobacco product classified as a cigar under § 45.12(a)(1)(ii), the manufacturer must have filed a tax classification certification with TTB before removal of the product. The manufacturer must sign, date, and file the certification with the National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau, 550 Main Street, Cincinnati, Ohio 45202. The certification must be in the following form:

I, _____ (name of person executing certification) of _____ (name and address of manufacturer) hereby certify under penalty of perjury that the product designated _____ (brand and style of product) ____ complies with ____ does not comply with (check one) the rules for classification as a cigar set forth in 27 CFR 45.12. _____ (Signature and Date).

(b) *Change in product.* If, after the filing of a certification for a product under paragraph (a) of this section, there is any change in the composition or presentation of that product, the manufacturer must file a new certification that:

(1) The product complies with the rules for classification as a cigar; or

(2) The product does not comply with the rules for classification as a cigar.

17. Section 45.44 is revised to read as follows:

§ 45.44 Notice for cigars.

(a) *General.* Before removal under this part, every package of cigars shall have adequately imprinted on it, or on a label securely affixed to it:

(1) The designation ''cigars'';

(2) The quantity of cigars contained in the package; and

(3) For small cigars, the classification of the product for tax purposes (i.e., either ''small'' or ''little'').

(b) *Additional notice for small cigars.* In addition to the notice required under paragraph (a) of this section, the following notice requirements apply to small cigars put up in a package that is comparable to a traditional cigarette-type package:

(1) The declaration ''cigars'', ''small cigars'', or ''little cigars'' must appear in direct conjunction with, parallel to, and in substantially the same conspicuousness of type and background as the brand name each time the brand name appears;

(2) A conspicuous ''cigars'', ''small cigars'', or ''little cigars'' declaration must appear on the front, back, and bottom panels of the package even if the brand name does not appear on one or more of these panels; and

(3) A carton containing multiple packages must bear the declaration ''cigars'', ''small cigars'', or ''little cigars'' in conjunction with the brand name.

Signed: August 3, 2006.

John J. Manfreda,

Administrator.

Approved: September 28, 2006.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 06–8835 Filed 10–24–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Notice No. 66]

Total Reducing Sugars Analytical Method

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: General notice.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau issues this notice to describe the analytical method that it uses to determine the total reducing sugars content in the cigars and cigarettes that it analyzes. We reference this method in our notice of proposed rulemaking entitled ''Tax Classification of Cigars and Cigarettes,'' which is published elsewhere in this issue of the **Federal Register**. We are giving notice of this method so that interested members of the public may use the same method to evaluate the total reducing sugars of tobacco products for the purpose of commenting on the proposed rule.

FOR FURTHER INFORMATION CONTACT: Linda Wade Chapman, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20220; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Background

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the administration of the Federal excise tax and related provisions that apply to tobacco products under Chapter 52 of the Internal Revenue Code of 1986, as amended. Cigars and cigarettes are among the tobacco products covered by those provisions.

Elsewhere in this issue of the **Federal Register**, we are publishing a notice of proposed rulemaking, ''Tax Classification of Cigars and Cigarettes,'' which sets forth proposed new regulatory standards for the classification of cigars and cigarettes for tax purposes. The proposed regulatory standards include a specification regarding the total reducing sugar content of cigar and cigarette filler tobacco. This specification is based on the results of a study TTB performed on cigars and cigarettes using the Astoria 2 + 2 Flow Analyzer, which is the apparatus that TTB currently uses for tobacco product analysis. The purpose of this notice is to advise the public of the apparatus and method we employ to determine the total reducing sugars found in tobacco products, thereby allowing interested industry members and others to evaluate the total reducing sugar content of tobacco products in the same way for the purpose of commenting on the proposed new regulatory standards.

TTB uses the Astoria 2 + 2 Flow Analyzer and the Astoria-Pacific International Total Reducing Sugars A250 method with one modification—we prepare the extraction solution without methanol, thereby increasing the extraction time to 30 minutes, instead of 15 minutes, per operating note 10 in method A250.

The method is set forth below.

Laboratory Method

Total Reducing Sugars—A250

(Astoria-Pacific International, Rev. D 8/2003)

A. Scope and Application

This method is used for the determination of total reducing sugar in acetic acid extracts of tobacco. The applicable range of this method is 20 to 400 mg/L. The range can be extended by changing the detector sensitivity or by sample dilution.

B. Summary of Method

Samples (containing sucrose) are first hydrolyzed by invertase to form reducing monosaccharides.[1] Reducing sugars react with p-hydroxybenzoic acid hydrazide (PAHBAH) in an alkaline media to form a yellow color measured at 410 nm.[2] Calcium is used to enhance the color development.[3]

C. Interferences

No interferences are known for this methodology.

D. Sample Handling and Preservation

Casing and flavoring products should be refrigerated until analyzed. Samples should be stored in airtight containers prior to analysis. Extracted samples are stable for 48 hours when refrigerated.

E. Raw Materials Required

Note: Chemicals should be of ACS grade or equivalent.

- Acetic Acid, Glacial CH_3COOH (FW 60.05);
- Brij®–35, 30% w/v (API p/n 90–0710–04);
- Calcium Chloride $CaCl_2 \cdot 2H_2O$ (FW 147.02) (API p/n 80–7040–72);
- Citric Acid $HOCCOOH(CH_2COOH)_2 \cdot H_2O$ (FW 210.14) (API p/n 80–7035–61);
- Deionized Water (ASTM Type I or II);
- Fructose $C_6H_{12}O_6$ (FW 180.16) (API p/n 80–7062–72);
- Glucose $C_6H_{l2}O_6$ (FW 180.16) (API p/n 80–7061–72);
- Hydrochloric Acid HCl (FW 36.46);
- Invertase (See Operating Note #2) (API p/n 80–7050–61K);
- p-Hydroxybenzoic Acid Hydrazide (PAHBAH) $C_7H_8N_2O_2$ (FW 152.20) (API p/n 80–7030–60);
- Methanol CH_3OH (FW 32.04);
- Sodium Hydroxide NaOH (FW 40.00); and
- Sucrose $C_{12}H_{22}O_{11}$ (FW 342.30) (API p/n 80–7063–72).

(Reagents may be purchased in a pre-packaged kit, API p/n 80–7000–13K).

F. Reagent Preparation

1. Sodium Hydroxide Solution, 1 N (1 L)

Caution: The dissolution of sodium hydroxide in water releases a great amount of heat.

Sodium Hydroxide ..... NaOH (FW 40.00)	40.0 g
Deionized Water	

Dissolve 40.0 g of sodium hydroxide in 800 ml of deionized water contained in a 1 L volumetric flask. Dilute to the mark. Mix well. Filter to 0.45 µm with a membrane filter. Keep tightly closed; stable for one month at room temperature.

2. Hydrochloric Acid Solution, 0.75 N (1 L)

Hydrochloric Acid, Concentrated (36–37%). HCl (FW 36.46)	63 ml
Deionized Water	

Cautiously add 63 ml of hydrochloric acid to 800 ml of deionized water contained in a 1 L volumetric flask. Dilute to 1 L with deionized water and mix well. Filtering is not necessary. Keep tightly closed; stable for 60 days at room temperature.

3. p-Hydroxybenzoic Acid Solution (PAHBAH) (500 ml)

p-Hydroxybenzoic Acid Hydrazide, 80–7030–60. $C_7H_8N_2O_2$ (FW 152.20)	1 vial or 30.0 g
Citric Acid, 80–7035–61. HOCCOOH $(CH_2COOH)_2 \cdot H_2O$ (FW 210.14)	1 vial or 10.5 g
Hydrochloric Acid Solution, 0.75N	

Dissolve one vial or 30.0 g of p-hydroxybenzoic acid hydrazide and one vial or 10.5 g of citric acid in 400 ml of 0.75 N hydrochloric acid solution contained in a 500 ml volumetric flask. Dilute to volume with hydrochloric acid solution and mix well using a magnetic stirring bar. Filter to 0.45 µm with a

membrane filter. Store at room temperature; stable for 60 days.

4. Calcium Chloride Solution (500 ml)

Calcium Chloride, 80–7040–72. $CaCl_2 \bullet 2H_2O$ (FW 147.02)	1 vial or 0.34 g
Deionized Water	

Dissolve one vial or 0.34 g of calcium chloride in 400 ml of deionized water contained in a 500 ml volumetric flask. Dilute to volume with deionized water and mix well. Filter to 0.45 µm with a membrane filter. Store at room temperature; stable for 60 days.

5. Extraction Solution, 1% acetic acid, 2% methanol (v/v) (20 L)

Note: If analyzing Nitrate/Nitrite simultaneously, see Operating Note 10.

Acetic Acid, Glacial ..... CH_3COOH (FW 60.05)	170 ml
Methanol ..... CH_3OH (FW 32.04)	340 ml
Deionized Water	

Add 170 ml of glacial acetic acid and 340 ml of methanol to 16.49 L of deionized water contained in a 20 L polyethylene carboy. Do not dilute to volume. Mix well. Store at room temperature. Stable for 30 days.

Note: Extraction Solution can be prepared in smaller quantities. This solution will be used for extraction, calibrants and sampler wash.

6. Invertase Solution (500 ml)

Invertase, 80–7050–61K (See operating note #2)	1 vial or 0.20 g
Extraction Solution	

Dissolve one vial or 0.20 g invertase into 300 ml extraction solution contained in a 500 ml volumetric flask. Dilute the solution to volume with Extraction Solution and mix well. Filter to 0.45 µm with a membrane filter. Store refrigerated; stable for 10 days.

7. Sampler Wash Solution (1 L)

Extraction Solution	1 L
Brij–35, 30% solution	1 ml

Add 1 ml of Brij–35, 30% solution to 1 L Extraction Solution and mix well.

8. Startup and Shutdown Solution (1 L)

Deionized Water	1 L
Brij–35, 30% solution	1 to 2 ml

Add 1 to 2 ml of Brij–35, 30% solution to 1 L deionized water and mix well.

G. Calibrants

Specific Stock and Working Calibrant preparation instructions can be found on the back of the flow diagram. Be sure to use the flow diagram which covers the concentration range you wish to analyze.

Working calibrants may be prepared to cover alternate ranges by adding the appropriate volumes of stock or intermediate calibrant to 100 ml volumetric flasks that contain approximately 80 ml of extraction solution. Dilute the solution to 100 ml with extraction solution and mix well.

The following formula can be used to calculate the amount of stock (or intermediate) calibrant to be used.

$$C_1V_1 = C_2V_2$$

Where:

C_1 = desired concentration (in mg/L) of working calibrant to be prepared;
V_1 = final volume (in ml) of working calibrant to be prepared (generally 100 ml);
C_2 = concentration (in mg/L) of stock (or intermediate) calibrant; and
V_2 = volume (in ml) of stock (or intermediate) calibrant to be used.

Rearranging the equation to solve for V_2 yields:

$$V_2 = \frac{C_1V_1}{C_2}$$

For example, to prepare a 1.0 mg/L working calibrant from a 1000 mg/L stock calibrant, use 0.1 ml (100 µl) of the stock calibrant in 100 ml final volume.

$$V_2 = \frac{(1.0\ mg/L)\ (100\ ml)}{1000\ mg/L}$$

$$V_2 = 0.1\ ml$$

Add this amount of stock calibrant to the volumetric flask and then dilute to volume with the extraction solution.

H. Operation Procedure

1. Set up the cartridge as shown in the flow diagram [The flow diagram is shown at the end of this document.[1] Check all tubing and connections. Replace if necessary.

2. Place reagent lines in startup solution.

3. Turn on the power to all units including heat bath and latch pump platens to begin liquid flow.

4. Verify that the bubble sizes and spacing are consistent throughout the cartridge. If bubbles are splitting up as they enter or exit a coil or heat bath, check and replace fittings if necessary. The bubbles should flow smoothly without dragging. If dragging occurs, add more Brij-35 to the startup and sampler wash solutions.

5. Check all reagent containers on the instrument for particulate matter. Reagents should be filtered prior to use. Be sure all containers are properly labeled and filled before pumping reagents.

6. After the heat bath has reached the desired temperature and a stable baseline has been verified on the startup solution, place reagent lines in reagent bottles.

7. If using data collection software, set up the appropriate sample table.

8. Allow reagents to run for 5 to 10 minutes and verify a stable baseline.

9. Load the sampler tray with calibrants, blanks, samples, and QC or monitor samples.

10. Select the appropriate parameters for the detector and sampler. (See Flow Diagram at the end of methodology.)

11. Begin analysis.

12. At the end of analysis place all reagent lines in startup/shutdown solution and turn off the heat bath. Pump for 20 to 30 minutes to flush all of the reagents out of the cartridge and to allow the heat bath to cool.

13. Turn off the power to all units and release pump platens.

I. Operating Notes

1. If this cartridge is run as a single cartridge on the system, a sample ''helper'' line may be necessary. Problems such as poor precision, erratic washout between peaks, irregular peak shape, or inconsistent ISAC artifacts could be an indication that a ''helper'' line is needed. (See Section 9 of the Astoria® Analyzer Operation Manual.) Pecking may also be turned ON.

2. Invertase, grade VII from Bakers Yeast, available from Sigma Chemical Company, St. Louis, MO is recommended.

3. To check hydrolysis efficiency, prepare a check calibrant of the same nominal concentration from sucrose. If hydrolysis efficiency is poor, replace the invertase reagent.

4. This cartridge has a 0.015″ ID pulse suppressor installed at the NaOH reagent addition tee. Insure that no air bubbles are present in this suppressor before analyzing samples. Air bubbles or debris in the suppressor will produce an unstable baseline and loss of sensitivity.

5. Another common cause of low sensitivity and noise in the baseline is debris in the flowcell. Particulate matter from the reagents and samples become lodged in the flowcell restricting the amount of light that is passed through the flowcell. Flushing the flowcell with approximately 10 ml of sampler wash solution with a syringe will dislodge

[1] **Note:** Some proprietary information of Astoria-Pacific International was removed from this diagram.

any debris. Following proper filtration procedures for the reagents and samples will reduce the frequency of clogging.

6. Avoid using carbon in the filtration of samples. It will effect the color development.

7. Adding 1 ml/L of Brij-35 to the reagents just before use rather than when they are prepared will decrease the possibility of bacteria or algae contamination.

8. If bubbles are sticking in a debubbler, cleaning the debubbler will allow bubbles to escape smoothly out the debubble line. Bubbles sticking in the debubbler can cause a loss in the overall precision of the peak height. To clean, soak the debubbler for 2–3 hours in a mixture of 20–30% Contrad®NF (API p/n 80–0007–04) and hot tap water. Rinse thoroughly.

9. Cover all reagents and other solutions to avoid interference due to dust and other particulates.

10. Methanol in the extraction buffer has been found to cause a 0.2–0.3% increase in Nitrate results. If running nitrate simultaneously with total reducing sugars, removing the methanol from the extraction solution will take care of the bias. However, you will need to increase the extraction time to 30 minutes.

J. Sample Preparation Procedure

Note: This procedure is applicable for all tobacco products including leaf, stem, scrap, and cut filler. The total sugar results achieved from this procedure will be on a dry weight basis.

1. Place approximately 3 to 5 grams of product into a screen wire basket.

2. Place baskets into a 90°C convection oven for one hour.

3. Remove baskets from oven.

4. Grind samples to 20 mesh using a Wiley Mill Grinder or equivalent.

5. Place ground samples into air tight containers.

6. Using an analytical balance, accurately weigh approximately 100 mg of the dried and ground tobacco sample.

7. Transfer the weighed sample to a 125 ml Erlenmeyer flask.

8. Accurately dispense 100 ml of Extraction Solution into the 125 ml flasks.

9. Stopper the flasks and place them on a wrist action or orbital shaker for 15 minutes.

10. Filter the samples through Schleicher and Schuell #560 pleated filter paper or equivalent.

11. Contain the filtered solution in plastic vials with hinged caps until the appropriate time for analysis.

12. If refrigerated, samples will be stable for 48 hours.

K. References

1. *Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC)*, Thirteenth Edition 31.134, 1980, Washington, DC.

2. Ferraro, J.J., Caccavo, F.A., Saifer, A., p-Hydroxybenzoic Acid Hydrazide Procedure for Serum Glucose Adapted to the Technicon ''SMA 12/60'', and Compared with Other Glucose Methods. Clin Chem 22/2, 263—266 (1976).

3. Davis, R. E., A Combined Automated Procedure for the Determination of Reducing Sugars and Nicotine Alkaloids in Tobacco Products Using a New Reducing Sugar Method. Tobacco Science, XX: pp. 146–151 (1976).

Acknowledgements

• Astoria® and FASPac™ are trademarks of Astoria-Pacific, Inc., Clackamas, Oregon.

• Brij®-35 is a registered trademark of ICI Americas, Wilmington, Delaware.

• Contrad® is a registered trademark of Decon Laboratories, Bryn Mawr, PA.

Calibrant Preparation

Total Reducing Sugars in Extracts of Tobacco

200–A250–A00
20–400 mg/L Sugars
(Astoria-Pacific International, Rev. A 11/2003)

4,000 mg/L Sugar Stock Standard (500 ml)

(1) Dissolve into 300 ml extraction solution:

• 1.0 g (one bottle) Fructose (API p/n 80–7062–72), $C_6H_{12}O_6$ (FW 180.16), dried at 110°C, and

• 1.0 g (one bottle) Glucose (API p/n 80–7061–72), $C_6H_{12}O_6$ (FW 180.16), dried at 110°C.

(2) Dilute to 500 ml with extraction solution.

(3) Add 2 drops Chloroform, $CHCl_3$ (FW 119.38) and mix well.

(4) Store @ 2–8°C. Stable for 60 days.

Working Standard (100 ml)

Use adjustable, microliter pipettes to add the designated volumes of stock, intermediate or working standard to 100 ml volumetric flasks containing approximately 80 ml of extraction solution. Dilute each solution to the mark with the extraction solution and mix well. Make standards covering the range being run.

Range	Working standard concentration	Standard to pipet (Stock, Intermediate or Working)	Volume to pipet (µL)–(ml)
20–400 mg/L	400 mg/L	4,000 mg/L	10,000 C6 10.0
20–400 mg/L	300 mg/L	4,000 mg/L	7,500 C5 7.5
20–400 mg/L	200 mg/L	4,000 mg/L	5,000 C4 5.0
20–400 mg/L	100 mg/L	4,000 mg/L	2,500 C3 2.5
20–400 mg/L	40 mg/L	4,000 mg/L	1,000 C2 1.0
20–400 mg/L	20 mg/L	4,000 mg/L	500 C1 0.5

Note: To prepare alternate calibrant concentrations consult the methodology.

2,000 mg/L Sucrose Stock for Liquid Control (500 ml)

(1) Dissolve into 300 ml extraction solution:

• 1.0 g (one bottle) Sucrose (API p/n 80–7063–72), $C_{12}H_{22}O_{11}$ (FW 180.16), dried at 110° C.

(2) Dilute to 500 ml with extraction solution.

(3) Add 2 drops Chloroform, CHC_{l3} (FW 119.38) and mix well.

(4) Store @ 2–8° C. Stable for 60 days.

150 mg/L Sucrose Liquid Control (100 ml)

(1) 7.5 ml of 2,000 mg/L Sucrose Stock.

(2) Dilute with Extraction Solution to 100 ml.

(3) Mix well.

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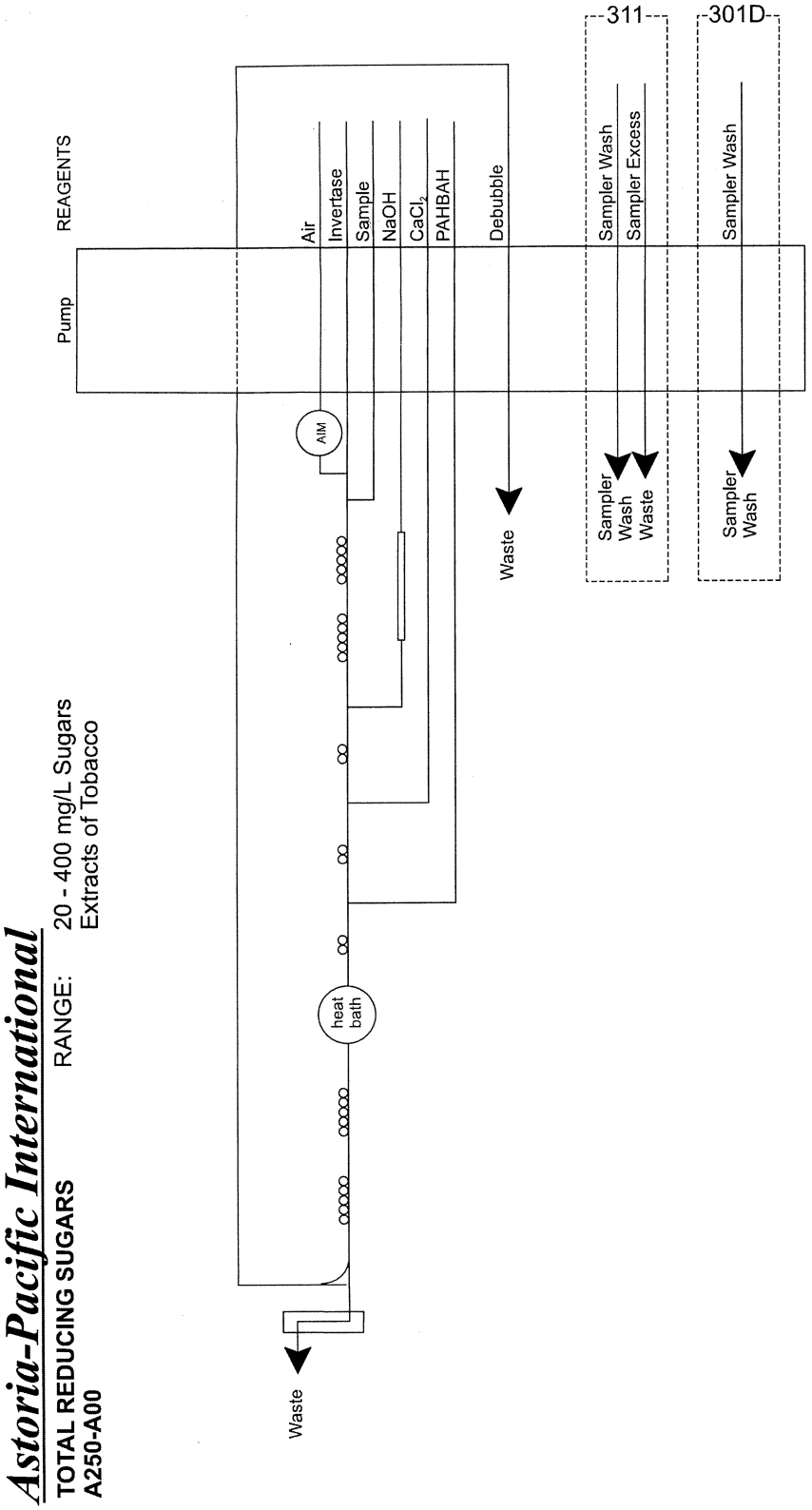

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Signed: October 17, 2006.

John J. Manfreda,

Administrator.

[FR Doc. 06–8836 Filed 10–24–06; 8:45 am]

BILLING CODE 4810–31–P

Federal Register

Wednesday,
October 25, 2006

Part III

Department of Education

34 CFR Part 106

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 106

RIN 1870–AA11

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations implementing Title IX of the Education Amendments of 1972 (Title IX), which prohibits sex discrimination in federally assisted education programs and activities. These amendments clarify and modify Title IX regulatory requirements pertaining to the provision of single-sex schools, classes,[1] and extracurricular activities in elementary and secondary schools. The amendments expand flexibility for recipients to provide single-sex education, and they explain how single-sex education may be provided consistent with the requirements of Title IX.

DATES: These regulations are effective November 24, 2006.

FOR FURTHER INFORMATION CONTACT: Sandra G. Battle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6125, Potomac Center Plaza, Washington DC 20202–1100. Telephone: (202) 245–6767.

If you use a telecommunications device for the deaf (TDD), you may call 1–877–521–2172. For additional copies of this document, you may call the Customer Service Team for the Office for Civil Rights (OCR) at (202) 245–6800 or 1–800–421–3481.

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SUPPLEMENTARY INFORMATION: Title IX prohibits discrimination on the basis of sex in education programs and activities that receive Federal financial assistance.[2] The Department's Title IX regulations implement Title IX's nondiscrimination requirements in education programs and activities assisted by the Department.[3] These amendments to the regulations establish new standards that OCR will use in determining[4] whether recipients that choose to operate single-sex elementary and secondary classes, extracurricular activities, and schools[5] are doing so consistent with their Title IX obligations not to discriminate on the basis of sex for the purposes of receiving financial assistance from the Department.

On March 9, 2004, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** (69 FR 11276). We explained that these amendments to the regulations are intended to provide recipients with additional flexibility in providing single-sex classes, extracurricular activities, and schools in elementary and secondary education. At the same time, these amendments ensure for students that single-sex classes, extracurricular activities, and schools are provided in a nondiscriminatory manner. In the preamble to the proposed regulations, on pages 11276 through 11282, we discussed the major changes needed to accomplish these objectives.[6] These changes included the following:

- Amending § 106.34(b) to add a new exception to the general prohibition against single-sex classes and extracurricular activities. The exception applies to nonvocational classes and extracurricular activities in elementary and secondary coeducational schools that are not vocational schools.[7] Under this exception a recipient would be permitted to offer a single-sex class or extracurricular activity if (1) the purpose of the class or extracurricular activity is achievement of an important governmental or educational objective, and (2) the single-sex nature of the class or extracurricular activity is substantially related to achievement of that objective. (Proposed § 106.34(b)(1)(i)). The two important objectives described in the proposed regulations were to provide a diversity of educational options to parents and students and to meet the particular, identified educational needs of students. (Proposed § 106.34(b)(1)(i)). The proposed amendments also described, for those recipients that choose to provide single-sex classes or extracurricular activities under this new exception, requirements necessary to ensure nondiscrimination. Under these requirements, as described in the proposed regulations, the recipient must treat male and female students in an evenhanded manner in implementing its objective, and it must always provide a substantially equal coeducational class or extracurricular activity in the same subject or activity. (Proposed § 106.34(b)(1)(ii), (iii)). The proposed amendments provided that, in addition to the required substantially equal coeducational class or extracurricular activity in the same subject or activity, a substantially equal single-sex class or extracurricular activity for students of the other sex may be required to ensure nondiscriminatory implementation. (Proposed § 106.34(b)(2)). The proposed amendment provided a non-exhaustive list of factors that the Department will

[1] The requirements for classes and extracurricular activities are the same. For the sake of simplicity, we generally use the term ''class'' in the preamble analysis of comments and changes. A noted exception is our discussion of comments from the public regarding extracurricular activities specifically.

[2] 20 U.S.C. 1681(a).

[3] 34 CFR part 106.

[4] OCR would make these determinations in resolving any complaints or compliance reviews related to these issues. See 34 CFR 100.7, made applicable to the Title IX regulations by § 106.71.

[5] These regulations do not require single-sex classes, extracurricular activities, or schools.

[6] The NPRM also discussed minor and technical changes including:

- Amending § 106.34(a) to delete obsolete timeframes; to move the general prohibition against providing education programs or activities separately on the basis of sex or refusing or requiring participation in education programs or activities on the basis of sex from an undesignated part of the former § 106.34 published in 1980 to § 106.34(a); and, because the proposed amendments provided for an exception that would permit single-sex classes in nonvocational elementary and secondary schools of any type, except for vocational education classes or vocational extracurricular activities, to delete from § 106.34 the introductory listing of specific types of classes to which the general prohibition applies.
- Amending § 106.34(a) to move the exceptions to the general prohibition, relating to physical education, sex education, and chorus, to § 106.34(a)(1) and (2), (a)(3) and (a)(4), respectively, and to expand the exception for sex education, § 106.34(a)(3), to include classes in elementary and secondary education that deal ''primarily'' with human sexuality, rather than only those that deal ''exclusively'' with human sexuality.
- Amending § 106.35 to clarify that the prohibitions against sex discrimination in admissions to vocational education schools apply to all recipients, public and private, and to move the requirements, including the substantive amendments, related to nonvocational schools operated by local educational agencies (LEAs) to § 106.34(c).
- Adding a new § 106.43 and moving to it, from § 106.34(d) of the former regulations, the provision regarding standards for measuring skill or progress in physical education.

[7] As explained in the preamble to the proposed regulations, the requirements for classes and extracurricular activities apply to recipients that operate public and private nonvocational coeducational schools. Private elementary and secondary schools are subject to the requirements pertaining to classes if they receive a grant or subgrant of Federal funds from the Department. Private schools with students who participate in programs conducted by LEAs that are funded under Federal programs such as Title I of the Elementary and Secondary Education Act of 1965, as amended, or the Individuals with Disabilities Education Act are not considered recipients of Federal funds unless they otherwise receive a grant or subgrant of Federal funds. These private schools are not subject to these amended regulations, but the LEA must ensure that its programs, including services to private school students, are consistent with Title IX.

consider in determining whether classes or extracurricular activities are substantially equal (Proposed § 106.34(b)(3)), and required the recipient to conduct periodic evaluations to ensure nondiscrimination (Proposed § 106.34(b)(4)). The proposed regulations defined ''classes'' to include all education activities provided for students by a school or sponsored by a school, and it was intended to include extracurricular activities.[8] (Proposed § 106.34(b)(5)).

• Amending § 106.34(c) to include from former § 106.35, with substantive changes, the nondiscrimination requirements applicable to the operation of nonvocational single-sex public schools.[9] The proposed amendment provided generally that a recipient that operates a public nonvocational elementary or secondary school may operate a single-sex school only if it provides substantially equal opportunities for students of the other sex in another school and that the other school may be either single-sex or coeducational. (Proposed § 106.34(c)(1)). As explained in the preamble to the proposed regulations, this represents a change in interpretation of Title IX. Under the prior interpretation, if a recipient operated a single-sex public school for students of one sex, we required it to offer a comparable single-sex school for students of the other sex.

The proposed amendments also exempted nonvocational public charter schools that are single-school LEAs from the requirement to provide a substantially equal school for students of the other sex. (Proposed § 106.34(c)(2)). In addition, the proposed amendments provided a non-exhaustive list of factors the Department would use in determining whether the schools are substantially equal and provided that the Department will use an aggregate approach in making this determination. (Proposed § 106.34(c)(3)).

Significant Changes Between the Proposed Regulations and the Final Regulations

• *Clarification that § 106.34(b)(1) through (5) applies to extracurricular activities, as well as to classes:* We have added the term ''extracurricular activities'' throughout § 106.34(b)(1) through (5) to clarify that these provisions apply to both classes and extracurricular activities. As described later in this section, we are also clarifying the scope of coverage of paragraph (b)(1) through (4) of § 106.34.

• *Clarification that a recipient's objective must be ''important'':* Section 106.34(b)(1) of the proposed regulations specified, in paragraph (i), that each single-sex class or extracurricular activity must be based on the ''recipient's objective.'' Recipients that are public entities must have an important governmental objective and recipients that are private entities must have an important educational objective. We have clarified this provision in the final regulations by adding the word ''important'' to describe the recipient's objective.

• *Revisions of ''diversity of educational options'' objective:* The proposed regulations stated that a ''diversity of educational options to parents and students'' was an important objective that may serve as a basis for providing single-sex classes. (Proposed § 106.34(b)(1)(i)(A)). We have revised the regulatory language to clarify that this objective is ''to improve educational achievement of its students, through a recipient's overall established policy, to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective.''

• *Clarification that participation in single-sex classes and extracurricular activities must be completely voluntary:* The proposed regulations in § 106.34(b)(1)(ii) referenced the requirements of § 106.34(a) to ensure together with the requirement to provide a coeducational class, that recipients did not assign students involuntarily to single-sex classes. New paragraph (iii) of § 106.34(b)(1) provides that student enrollment in single-sex classes and extracurricular activities must be completely voluntary.

To accommodate the addition of this new paragraph, we have renumbered the other paragraphs in this section. The requirement for evenhanded treatment of male and female students is now in § 106.34(b)(1)(ii), the requirement that participation in single-sex classes and extracurricular activities must be completely voluntary is in § 106.34(b)(1)(iii), and the requirement to provide a substantially equal coeducational class or extracurricular activity is in § 106.34(b)(1)(iv). We also have removed the reference to paragraph (a) in this paragraph because it is no longer needed.

• *Clarification of aggregate approach regarding the assessment of substantial equality of classes in § 106.34(b)(3) and schools in § 106.34(c)(3):* We have clarified the description of the Department's use of an aggregate approach for considering factors in assessments of substantial equality by deleting § 106.34(c)(ii) of the proposed regulations, which was misunderstood by commenters, and by adding the clarifying language, ''either individually or in the aggregate as appropriate,'' to § 106.34(b)(3), regarding factors the Department will consider in the assessment of substantial equality of classes, and to § 106.34(c)(3), regarding factors the Department will consider in the assessment of substantial equality of schools, in the final regulations.

• *Addition of ''intangible features'' to factors in § 106.34(b)(3) and (c)(3); addition of ''geographic accessibility'' factor in § 106.34(b)(3):* The proposed regulations provided non-exhaustive lists of factors in § 106.34(b)(3) and (c)(3) that the Department will consider in comparing classes or extracurricular activities and schools, respectively, for the purposes of determining compliance. We have added ''intangible features'' and ''reputation of faculty'' as an example of an intangible feature to both lists of factors in the final regulations. We also have added ''geographic accessibility'' as a factor in § 106.34(b)(3) because it may be relevant in certain circumstances in compliance determinations.

• *Modification of provisions on periodic evaluations:* The proposed regulations in § 106.34(b)(4) required that recipients conduct periodic evaluations of single-sex classes to ensure, among other things, that the classes and activities are based on genuine justifications and do not rely on overly broad generalizations about the different talents or capacities of either sex. Title IX also does not permit single-sex classes or extracurricular activities to rely on overly broad generalizations about the preferences of either sex. Therefore, we added the word ''preferences'' to § 106.34(b)(4). We also have added the term ''important'' to clarify that the evaluation must ensure that the single-sex class or extracurricular activity is substantially related to the recipient's important objective.

• *Clarification addressing the frequency of the procedural requirement for periodic evaluations:* In the preamble to the proposed regulations, we requested comments regarding how often recipients should conduct the periodic evaluations required by § 106.34(b)(4). The proposed regulations were silent on this issue. The final regulations add a new paragraph (ii) to § 106.34(b)(4) that specifies that evaluations for the purposes of

[8] 69 FR 11276, footnote 1.

[9] As explained in the preamble to the proposed regulations, the requirements pertaining to the provision of single-sex schools do not apply to recipients that operate private, nonvocational elementary or secondary schools.

§ 106.34(b)(4)(i) must be conducted at least every two years.

• *Scope of coverage of § 106.34(b)(1) through (4):* The proposed regulations in § 106.34(b)(5) defined ''class'' for the purposes of § 106.34(b)(1) through (4), and that definition was intended to cover academic classes and extracurricular activities. We have determined that rather than define ''class,'' it is clearer and more useful to include a provision on the scope of coverage of paragraph (b)(1) through (4) of § 106.34. We have revised § 106.34(b)(5) to provide that paragraph (b)(1) through (4) applies to classes and extracurricular activities provided by a recipient directly or through another entity, and to clarify that paragraph (b)(1) through (4) does not apply to interscholastic, club, or intramural athletics, which are subject to the requirements of §§ 106.41 and 106.37(c).

• *Definition of ''school'' and ''school within a school'':* The proposed regulations in § 106.34(c)(1) referred to a single-sex education unit. For the purposes of this paragraph, we consider an ''education unit'' to mean a ''school within a school'' and that term to mean a school that is housed within another school. We believe that the term ''school within a school'' and this explanation are clearer, more accurate, and more useful to recipients than the term ''education unit.'' For this reason we have added a new paragraph (4) to § 106.34(c) that defines the term ''school'' for the purposes of paragraph (c)(1) through (3) to include a ''school within a school'' and explains that the latter term means ''an administratively separate school located within another school.'' We have deleted the term ''single-sex education unit'' from § 106.34(c)(1) because it is no longer necessary in light of the new definition.

Analysis of Comments and Changes

In response to the Secretary's invitation in the preamble to the proposed regulations, we received approximately 5,860 comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the proposed regulations follows.

We group major issues according to subject under the appropriate sections of the final regulations. Generally, we do not address technical or minor changes and suggested changes that the law does not authorize the Secretary to make.

Section 106.34. Access to Classes and Schools

1. Research

Comments: Some commenters recommended that the Department postpone amendment of the regulations. Among the comments were recommendations that we wait until pilot projects were conducted, until completion of a Department-commissioned study on single-sex schools, or until the completion of additional scientific research that concludes that single-sex education is beneficial to students.

Discussion: Title IX has always permitted single-sex schools under conditions that ensure nondiscrimination. Existing educational research suggests that single-sex education may provide benefits to some students under certain circumstances. For an overview of the literature assessing single-sex schools, see *Single Sex Versus Coeducational Schooling: A Systematic Review*, U.S. Department of Education, Office of Planning, Evaluation and Policy Development, 2005, available on the Department's Web site. Although there is a debate among educators on the effectiveness of single-sex education, the final regulations permit each recipient to make an individualized decision about whether single-sex educational opportunities will achieve the recipient's important objective and whether the single-sex nature of those opportunities is substantially related to achievement of that important objective consistent with the nondiscrimination requirements of these regulations.

Changes: None.

2. Legal Standards for Single-Sex Classes (§ 106.34(b))

Comments: Some commenters objected to amending the regulations to permit additional flexibility to provide single-sex education because they were concerned that sex discrimination may result. Some commenters were particularly concerned about sex discrimination resulting from single-sex classes, given that the former regulations had restricted single-sex classes to very limited circumstances. Some commenters expressed the view that single-sex public education is generally illegal, analogizing it to race-segregated public education, which is unconstitutional. Some commenters expressed the view that the amendments were inconsistent with standards pertaining to sex discrimination under the Equal Protection Clause of the 14th Amendment to the U.S. Constitution (Equal Protection Clause) and that recipients who implemented programs consistent with these regulations might be subject to litigation. Some commenters recommended that the final regulations provide notice about constitutional requirements.

Discussion: The Title IX statute requires equal educational opportunity regardless of sex, and both Title IX and the regulations [10] have always permitted single-sex nonvocational elementary and secondary schools.[11] With respect to schools, Congress both required that recipients that operate public schools conduct their education program or activity in a manner that does not discriminate on the basis of sex and permitted these recipients to operate single-sex schools within their school districts consistent with the nondiscrimination requirements. In issuing the original Title IX regulations, the former Department of Health, Education, and Welfare chose to require generally that classes be coeducational to ensure nondiscrimination. 45 CFR 86.34 (1975). Given that Congress intended for school districts to be operated in a manner that both prohibits sex discrimination and permits the operation of single-sex schools under conditions that ensure nondiscrimination, we believe that it is consistent with the intent of Congress to permit recipients additional flexibility to offer single-sex classes as long as they are offered under conditions that ensure nondiscrimination. These regulations permit recipients to continue to operate solely coeducational classes and provide the requirements that will ensure that, if recipients choose to provide single-sex classes, they will do so in a nondiscriminatory manner.

Although the Supreme Court has ruled race-segregated public education per se unconstitutional,[12] the Court has

[10] Comments pertaining solely to the legal standards applicable to schools are discussed in subsequent paragraphs in connection with § 106.34(c)(1) through (4), which provides requirements for single-sex schools.

[11] 20 U.S.C. 1681(a)(1); § 106.15(d) and former § 106.35 published in 1980. Title IX also includes exemptions for voluntary youth organizations (e.g., Boy Scouts and Girl Scouts), Boys' and Girls' Nation or State conferences, and father-son and mother-daughter activities. 20 U.S.C. 1681(a)(6)(B), (7), and (8). The Title IX regulations historically have permitted sex-separate athletic teams if selection is based on competitive skill or the activity involved is a contact sport (§ 106.41(b)) and sex-separate physical education activities involving a contact sport (former § 106.34(c) or § 106.34(a)(1) in these final regulations). The Title IX regulations also historically have permitted sex separation in classes on human sexuality (former § 106.34(e) or § 106.34(a)(3) in these final regulations) and for pregnant students, on a voluntary basis (§ 106.40(b)(1) and (3)).

[12] *Brown* v. *Board of Education,* 347 U.S. 483 (1954).

not struck down the legality of single-sex public elementary or secondary education [13] under either Title IX or the Constitution.[14] In analyzing whether sex-separate admissions policies in public postsecondary undergraduate institutions were consistent with the standards of the Equal Protection Clause, the Supreme Court has indicated that to justify a sex-based classification the public entity must demonstrate that it is based on an important governmental objective and that exclusion of students of the other sex is substantially related to achievement of that objective.[15] The Supreme Court has ruled that the ''justification must be genuine, not hypothesized or invented *post hoc* in response to litigation'' and that ''it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.'' [16] Subsequent paragraphs describe how the Title IX regulations also prohibit treatment based on overly broad sex-based generalizations.

With respect to the comments about consistency of these regulations with Equal Protection Clause standards, the Department enforces its Title IX regulations, which prohibit discrimination on the basis of sex in education programs and activities by public and private recipients of Federal assistance. The Equal Protection Clause prohibits sex discrimination by public actors, such as public school districts. If possible, the regulatory provisions of Title IX are informed by constitutional principles, but because the scope of the Title IX statute differs from the scope of the Equal Protection Clause,[17] these regulations do not regulate or implement constitutional requirements or constitute advice about the U.S. Constitution. Rather, they implement Title IX by establishing the nondiscrimination requirements that the Department will enforce with respect to recipients that choose to provide single-sex education. These regulations do not require that recipients implement single-sex education. Recipients may wish to consult legal counsel regarding how the Equal Protection Clause or other applicable legal authorities prohibiting sex discrimination [18] may affect any particular single-sex school or class they propose to offer.

Changes: None.

3. Procedural Safeguards

Comments: Some commenters recommended additional requirements, such as pre-approval of single-sex classes or schools by the Department, specific data maintenance requirements in the regulations, reporting requirements to the Department, and routine review or monitoring by the Department to ensure nondiscrimination.

Discussion: We believe that these regulations and our current enforcement requirements and procedures are sufficient to ensure compliance. These regulations recognize that recipients that implement single-sex education will have differing objectives addressing differing student populations and that requiring a particular data set in the regulations could be both over-inclusive and under-inclusive. The Department has authority to access recipient records and other sources of information to determine compliance.[19] Recipients have an ongoing responsibility to maintain compliance with Title IX and these regulations.[20] Additionally, the amended regulations require a recipient to periodically conduct self-evaluations. If students and their parents believe there has been a violation of these regulations, they may file a complaint alleging discrimination under the recipient's grievance procedures.[21] Students, parents, and third parties may also file complaints with the Department's Office for Civil Rights (OCR) if they believe discrimination in violation of these regulations has occurred. See, e.g., 34 CFR 100.7(b), (c), and (d), which are incorporated by reference in 34 CFR 106.71. In addition, OCR has authority to conduct periodic compliance reviews of recipients to ensure compliance.[22] If OCR finds that a recipient has failed to comply with the Title IX regulations, OCR will negotiate with the recipient to secure compliance by voluntary means, and will take action to enforce [23] if voluntary compliance cannot be achieved.

Changes: None.

4. Effect on Other Issues

Comments: Some commenters expressed concern that additional flexibility for single-sex education might result in a reversion to sex-based stereotypes or roles. Some commenters indicated concern that single-sex education may have negative effects on socialization of children. Another commenter was concerned that recipients might not be aware that the amendments do not affect Federal law that prohibits recipient employers from making job assignments on the basis of sex.

Discussion: With respect to commenters who expressed concern that increased flexibility to provide single-sex education might result in a reversion to sex-based stereotypes or roles, the regulations establish substantive and procedural requirements to ensure nondiscrimination. The regulations make it clear that a recipient's failure to have a justification, i.e., an important objective and a substantial relationship between the important objective and the sex-based means to further that objective, that is genuine would be sex discrimination. Thus, the regulations also make it clear that a recipient's use of overly broad sex-based

[13] There are no Supreme Court opinions on the issue of single-sex public elementary and secondary education. In 1977, the Court, by an evenly divided vote and without an opinion, let stand a decision allowing, under the Equal Protection Clause, a school district that also operated coeducational high schools to operate two comparable single-sex high schools, one for girls and one for boys. *Vorchheimer* v. *School District of Philadelphia,* 532 F.2d 880 (3rd Cir. 1976), affirmed by an equally divided Court, 430 U.S. 703 (1977) (per curiam). More recently, the Court determined in a case involving the Virginia Military Institute that, by denying females the educational opportunities provided to males in a single all-male postsecondary school, the State had denied equal protection to females. *United States* v. *Virginia,* 518 U.S. 515 (1996).

[14] The Court uses different standards to evaluate classifications based on race, as compared to sex, to determine if they are consistent with the U.S. Constitution. Racial classifications are analyzed under the standard of strict scrutiny, whereas sex-based classifications are analyzed under the standard of intermediate scrutiny. *Grutter* v. *Bollinger,* 539 U.S. 306, 326–327 (2003); *Virginia,* 518 U.S. at 532–533.

[15] *Virginia,* 518 U.S. at 533, quoting *Mississippi University for Women* v. *Hogan,* 458 U.S. 718, 724 (1982).

[16] *Virginia,* 518 U.S. at 533.

[17] For example, as explained in the Department's ''Guidelines on current title IX requirements related to single-sex classes and schools,'' although recipients that operate public schools are subject to constitutional requirements pertaining to their justification for establishing single-sex schools, because the Title IX statute does not cover admissions to nonvocational elementary and secondary schools, the Department is generally precluded from examining the recipient's justification. 67 FR 31101, 31103 (May 8, 2002).

[18] Recipients that are public entities, such as public school districts, are subject to the sex discrimination prohibitions of the Equal Protection Clause. Public elementary and secondary schools are also subject to the requirements of the Equal Educational Opportunities Act of 1974, 20 U.S.C. 1701–1721 (EEOA), which, among other things, contains prohibitions against the involuntary assignment of students to sex-separate schools on the basis of sex. 20 U.S.C. 1703(c), 1705, and 1720(c). Recipients also are subject to private litigation under Title IX for intentional discrimination on the basis of sex. Public school and private school recipients also may be subject to State or local laws prohibiting single-sex classes or schools.

[19] Section 106.71, incorporating by reference 34 CFR 100.6(c).

[20] Section 106.4.

[21] Section 106.8(b).

[22] Section 106.71, incorporating 34 CFR 100.7.

[23] Enforcement options include commencement of proceedings to terminate Federal funds administratively or referral to the Department of Justice for judicial enforcement. 20 U.S.C. 1682.

generalizations in connection with offering single-sex education would be sex discrimination. With respect to commenters who were concerned about the effect of single-sex education on the socialization of students, we reiterate that these regulations do not require single-sex education. Rather, they permit a recipient that has determined that single-sex education may be beneficial for some portion of its student population to offer single-sex education consistent with the requirements in these regulations.

These regulations do not change the prohibitions on sex discrimination in employment, or any other area not specifically addressed in these amendments, in the Title IX regulations. Among other things, the Title IX regulations prohibit recipients from making job assignments on the basis of sex, § 106.51(b)(4), and from classifying jobs as being for males or females, § 106.55(a). Both of these provisions would prohibit schools from assigning teachers to single-sex classes based on their sex.

Changes: None.

5. Important Objective (§ 106.34(b)(1)(i))

Comments: Some commenters objected to the description, in the preamble to the proposed regulations, of the recipient's objective for establishing a single-sex class as being an important ''educational'' objective because they perceived that the educational objective requirement imposed a lesser standard than the important ''governmental'' objective requirement.

Discussion: The same Title IX nondiscrimination standards apply to classes, whether public or private recipients operate them. We used two terms, ''important educational objective'' and ''important governmental objective,'' in recognition of the fact that the regulatory provisions on single-sex classes apply to both private and public recipients. Recipients that are public actors, such as school districts, must have an important governmental objective to use any sex-based classification for the purposes of the Equal Protection Clause. Accordingly, for public recipients the same important governmental objective that would satisfy the requirements of the Equal Protection Clause will satisfy this portion of the regulations for the purposes of Title IX. Private recipients are not subject to the Equal Protection Clause because they are not governmental agencies. Thus, it is not appropriate to describe the objective for private recipients as an important ''governmental'' objective. However, with respect to single-sex classes, unlike single-sex schools, the same demanding standards apply under Title IX for both public and private recipients. Thus, the regulations impose a Title IX requirement on private recipients that is analogous to the requirement for public recipients that they base any single-sex class on an ''important governmental objective.'' The analogous requirement for private recipients is that they must base any single-sex class on an ''important educational objective.'' In addition, because some commenters perceived that the reference to an important ''educational'' objective was a lesser standard than important ''governmental'' objective, we have added the term ''important'' to modify the term ''objective'' in the regulatory language in § 106.34(b)(1)(i).

Changes: The term ''important'' has been added to modify the term ''objective'' in § 106.34(b)(1)(i).

6. Diversity Objective (§ 106.34(b)(1)(i)(A))

Comments: Some commenters objected to the diversity of educational options rationale for single-sex classes. Some of these commenters expressed the view that providing diverse educational options was not an important governmental interest for the purposes of the constitutional test for sex-based classifications. Some commenters stated that there is not an important governmental interest in a sex-based educational option as a diverse option without a requirement that the recipient demonstrate that the single-sex option advances educational goals, because otherwise the single-sex nature of the class would always be justified as substantially related to achievement of the objective, which is circular.

Some commenters argued that implementation of diversity of educational options was an impermissible justification for single-sex classes because it might permit classes to be based on sex-based stereotypes or overly broad generalizations about the different talents, capacities, or preferences of either sex.

Discussion: The Department continues to believe that, for the purposes of justifying a single-sex class under Title IX, a recipient can have an important governmental or educational objective evenhandedly to provide the opportunity to choose among diverse educational opportunities, provided that the single-sex nature of the class is substantially related to achieving that important objective. Although the Supreme Court has not decided the specific issue of whether this objective is an important governmental or educational objective for the purposes of justifying a sex-based classification under either Title IX or the Equal Protection Clause, the Court has suggested it would uphold the evenhanded provision of single-sex public educational opportunities, among a diversity of educational opportunities.[24]

Given that Title IX encompasses broad nondiscrimination requirements, with narrow statutory exceptions,[25] our intent is to establish regulatory exceptions for single-sex classes consistent with the statutory approach. We have clarified that a recipient's evenhanded provision of single-sex classes for the purpose of improving educational achievement of its students, through a recipient's overall established policy to provide diverse educational opportunities consistent with the requirements of these regulations meets the nondiscrimination requirements of Title IX.

In this regard, subject to the requirements of these regulations, some recipients might determine that the diversity of educational opportunities they provide to students would appropriately include providing single-sex opportunities in addition to coeducational opportunities.[26] The regulations also require that the single-sex nature of any class offered pursuant to this objective must be substantially related to achievement of the objective.[27]

The purpose of providing diverse educational opportunities is to engage parents in the education of their children and students in their own education with the goal of improving student outcomes. This will provide parents the opportunity to choose single-sex classes as well as other diverse opportunities because they

[24] In considering admissions policies at the postsecondary level, the Court stated that ''we do not question the State's prerogative evenhandedly to support diverse educational opportunities.'' *Virginia,* 518 U.S. at 534, n.7. Responding to the Virginia Military Institute's defense that its male-only admissions policy was established and maintained to further a State policy of diversity, the court recognized that the reality that ''single-sex education affords pedagogical benefits to at least some students'' was uncontested in the litigation and that ''it is not disputed that diversity among public educational institutions can serve the public good.'' 518 U.S. at 535. *See also Virginia,* 518 U.S. at 564 (Chief Justice Rehnquist, concurring.)

[25] *Jackson* v. *Birmingham Board of Education,* 544 U.S. 167, 175 (2005).

[26] For example, a recipient may seek to achieve an educational benefit for its students such as improvement in class work.

[27] For example, a recipient may have evidence that some boys and girls show educational improvement in single-sex classes during their adolescent years.

believe that these classes will help their children. In support of this objective and to further bolster the connection between the diversity justification and the legitimate interest in providing diverse educational opportunities, the final regulations clarify that the provision of single-sex classes must be pursuant to a recipient's established policy of offering diverse educational opportunities. This means that the range of choices offered to students and parents is not limited to single-sex schools and classes and coeducational schools and classes. A school or school district may not simply establish a single-sex class and declare that the class by definition promotes diversity and is therefore consistent with these regulations. This ensures that a single-sex class in fact must be related to the important objective of improving educational achievement of its students, through a recipient's overall established policy to provide diverse educational opportunities.

At the school district level examples of diverse educational opportunities that a recipient might offer as part of an overall established policy include charter schools, magnet schools, coeducational schools, single-sex schools, coeducational schools that offer both coeducational and single-sex classes, or other forms of public school opportunities. At the school level, this policy may include a range of elective classes or the opportunity to take classes at other schools.

A recipient's justification, i.e., an important objective and a substantial relationship between the important objective and the sex-based means to further the objective, must be genuine. Thus, recipients are prohibited from determining which classes to offer on a single-sex basis or providing single-sex classes on the basis of overly broad generalizations about the different talents, capacities, or preferences of either sex. However, to the extent that a recipient offers single-sex classes, consistent with the requirements of these regulations, among its diverse educational opportunities, these regulations recognize that a parent or guardian may make an individualized decision to select from those opportunities regarding enrollment of his or her child.

Changes: We have revised § 106.34(b)(1)(i)(A) to clarify that single-sex classes offered under this objective are offered to improve educational achievement of its students, through an overall established policy of providing diverse educational opportunities.

7. Needs Objective (§ 106.34(b)(1)(i)(B))

Comments: Numerous commenters questioned, on a variety of grounds, whether the amendments permitting single-sex classes to address particular, identified educational needs met the requirements of Title IX or met the test for sex-based classifications under the Equal Protection Clause. Numerous commenters expressed concern that the regulations did not require a recipient to articulate the educational benefit that it would be trying to achieve pursuant to the particular, identified educational needs objective or to produce evidence that the class would achieve the benefit described in the objective. Numerous commenters indicated that the proposed regulations did not require a recipient to compile evidence that the single-sex nature of its class is substantially related to the particular, identified educational need or educational benefit the recipient seeks to provide. Several commenters were concerned that recipients would establish single-sex classes based on administrative convenience.

Commenters also objected to the implementation of the particular educational need objective for single-sex classes because it might permit classes to be based on sex-based stereotypes or overly broad generalizations about the different talents, capacities, or preferences of either sex.

Discussion: The Supreme Court has not decided the issue of whether the particular, identified educational needs objective is an important governmental or educational objective for the purposes of justifying a sex-based classification under either Title IX or the Equal Protection Clause. However, the Court has indicated in Equal Protection Clause decisions that an array of ''important objectives'' can support sex-based classifications, including ''to advance full development of the talent and capacities of our Nation's people.'' [28] We believe that a recipient's evenhanded provision of single-sex classes to meet the particular, identified educational needs of its students in order to improve educational outcomes for its students is consistent with the objective found by the Court of ''advance[ment of] full development of the talent and capacities of our Nation's people.'' Thus, we continue to believe that meeting the particular, identified educational need of students is an important governmental or educational objective for recipients for the purposes of Title IX, and that, if single-sex classes are evenhandedly implemented pursuant to this objective and consistent with the safeguards in these amended regulations, they will meet the nondiscrimination requirements of Title IX.[29]

The regulations require a recipient to evenhandedly identify the particular educational needs of students of both sexes. A student's particular, identified educational need is evidenced by limited or deficient educational achievement.[30] After the needs of its students have been evenhandedly identified, a recipient then evenhandedly determines how to meet those needs. This determination must be made on a nondiscriminatory basis and should include nondiscriminatory consideration of whether a single-sex class would meet the particular needs identified for its male and female students. Establishment of a single-sex class requires a determination, based on an analysis of evidence, that the single-sex nature of the class would be substantially related to the achievement of a recipient's important objective of meeting the particular, identified educational needs of its students. Administrative convenience cannot justify sex-based classifications under Title IX.[31] As discussed previously regarding single-sex classes, to provide the opportunity to choose among diverse educational opportunities, under Title IX, a recipient's justification, i.e., an important objective and a substantial relationship between the important objective and the sex-based means used to further that objective, must be genuine and cannot be based on overly broad generalizations about the different talents, capacities, or preferences of either sex.[32]

Changes: We have made a nonsubstantive revision to § 106.34(b)(1)(i)(B) to change the term ''meeting those needs'' to ''achieving that objective'' in order to reflect the language used by the Supreme Court in *Virginia*. Our previous language was intended to convey this concept.

[28] *Virginia,* 518 U.S. at 533 (internal quotations omitted; citations omitted). *See also Hogan,* 458 U.S. at 728 (finding that in limited circumstances, sex-based classifications can be justified.)

[29] *See Virginia,* 518 U.S. at 534, n.7.

[30] For example, limited educational achievement may be shown when students are not taking higher level courses; deficient educational achievement may be shown when students have remedial needs.

[31] *See Wengler* v. *Druggists Mutual Insurance Company,* 446 U.S. 142, 151–52 (1980)(citing cases); *Frontiero* v. *Richardson,* 411 U.S. 677, 689–90 (1973).

[32] *See Virginia,* 518 U.S. at 533. *See also Hogan,* 458 U.S. at 726; *Craig* v. *Boren,* 429 U.S. 190, 198 (1976) (holding that sex cannot be used as a proxy for other more germane bases of classification.)

8. Social Needs (§ 106.34(b)(1)(i)(B))

Comments: Two commenters responded to OCR's invitation for comments on whether there were additional important governmental or educational objectives that could be the basis for single-sex classes that should be incorporated into the final regulations. They proposed to add as an important objective one that addresses social problems affecting students, i.e., social needs. The types of social needs they mentioned included pregnancy, discipline problems, drug or alcohol abuse, delinquency, and criminal activity.

Discussion: We recognize that a recipient's educational mission may legitimately extend beyond strictly academic objectives and outcomes, that their classes may provide social benefits, in addition to academic benefits, to students, and that positive social outcomes for students can have a positive effect on their educational outcomes. Thus, it may be consistent with a recipient's broad educational mission to provide classes and extracurricular activities to meet the types of social needs described by these commenters. We interpret the regulations pertaining to a recipient's important objective to meet particular, identified educational needs as already covering the types of social needs described by these commenters. For example, under the educational needs objective a school district that has high school students who are pregnant or are parents may determine that it is important to help students address a related particular, identified need, and may offer a single-sex class [33] to meet that need consistent with these regulations as long as the single-sex nature of the class is substantially related to the objective and the other requirements of § 106.34(b) are met. For this reason, it is unnecessary to change the regulations pertaining to a recipient's important objective to add a separate social needs objective.

Changes: None.

9. Evenhanded Implementation (§ 106.34(b)(1)(ii))

Comments: In the preamble to the proposed regulations, we invited specific comments on whether OCR needs more information on how to assess if a recipient is implementing its objective in an evenhanded manner. Commenters indicated that they found the evenhanded implementation standard vague and subjective and found that it did not provide sufficient guidance.

Discussion: Under Title IX, subject to the other requirements of these regulations, evenhanded [34] implementation of the recipient's important objective means that a recipient that offers single-sex classes in connection with achieving its important objective must provide equal educational opportunity to students regardless of their sex, with the end result that it must provide substantially equal classes.[35]

A recipient's important objective may be providing diverse educational opportunities to students pursuant to § 106.34(b)(1)(i)(A). That choice of diverse educational opportunities, including the single-sex or coeducational class opportunity, must be provided evenhandedly to male and female students. In this regard, evenhanded implementation of single-sex opportunities requires an evenhanded assessment of what to offer. This means that the recipient must determine, in a manner that provides equal educational opportunity to male and female students, which classes in which subjects should be offered as a single-sex opportunity and to whom (i.e., does it have an obligation to offer a particular single-sex class to students of both sexes or is it permissible to offer it to students of one sex only; see the discussion in subsequent paragraphs), and then offer those classes evenhandedly to students. A recipient may collect pre-enrollment information from its student and parent populations in an evenhanded manner as part of its determination of the types of classes in which students would enroll. In a school in which male and female students sought to enroll in single-sex classes in the same subjects, the recipient would be required to accommodate them evenhandedly, absent a non-discriminatory reason, which would result in male and female students being provided single-sex classes in the same subjects.

If a recipient's important objective is meeting the particular, identified educational needs of students pursuant to § 106.34(b)(1)(i)(B), evenhanded implementation requires the recipient's unbiased assessment, based on evidence, of the educational needs of students of both sexes within a particular setting. After the needs of students have been identified, the recipient then determines how to meet those needs on an evenhanded basis. The regulations permit a recipient to consider in an evenhanded manner whether a single-sex class would meet the particular, identified educational needs for male or female students, or for students of both sexes, and whether the single-sex nature of such a class would be substantially related to the achievement of the objective of meeting the particular, identified need.

For example, if a recipient has evidence that providing a single-sex class in a particular subject would meet the particular, identified educational needs of students of one sex and that the single-sex nature of the class is substantially related to achievement of the objective, (i.e., meeting the needs of students of that sex), subject to the other requirements of these regulations, the recipient may offer that class on a single-sex basis to students of that sex. If the recipient also has evidence that providing a single-sex class in that same subject would meet the particular, identified educational needs of students of the other sex and that the single-sex nature of the class would be substantially related to meeting those needs, then the requirement that the recipient implement its objective evenhandedly would require that, absent a non-discriminatory reason, it provide a single-sex class in that subject to students of the other sex as well. On the other hand, if a recipient has evidence that providing a single-sex class in that subject would not meet the particular, identified needs of students of the other sex or that the single-sex nature of the class would not be substantially related to achievement of that objective, the recipient is not required to provide a single-sex class to students of the other sex, but would be required to offer a substantially equal coeducational class in that subject. However, although a single-sex class would not be required in that subject, evenhanded implementation of the recipient's objective does require the recipient to determine, based on its assessment of educational needs of students, whether a class in another subject should be offered on a single-sex

[33] *Compare* with § 106.40(b)(1) and (3), regarding pregnant students.

[34] In *Virginia,* 518 U.S. at 534, n.7, the Court noted that briefs submitted by *amici* argued that ''diversity in educational opportunities is an altogether appropriate governmental pursuit and that single-sex schools can contribute importantly to such diversity,'' and the Court stated: ''We do not question the Commonwealth's prerogative evenhandedly to support diverse educational opportunities.'' The Court indicated that its decision addressed only the facts presented by the Virginia Military Institute's program, a unique educational opportunity available only at one public institution for students of one sex.

[35] *Virginia,* 518 U.S. at 554 (Virginia failed to show ''substantial equality in the separate educational opportunities'' offered in the two institutions).

basis to meet the particular, identified needs of students of the excluded sex.

Changes: None.

10. Voluntary Participation (§ 106.34(b)(1)(iii))

Comments: Commenters recommended that we clarify the regulations to require clearly that student participation in single-sex classes must be voluntary. Some commenters were concerned, unless the regulations were clear about this requirement, that in situations in which many students of one sex voluntarily chose a single-sex class that a recipient might, for administrative convenience, assign or attempt to ''steer'' students of the other sex to a single-sex class, even if they wanted to enroll in a coeducational class. A commenter recommended that the regulations be revised to require that recipients notify parents or guardians of all their options, including the option of enrolling their child in a single-sex class.

Discussion: The proposed regulations in § 106.34(b)(1)(ii) were intended to require recipients to offer single-sex classes only on a completely voluntary basis, by requiring a recipient to provide a coeducational class in the same subject, in conjunction with the requirement in § 106.34(a) that a recipient may not require participation in classes on the basis of sex. We agree with commenters that the proposed regulations may not have been as clear as we intended, and we have revised the regulations to require clearly that participation in single-sex classes must be completely voluntary.

Unless a recipient offers enrollment in a coeducational class in the same subject, enrollment in a single-sex class is not voluntary. In order to ensure that participation in any single-sex class is completely voluntary, if a single-sex class is offered, the recipient is strongly encouraged to notify parents, guardians, and students about their option to enroll in either a single-sex or coeducational class and receive authorization from parents or guardians to enroll their children in a single-sex class.

Changes: We have added new regulatory language in § 106.34(b)(1)(iii), clearly requiring that student participation in a single-sex class must be completely voluntary. For the sake of clarity, we have also deleted the reference in paragraph (b) of § 106.34 to the requirements of paragraph (a) of that section.

11. Coeducational Class (§ 106.34(b)(1)(iv))

Comments: Some commenters expressed concern that if a recipient provides a single-sex class for students of one sex, the regulations always require a coeducational class, but they do not always require a single-sex class for students of the other sex. Some commenters argued that it would be a denial of equal opportunity to provide a single-sex class or other benefit, service, or opportunity for students of one sex, but not for the other. Some commenters expressed the view that a recipient could legally provide a single-sex class for students of one sex, without a corresponding single-sex class for students of the other sex, only if the purpose was to remediate discrimination.

Discussion: The regulations always require a recipient that offers a single-sex class to offer a substantially equal coeducational class in the same subject to all students, including students excluded from the single-sex class. A recipient must provide single-sex classes in an evenhanded manner when seeking to fulfill its important objectives either to provide a diversity of educational opportunities or to address particular, identified educational needs.

Thus, if a recipient's procedure includes obtaining information from parents and students about interest in enrolling in potential single-sex classes in order to provide a diversity of educational opportunities, the recipient must include students of both sexes and their parents. Similarly, if a recipient is seeking to address educational needs of students, the recipient must treat male and female students in an evenhanded manner when identifying particular educational needs, determining if a single-sex class would meet those needs, and meeting the educational needs of both sexes. A recipient may not decide simply to offer single-sex classes only to students of one sex, but rather may do so only if it can show (1) students of the other sex are not interested in having the option to voluntarily enroll in a single-sex class if the recipient is seeking to further its important objective of providing diverse educational opportunities, or (2) students of the other sex do not have educational needs that can be addressed by a single-sex class if the recipient is seeking to meet the educational needs of its students. Thus, under these circumstances, the recipient would not be denying students of the other sex a substantially equal class by providing them only a substantially equal coeducational class in the same subject as the single-sex class.

Additionally, OCR will examine recipients that provide significantly more single-sex opportunities to students of one sex than to students of the other sex to determine if this is the result of sex discrimination.

Changes: We have added to § 106.34(b)(1)(iv) the words ''to all other students, including students of the excluded sex'' to clarify the scope of this requirement.

12. Private Schools (§ 106.34(b)(1)(iv))

Comments: Two commenters sought a revision to the regulations to provide an exemption, under certain circumstances, for coeducational recipient private schools from the requirement that they provide a substantially equal coeducational class if they provided a single-sex class to students of both sexes.

Discussion: Because all recipients are subject to Title IX and because a substantially equal coeducational class option for students is essential to prevent involuntary assignment to a single-sex class on the basis of sex, Title IX does not permit a categorical exception to this requirement. However, in some cases, parents of all students in a particular grade in a private school may provide their completely voluntary consent to the private school to offer a single-sex class with no coeducational class. If the parents of the affected students in a class in a private school enroll their children, or the students themselves enroll, in a single-sex class on a completely voluntary basis, and there are no students who would choose to enroll in a coeducational class in that subject, these regulations do not require the school to provide a coeducational class in that subject.

Changes: None.

13. Substantially Equal Classes (§ 106.34(b)(1)(iv) and (b)(2))

Comments: Some commenters stated that the regulations needed to state specifically that recipients are required to provide students of both sexes equal educational opportunities. Some commenters objected to the term ''substantially equal'' in the proposed regulations because it might be interpreted as a lower standard than a requirement of equal educational opportunity. Some commenters stated that the term ''substantially equal'' was too vague and that recipients would not understand what was required for compliance.

Discussion: Section 106.34(b)(1)(ii) of the proposed regulations provided that a recipient that offered a single-sex class to students of one sex was required to offer a substantially equal coeducational class in the same subject, and § 106.34(b)(2) provided that a recipient that offered a single-sex class to students of one sex also may be required

to offer a substantially equal single-sex class for the excluded sex. Section 106.34(b)(3) of the proposed regulations described factors that the Department would consider in comparing classes.

We disagree with the comments that the substantially equal standard for comparing and measuring classes is a lower standard or is too vague. The substantially equal standard in these regulations is informed by, and consistent with, the nondiscrimination requirements of the Equal Protection Clause. The Supreme Court compared two single-sex postsecondary institutions and used the term ''substantial equality'' in measuring whether the standards of the Equal Protection Clause were met.[36] This standard ensures that students who are excluded from a single-sex class will be provided a class with tangible and intangible features substantially equal to the corresponding features in the single-sex class. We recognize, however, that in comparing classes, a recipient may provide students with a substantially equal class even if the classes are not identical in every respect.

Changes: None.

14. Factors (§ 106.34(b)(3))

Comments: Some commenters suggested that the proposed list of factors to be used in determining whether a class meets the requirements of § 106.34(b)(1)(iv) or (b)(2) should include intangible factors because the Supreme Court considered intangible features, as well as tangible features, in comparing single-sex educational institutions to determine if Equal Protection standards had been met. Some commenters recommended that additional factors be added to the list including educational methods, single-sex opportunities, factors that would capture sex-stereotyping, and motive for creating single-sex classes.

Discussion: Section 106.34(b)(3) of the proposed regulations listed several factors that the Department proposed to consider in comparing classes and determining if a class provided to students of the excluded sex is substantially equal to the single-sex class. The list of factors, which was not intended to be exhaustive, included—the policies and criteria of admission; the educational benefits provided, including the quality, range, and content of curriculum and other services, and the quality and availability of books, instructional materials, and technology; the qualifications of faculty and staff; and the quality, accessibility, and availability of facilities and resources. Under the substantially equal standard, classes are not required to be identical, and there may be differences in factors that may be justified for legitimate, nondiscriminatory reasons or because the differences are not significant enough, alone or aggregated together, to constitute sex discrimination under these regulations. Alternatively, a substantial difference (or differences) of an unjustified nature in the benefits, treatment, services, or opportunities that constitute one factor in the respective classes, if significant enough, in and of itself, to cause the classes not to be substantially equal, is sex discrimination under these regulations. Also, when factors for determining substantial equality of the respective classes are considered in the aggregate, if there is a pattern of differences of an unjustified nature that favors one class with regard to the benefits, treatment, services, or opportunities provided to students to the extent that the pattern of differences is significant enough to cause the classes not to be substantially equal, this pattern constitutes sex discrimination under these regulations. Because, as described in a subsequent section on schools, commenters who objected to a provision in the proposed regulations regarding the aggregate approach for assessing the substantial equality in schools misunderstood it, we have clarified the regulatory language for both classes and schools by adding the term ''either individually or in the aggregate as appropriate.''

The Supreme Court considered intangible and tangible features in comparing postsecondary institutions for the purposes of the Equal Protection Clause.[37] The Department will consider all relevant factors in determining whether classes meet the requirements of § 106.34(b)(1)(iv) or (b)(2) and agrees that, for the purposes of assessing compliance with Title IX, intangible features should be considered whenever relevant.

Although we have not listed other factors suggested by commenters, the Department will consider all relevant factors in any case investigation. The list of factors is not exhaustive. We note that some aspects of single-sex education that commenters suggested be included in the list of factors will be considered in connection with compliance with other parts of these regulations.

Although we did not receive comments from the public, we are adding geographic accessibility as a factor pertaining to substantial equality of classes. In most cases a recipient's substantially equal classes for a particular school will be in the same school building, and geographic accessibility will not be relevant to substantial equality. There are, however, situations in which geographic accessibility will be relevant for classes. For example, if a recipient operates a consortium of schools whereby students at three neighboring high schools take some classes at the school to which they are assigned on the basis of their residence and are permitted to take certain other classes, which are not offered at their assigned school, at one of the neighboring schools, location, *i.e.*, geographic accessibility, of the classes in the same subject, would be relevant to the issue of substantial equality. The list of factors described in the regulations is not exhaustive. However, because the proposed regulations listed geographic accessibility as a factor for schools, but not for classes, it is important to ensure that recipients have notice that geographic accessibility is also a factor for classes.

Changes: We have revised the regulatory language to clarify the aggregate approach in assessing substantial equality in classes by adding the clarifying term, ''either individually or in the aggregate as appropriate.'' Section 106.34(b)(3) of the final regulations provides in relevant part: ''Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether classes or extracurricular activities are substantially equal include. * * *''

We have revised the list of factors in § 106.34(b)(3) to be considered in comparing classes to include ''intangible features'' and ''reputation of faculty'' as an example of an intangible feature. We have also revised the list of factors to include ''geographic accessibility.''

15. Periodic Evaluations for Classes (§ 106.34(b)(4))

Comments: In the preamble to the proposed regulations we invited specific comments as to how often a recipient should be required to conduct periodic evaluations. Comments ranged from yearly, biennially, or variable depending on the single-sex classes offered. Of the four comments received on this issue, two commenters recommended biennial evaluation. In addition, commenters were concerned that the regulations did not require the evaluation to ensure against reliance on overly broad generalizations about the different preferences of either sex consistent with Equal Protection Clause requirements.

[36] *Virginia*, 518 U.S. at 554 (citing *Sweatt* v. *Painter*, 339 U.S. 629, 633 (1950)).

[37] *Virginia*, 518 U.S. at 554, 557.

Discussion: Recipients have an ongoing responsibility to comply with the nondiscrimination requirements of the Title IX regulations. These regulations require recipients to conduct periodic evaluations to ensure that their single-sex classes are based on justifications, *i.e.*, an important objective and a substantial relationship between the important objective and the sex-based means used to further that objective, that are genuine and that do not rely on overly broad generalizations about either sex. Part of the periodic evaluation requirement involves an assessment of the degree to which the recipient's important objective has been achieved and an assessment of whether the single-sex nature of the class is substantially related to achievement of the recipient's objective. This procedural provision requires a recipient to evaluate its own classes so that it can take appropriate corrective action if it identifies compliance problems. We have determined that recipients must conduct evaluations at least every two years in order to meet this procedural obligation. Recipients may evaluate single-sex classes more often because the substantive obligation to comply is ongoing or because its own findings have identified issues that may require a more frequent evaluation. In addition, if the Department investigates a recipient and identifies compliance problems, we may require the recipient to conduct more frequent evaluations. Because § 106.71 of the Title IX regulations, which incorporates the requirements of 34 CFR 100.6(b) and (c), requires generally that recipients keep records to show that they are in compliance with civil rights requirements and requires them to provide the Department access to information relevant to compliance determinations, recipients should have appropriate records to show compliance with the periodic evaluation requirement.

We agree that under Title IX, single-sex classes cannot be based on overly broad generalizations about the talents, capacities, or preferences of either sex. As discussed previously, recipients must make fact-specific determinations.

Changes: We have revised § 106.34(b)(4)(i) to add ''or preferences'' and to delete ''male and female students'' and substitute in its place ''either sex.'' We have also added the term ''important'' to clarify that the evaluation must ensure that the single-sex class or extracurricular activity is substantially related to the recipient's important objective. In addition we have revised § 106.34(b)(4) to provide that a recipient must conduct evaluations of its classes at least every two years (§ 106.34(b)(4)(ii)) in order to comply with the procedural requirement for periodic evaluations (§ 106.34(b)(4)(i)).

16. Extracurricular Activities (§ 106.34(b)(1) Through (5))

Comments: None.

Discussion: Section 106.34(b)(1) through (5) applies to extracurricular activities, as well as classes.

Changes: We have added the term ''extracurricular activities'' throughout § 106.34(b)(1) through (5) of the regulations to clarify that these provisions apply both to classes and extracurricular activities.

17. Athletics

Comments: Some commenters objected to the coverage of extracurricular activities in the proposed regulations because they perceived that the amendments would be applied to athletics, which would result in undermining the Department's longstanding Title IX regulations requiring equal athletic opportunity for students of both sexes and would permit sex discrimination in athletics.

Discussion: The proposed regulations defined ''classes,'' for the purposes of proposed § 106.34(b), to include ''all education activities provided for students by a school or in a school'' (proposed § 106.34(b)(5)), and this definition was intended to cover extracurricular activities, as well as classes. It was not, however, intended to affect or change the longstanding Title IX requirements applicable to athletics, including interscholastic, club, or intramural athletics.[38]

Changes: Because some commenters interpreted the proposed definition as extending the requirements in § 106.34(b)(1) through (4) to athletics, we have revised § 106.34(b)(5) in the final regulations. We have determined that rather than define ''class'' and ''extracurricular activity,'' it is clearer and more useful to include a provision on the scope of coverage of paragraph (b)(1) through (4) of § 106.34. We have revised § 106.34(b)(5) to provide that paragraph (b)(1) through (4) applies to classes and extracurricular activities provided by a recipient covered by § 106.34(b)(1) either directly or through another entity and to clarify that paragraph (b)(1) through (4) does not apply to interscholastic, club, or intramural athletics, which are subject to the provisions of §§ 106.41 and 106.37(c).

[38] Sections 106.41 and 106.37(c).

18. Physical Education Classes

Comments: Commenters objected to these amendments because they perceived that they would weaken the current Title IX regulatory standards pertaining to physical education classes in a manner that would permit sex discrimination. Commenters indicated that separation in physical activity should be based on differences in skill, size, or strength, rather than on the sex of the student. Some female commenters described how playing sports with boys had enhanced their sports skills.

Discussion: The longstanding regulatory provision that permits recipients to separate students in physical education classes on the basis of ability is not affected by these amendments.[39] Similarly, the regulatory exception that permits recipients to separate students by sex within physical education classes or activities during participation in contact sports[40] is not affected by these amendments. The amended regulations provide a recipient the additional flexibility to offer single-sex classes, including physical education classes, if all the requirements of § 106.34(b)(1) through (5) are met. These requirements, which are discussed in previous paragraphs, require a recipient that provides a single-sex class, including a physical education class, to provide substantially equal classes to students of both sexes. These requirements prohibit discrimination on the basis of sex, including physical education classes, which means that single-sex classes must be based on a justification, i.e., an important objective and a substantial relationship between the important objective and the sex-based means used to further the objective, that is genuine and not based on overly broad sex-based generalizations about either sex.

Changes: None.

19. Legal Standards for Single-Sex Schools (§ 106.34(c)(1))

Comments: In addition to the general concerns about legal standards discussed in previous paragraphs, some commenters had specific concerns about the legal standards applicable to the proposed regulations regarding single-sex schools. Some commenters objected to permitting any ''new'' single-sex schools (i.e., after the effective date of Title IX), citing the reasoning in a Federal district court decision, as contrary to congressional intent.

[39] *Compare* former § 106.34(b) with § 106.34(a)(2) of these final regulations.

[40] *Compare* former § 106.34(c) with § 106.34(a)(1) of these final regulations.

A commenter objected to the proposed regulations on schools on the basis that sex-segregated schools violate the Equal Educational Opportunity Act of 1974 (EEOA),[41] citing a Federal appellate court decision [42] holding that a sex-segregated assignment plan violated the EEOA.

Some commenters objected to the proposed provisions on schools because public recipients are subject to both Title IX and the Equal Protection Clause, but the regulatory requirements did not require constitutionally sufficient justifications for sex-based classifications.

Discussion: The Title IX regulations have permitted single-sex nonvocational schools since the regulations were issued in 1975. Thus, it is not a change that these regulations continue to permit single-sex schools. Both the plain language of the statute and legislative intent support this interpretation. Section 901 of Title IX covers admissions only to certain types of educational entities named in the statute.[43] Because nonvocational elementary and secondary schools are not among those listed, admission to these schools is not covered. The legislative history of Title IX shows that Congress was aware of the existence of public single-sex elementary and secondary schools and that Congress understood that, by exempting admissions to these schools from the general prohibitions, single-sex admissions policies could continue.[44] Our longstanding and current interpretation that the Department is precluded from examining a recipient's justifications for offering single-sex schools is based on the plain language of Title IX and its legislative history. As the commenter pointed out, involuntary assignment to single-sex public schools violates the EEOA.

Changes: We have made a nonsubstantive revision to § 106.34(c) to add ''*General Standard*'' to the title of this provision to make it consistent with § 106.34(b). We also revised the statement of the general standard for single-sex schools to align it more closely to the statute. Section 106.34(c)(1) requires, subject to an exception for certain charter schools, discussed in a later paragraph, a recipient that operates a public, nonvocational single-sex elementary or secondary school to provide a substantially equal single-sex school or coeducational school to students of the excluded sex.

20. Schools for Excluded Sex (§ 106.34(c)(1))

Comments: Some commenters objected to amending the regulations to permit a recipient to offer a single-sex school to students of one sex and to offer either a coeducational or a single-sex school to students of the excluded sex, rather than requiring that excluded students also be offered a single-sex school. Commenters objected to this change in our previous interpretation of the Title IX statute. They stated that to provide students of one sex the opportunity to attend a single-sex school, but not to provide students of the other sex an equal opportunity to attend a single-sex school, is discriminatory treatment on the basis of sex in violation of the requirements of Title IX and the Equal Protection Clause.

Discussion: The Title IX statute does not cover admissions to nonvocational elementary and secondary schools.[45] We have determined that, by excluding these schools from the admissions coverage, Congress was not only permitting recipients to operate public schools with single-sex admissions policies without sanction under Title IX,[46] but it also was permitting recipients to operate single-sex schools without requiring them also to provide a corresponding single-sex school for students of the excluded sex, again without sanction under Title IX. We no longer interpret Title IX to require that if a recipient offers a single-sex school for students of one sex, it must offer students of the other sex a corresponding single-sex school. The regulations now require, in § 106.34(c)(1), that the recipient must provide a substantially equal school to students of both sexes,[47] but the school may be a coeducational or single-sex school.

Changes: None.

21. Substantially Equal Schools (§ 106.34(c)(1))

Comments: Many commenters had the same concerns regarding the regulatory language in § 106.34(c)(1) used to describe the standard for comparing and measuring schools as they had for classes. As discussed in previous paragraphs regarding requirements for classes, commenters were concerned that the term ''substantially equal,'' as used in the proposed regulations for comparing benefits provided to students, described a lower standard than the equal educational opportunity standard required by Title IX and the Equal Protection Clause.

Discussion: Title IX does not cover admissions to nonvocational elementary and secondary schools. Title IX does require that a recipient that operates public schools must not provide a single-sex school to students of one sex and discriminate against students of the excluded sex with respect to the educational opportunities the recipient provides them in another school, regardless of whether the other school is coeducational or single-sex. Under the original Title IX regulations, if an LEA chose to provide a single-sex school, the standard for comparison of benefits and treatment provided to students in schools was described as ''comparable.'' Under the final regulations the standard of comparison for schools is described as ''substantially equal.''

As discussed under the paragraphs on single-sex classes, we disagree with the comments that the substantially equal standard is a lower standard for comparing schools than is required under Title IX or the Equal Protection Clause. This standard ensures that students who are excluded from a single-sex school will be provided a school with tangible and intangible features substantially equal to the corresponding features in the single-sex school. We recognize, however, that in comparing two schools, a recipient may provide students with a substantially equal school even if the schools are not identical in every respect.

Changes: None.

22. School Within a School (§ 106.34(c)(1) and (c)(4))

Comments: None.

Discussion: Section 106.34(c)(1) of the proposed regulations referred to a school or ''education unit.'' We explained in the preamble to the proposed regulations that ''education unit'' meant a ''school within a school,'' which was a school located within another school. We believe that it is important for recipients to have this information included in the regulations.

[41] 20 U.S.C. 1701 through 1721.

[42] *United States* v. *Hinds County Sch. Bd.*, 560 F.2d 619 (5th Cir. 1977).

[43] 20 U.S.C. 1681(a)(1). The nondiscrimination provisions of section 901 of Title IX apply to admissions to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education.

[44] 118 Cong. Rec. 5804, 5807, 5812–13 (1972).

[45] 20 U.S.C. 1681(a)(1) (''in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of higher education'').

[46] 118 Cong. Rec. 5804, 5807, 5812–13 (1972).

[47] Subject to the exception for certain public charter schools in § 106.34(c)(2).

Changes: We have deleted the term ''education unit'' from § 106.34(c)(1) and added a new paragraph (4) that defines ''school'' to include ''school within a school'' and explains what we mean by a ''school within a school.''

23. Limited Charter Schools Exception (§ 106.34(c)(2))

Comments: Some commenters objected to the provision in the proposed regulations that would exempt nonvocational public single-sex charter schools that are single-school LEAs from the requirements that apply to other public schools. Many of these commenters stated that public charter schools, like other public schools that receive Federal funds, are subject to the requirements of Title IX and the U.S. Constitution. They believed that all single-sex public schools should be required to demonstrate an exceedingly persuasive justification for limiting admission to one sex. One commenter noted that recipients authorizing the operation of single-sex charter schools, as opposed to the individual schools themselves, are likewise subject to the constitutional and Title IX requirements. One commenter stated that the Department's rationale that it would be unduly burdensome to require single-sex charter schools that are single-school LEAs to create a single-sex charter school for students of the excluded sex was not a valid reason to excuse those schools from the constitutional requirements of the Equal Protection Clause.

Discussion: The constitutional standard referenced in the comments is not a Title IX requirement. The Title IX statute does not cover admissions to nonvocational elementary and secondary schools.[48] Given Congress' intent, OCR does not have the authority to require recipients to provide a justification for single-sex nonvocational elementary or secondary schools. Accordingly, the regulatory amendment regarding single-sex schools is consistent with Title IX. Of course, public schools are subject to constitutional requirements, including the Equal Protection Clause, which requires that a recipient demonstrate that its sex-based classification serves an important governmental objective and that the sex-based classification is substantially related to the achievement of that objective.

With regard to public charter schools, it would be impracticable to require either chartering authorities, which are merely approving applications for—but are not operating—single-sex charter schools, or the groups of community leaders, developers, or parents who seek to establish a single-sex charter school that will be a single-school LEA under State law, to establish and operate an additional substantially equal school to meet the needs of the other sex. Because it would be unlikely that those groups would be able to create two substantially equal charter schools, absent the exception in § 106.34(c)(2) those groups would be unable to establish a single-sex charter school. Title IX does not require such a rigid approach. On the other hand, any LEA that operates multiple schools, including charter schools, must comply with § 106.34(c)(1). The notion of excepting certain types of schools from the Title IX requirements is not new. Pursuant to § 106.35 of the former regulations, private schools that received Federal assistance were permitted to operate single-sex schools without providing the excluded sex with a comparable school. The requirements of § 106.34(c)(1) of these regulations do not apply to recipients that operate private, nonvocational elementary or secondary schools.

Changes: We have made a nonsubstantive revision to describe more precisely the single-school LEAs that are entitled to this exception.

24. Chartering Authorities

Comments: A commenter noted that a school board that serves as a chartering authority of public charter schools should not be found to have violated Title IX if it approves a charter school application for a single-sex charter school, but does not provide the resources to establish a single-sex school for students of the excluded sex. Additionally, the commenter suggested that the final regulations include a statement clarifying that Title IX does not obligate a chartering authority that is an LEA to approve an application for a single-sex charter school.

Discussion: Title IX would require all chartering authorities that receive Federal financial assistance to review, and approve or reject, applications in a nondiscriminatory manner. Nothing in Title IX or these regulations requires that applications for single-sex charter schools be approved. Title IX simply requires that the same standards be applied to a proposed single-sex charter school, regardless of which sex the charter school proposes to serve. An LEA will be considered to be ''operating'' a charter school that is part of the LEA. Thus, if a recipient LEA chartering authority approves an application for a single-sex charter school that will be part of the LEA, the LEA must comply with the requirements of § 106.34(c)(1) and must provide students of the excluded sex with a substantially equal single-sex school or coeducational school. As stated in the discussion of § 106.34(c)(2), however, if a chartering authority's role is merely approving an application for a single-sex charter school that is a single-school LEA, the chartering authority will not be required to provide the students of the excluded sex with a substantially equal school. State charter school laws govern whether a charter school will be a public school within the LEA or whether it will be a single-school LEA.

Changes: None.

25. Factors (Proposed § 106.34(c)(3)(i))

Comments: Several commenters stated that the proposed list of factors used to compare schools must include intangible factors.

Discussion: Readers should refer to the prior discussion of this issue under the classes section of this analysis.

Changes: We have removed paragraph designation (i) from § 106.34(c)(3). With respect to the list of factors (in proposed § 106.34(c)(3)(i))), we have revised the regulations to include ''intangible features'' and to list ''reputation of faculty'' as an example of an intangible feature on the non-exhaustive list of factors. Further changes with respect to the consideration of these factors (proposed § 106.34(c)(3)(ii)) are discussed in the next section.

26. Aggregate Approach (Proposed § 106.34(c)(3)(ii))

Comments: Some commenters objected to the proposed ''aggregate'' approach[49] for comparing the benefits and treatment provided to students in single-sex schools and the benefits and treatment provided to students excluded from those schools. Commenters were concerned that this approach would permit inequities between schools that would constitute discrimination on the basis of sex against the students in one of the schools in violation of Title IX and the U.S. Constitution. A commenter stated that the proposed aggregate approach would condone inequities between a single-sex and coeducational school as long as the inequities balanced in some unspecified way.

Discussion: Commenters misunderstood the aggregate approach

[48] 20 U.S.C. 1681(a)(1).

[49] The proposed amendments in § 106.34(c)(3)(i) provided a non-exhaustive list of factors that the Department would consider in determining whether schools were substantially equal, and in § 106.34(c)(3)(ii) provided that ''this determination involves an assessment in the aggregate of the educational benefits provided by each school as a whole.''

in the proposed regulations to permit inequities that would be prohibited by Title IX. This perception of the proposed provision was inconsistent with the intent of the proposed provision and of the substantial equality standard.

We have revised the regulations to provide more clarity on the aggregate approach. The same regulatory language added in these final regulations to clarify the aggregate approach for assessing substantial equality of classes, § 106.34(b)(3), has also been added to the regulatory language on assessing substantial equality of schools, and § 106.34(c)(ii) of the proposed regulations has been deleted in the final regulations. For more information about assessments of substantial equality, readers should refer to the prior discussion in this analysis of how compliance with the requirement of substantial equality will be assessed for classes.

Changes: Section 106.34(c)(3) has been revised to clarify the aggregate approach in assessing substantial equality of schools, by adding the term ''either individually or in the aggregate as appropriate'' so that the regulatory language now provides in relevant part: ''Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether schools are substantially equal include * * *.'' Section 106.34(c)(3)(ii) of the proposed regulations has been deleted and the section has been renumbered to reflect this change.

27. Periodic Evaluations

Comments: Some commenters stated that the regulations should require recipients to periodically evaluate single-sex schools.

Discussion: As discussed in previous paragraphs, we interpret the Title IX admissions exception for nonvocational elementary and secondary schools to prevent the Department from regulating the justifications for single-sex schools. For that reason we have not included a requirement for periodic evaluations, similar to the requirement for single-sex classes. Regardless of the lack of this additional procedural requirement for schools, recipients continue to be subject to the substantive requirements of Title IX and our Title IX regulations, and they continue to be subject to investigation if there is a complaint or compliance review.[50] Recipients that voluntarily monitor their single-sex and coeducational schools for compliance with these regulations are in the best position to achieve compliance.

Changes: None.

[50] 34 CFR 100.6(c); 34 CFR 100.7(a)(b). As discussed in previous paragraphs, public schools and school districts are also subject to the Equal Protection Clause.

Executive Order 12250

Pursuant to Executive Order 12250, which provides for the Attorney General to review regulations implementing Title IX, the Attorney General has reviewed and approved these final regulations for publication.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The benefit of the final regulations is the expanded flexibility to provide single-sex schools, classes, or extracurricular activities, if they are desired. The final regulations do not require recipients to provide single-sex schools, classes, or extracurricular activities and thus do not require recipients to incur any additional costs. If recipients choose to continue to operate schools, classes, or extracurricular activities under their current policies or practices and choose not to provide single-sex education, no added costs will be incurred. Those recipients that choose to provide single-sex schools, classes, or extracurricular activities may incur additional expenses. The costs associated with providing single-sex education under the final regulations will range from minimal to substantial, depending on what options recipients choose to provide.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

These final regulations also will be available at OCR's Web site on the Internet at: *http://www.ed.gov/ocr.*

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 Number does not apply.)

List of Subjects in 34 CFR Part 106

Education, Sex discrimination.

Dated: October 20, 2006.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends part 106 of title 34 of the Code of Federal Regulations as follows:

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 1. The authority citation for part 106 continues to read as follows:

Authority: 20 U.S.C. 1681 *et seq.*, unless otherwise noted.

■ 2. Section 106.34 is revised to read as follows:

§ 106.34 Access to classes and schools.

(a) *General standard.* Except as provided for in this section or otherwise in this part, a recipient shall not provide or otherwise carry out any of its

education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on the basis of sex.

(1) *Contact sports in physical education classes.* This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(2) *Ability grouping in physical education classes.* This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) *Human sexuality classes.* Classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality may be conducted in separate sessions for boys and girls.

(4) *Choruses.* Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

(b) *Classes and extracurricular activities.* (1) *General standard.* Subject to the requirements in this paragraph, a recipient that operates a nonvocational coeducational elementary or secondary school may provide nonvocational single-sex classes or extracurricular activities, if—

(i) Each single-sex class or extracurricular activity is based on the recipient's important objective—

(A) To improve educational achievement of its students, through a recipient's overall established policy to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective; or

(B) To meet the particular, identified educational needs of its students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective;

(ii) The recipient implements its objective in an evenhanded manner;

(iii) Student enrollment in a single-sex class or extracurricular activity is completely voluntary; and

(iv) The recipient provides to all other students, including students of the excluded sex, a substantially equal coeducational class or extracurricular activity in the same subject or activity.

(2) *Single-sex class or extracurricular activity for the excluded sex.* A recipient that provides a single-sex class or extracurricular activity, in order to comply with paragraph (b)(1)(ii) of this section, may be required to provide a substantially equal single-sex class or extracurricular activity for students of the excluded sex.

(3) *Substantially equal factors.* Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether classes or extracurricular activities are substantially equal include, but are not limited to, the following: the policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources provided to the class, and intangible features, such as reputation of faculty.

(4) *Periodic evaluations.* (i) The recipient must conduct periodic evaluations to ensure that single-sex classes or extracurricular activities are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex and that any single-sex classes or extracurricular activities are substantially related to the achievement of the important objective for the classes or extracurricular activities.

(ii) Evaluations for the purposes of paragraph (b)(4)(i) of this section must be conducted at least every two years.

(5) *Scope of coverage.* The provisions of paragraph (b)(1) through (4) of this section apply to classes and extracurricular activities provided by a recipient directly or through another entity, but the provisions of paragraph (b)(1) through (4) of this section do not apply to interscholastic, club, or intramural athletics, which are subject to the provisions of §§ 106.41 and 106.37(c) of this part.

(c) *Schools.* (1) *General Standard.* Except as provided in paragraph (c)(2) of this section, a recipient that operates a public nonvocational elementary or secondary school that excludes from admission any students, on the basis of sex, must provide students of the excluded sex a substantially equal single-sex school or coeducational school.

(2) *Exception.* A nonvocational public charter school that is a single-school local educational agency under State law may be operated as a single-sex charter school without regard to the requirements in paragraph (c)(1) of this section.

(3) *Substantially equal factors.* Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether schools are substantially equal include, but are not limited to, the following: The policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology, the quality and range of extracurricular offerings, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources, and intangible features, such as reputation of faculty.

(4) *Definition.* For the purposes of paragraph (c)(1) through (3) of this section, the term ''school'' includes a ''school within a school,'' which means an administratively separate school located within another school.

(Authority: 20 U.S.C. 1681, 1682)

■ 3. Section 106.35 is revised to read as follows:

§ 106.35 Access to institutions of vocational education.

A recipient shall not, on the basis of sex, exclude any person from admission to any institution of vocational education operated by that recipient.

(Authority: 20 U.S.C. 1681, 1682)

■ 4. Section 106.43 is added to subpart D to read as follows:

§ 106.43 Standards for measuring skill or progress in physical education classes.

If use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have that effect.

(Authority: 20 U.S.C. 1681, 1682)

[FR Doc. E6–17858 Filed 10–24–06; 8:45 am]
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Wednesday,
October 25, 2006

Part IV

Department of Homeland Security

Transportation Security Administration

49 CFR Parts 1544, 1546, and 1548

Air Cargo Security Requirements; Compliance Dates; Amendment; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1544, 1546, and 1548

[Docket No. TSA–2004–19515; Amendment Nos. 1544–6, 1546–3, and 1548–3]

RIN 1652–AA52

Air Cargo Security Requirements; Compliance Dates; Amendment

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule (IFR) amends the Air Cargo Security Requirements final rule (Air Cargo Final Rule) (published May 26, 2006, and corrected in June 2006) by extending the compliance dates by which certain requirements must be completed. TSA has concluded that the regulated community will be unable to meet some deadlines in the Air Cargo Final Rule because of the large number of employees and agents subject to the requirements. TSA is, therefore, extending dates for the following requirements: That aircraft operators, foreign air carriers, and indirect air carriers (IACs) ensure that their employees and agents with unescorted access to cargo successfully complete a Security Threat Assessment (STA); that IACs ensure that their employees and agents performing security-related duties are trained in the IAC's security program; and that airport operators ensure that individuals with unescorted access to expanded Security Identification Display Areas (SIDA) are subjected to a criminal history records check (CHRC) and a name-based security threat assessment (STA), receive proper security training, and hold appropriate personnel identification.

DATES: *Effective Date:* This rule is effective October 23, 2006.

Comment Date: Comments must be received by December 26, 2006.

Compliance Dates: Compliance date for STAs for employees under §§ 1544.228, 1546.213, 1548.15, and for IAC proprietors, general partners, officers, directors and certain owners of the entity under § 1548.16: Changed from December 1, 2006 to March 15, 2007.

Compliance date for STAs for agents under §§ 1544.228, 1546.213 and 1548.15: Changed from December 1, 2006 to June 15, 2007.

Compliance date for training of IAC employees under §§ 1548.11: Remains November 22, 2006.

Compliance date for training of IAC agents §§ 1548.11: Changed from November 22, 2006 to June 15, 2007.

Compliance date for submission and approval of extension of Secure Identification Display Area (SIDA) boundaries to cargo areas under § 1542.205(a)(2) and (3): Remains October 23, 2006.

Compliance date for full compliance with requirements for individuals with unescorted access to expanded SIDA under §§ 1542.205(b)(2), 1542.209, 1542.211, 1542.213, and Security Directives: Changed from October 23, 2006 to January 22, 2007.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket Web site at *http://dms.dot.gov.* You also may submit comments through the Federal Rulemaking portal at *http://www.regulations.gov.*

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001; Fax: 202–493–2251.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Tamika McCree, Office of Transportation Security Network Management (TSA–28), Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202; (571–227–2632); *tamika.mccree@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This interim final rule is being adopted without prior notice and prior public comment. However, to the maximum extent possible, TSA will provide an opportunity for public comment on regulations issued without prior notice. Accordingly, TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. See **ADDRESSES** above for information on where to submit comments.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and sensitive security information (SSI).[1] TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS's) FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

You may review the comments in the public docket by visiting the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located on the plaza level of the Nassif Building at the Department of Transportation address, previously provided under **ADDRESSES**. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/law_lib.html.*

Background

On May 26, 2006, TSA published a final rule in the **Federal Register** (71 FR 30478) on air cargo security requirements (Air Cargo Final Rule) to enhance and improve the security of air cargo transportation. Sections 1544.228, 1546.213, 1548.15, and 1548.16 of the final rule incorrectly stated that the deadline for completion of the security threat assessments (STAs) required by those sections was November 22, 2006 (71 FR 30478, 30511–12 and 30516). This conflicted with the **DATES** section of the rule, which listed the compliance date for STAs as December 1, 2006. On June 2, 2006, TSA issued a notice correcting the deadline for STAs in the pertinent regulatory text to December 1, 2006 (71 FR 31964). Also, on June 8, 2006 (71 FR 33254), TSA published an additional correction notice that added an amendatory instruction in § 1548.1 to remove the word ''passenger'' that had inadvertently been included in the Air Cargo Final Rule.

Requirements of the Air Cargo Final Rule

The Air Cargo Final Rule, in part, requires that aircraft operators, foreign air carriers, and indirect air carriers (IACs) ensure that security threat assessments (STAs) are completed on their employees and agents with unescorted access to cargo under §§ 1544.228, 1546.213, and 1548.15, and on proprietors, general partners, officers, directors, and certain owners of an IAC entity under § 1548.16. The compliance date for these sections (following the June 2, 2006 correction) is December 1, 2006. In addition, § 1548.11 requires that by November 22, 2006, IACs must ensure that no employee or agent may perform any security-related duties under the IAC's security program unless that employee or agent is properly trained.

Another requirement of the Air Cargo Final Rule provides that each part of the air operations area in an airport that is regularly used to load or unload cargo from an aircraft, and areas where cargo is present after a carrier or IAC accepts it, must be a security identification display area (SIDA) (See §§ 1542.205(a)(2) and (3)). Under requirements in effect before publication of the Air Cargo Final Rule, airport operators must ensure that each individual with unescorted access to the SIDA is subject to a criminal history records check (CHRC), holds an appropriate identification, successfully completes training in accordance with the TSA-approved curriculum, and undergoes a name-based STA by TSA (See §§ 1542.209, 1542.211 and 1542.213(b); and Security Directives).[2] The current deadline for all of the above SIDA requirements is October 23, 2006.

On June 1, 2006, TSA issued proposed revised and new security programs for aircraft operators, foreign air carriers (FACs), and IACs that would implement the requirements of the Air Cargo Final Rule.[3] TSA received extensive comments to the proposed revised and new security programs.

STAs and Training for Employees and Agents of Aircraft Operators, Foreign Air Carriers, and IACs

Some commenters were very concerned about their ability to comply with the deadlines for completion of STAs and training for the employees and numerous agents of the regulated parties. Under the final rule, the deadline for completion of training is November 22, 2006.

Agents are not direct employees of the air carriers, nor are they directly regulated by TSA. Rather, ''agents'' are entities under contract with the air carriers to perform a security responsibility. For example, an IAC may contract with a cartage agent to move cargo from a warehouse to an airport. An IAC may use the services of many agents for cartage and warehousing, and each of those cartage and warehousing agents may serve multiple IACs. IACs are responsible for ensuring that their agents are properly trained to perform security responsibilities, and actually carry out the IAC's security program.

Commenters raised concerns as to how these agents will determine whether or not the driver picking up, or delivering cargo, actually has undergone an STA and has been trained in the IAC security program. TSA is enhancing the IAC Management System (IACMS) to process STA applications and results, and is providing online training for employees and agents. However, only IACs will have access to the IACMS data base to determine if a driver has an STA. Commenters stated that it would be helpful to have a system that will allow them to identify and verify those individuals with the requisite STAs and training. Otherwise, in order for an IAC to ensure compliance with the Air Cargo Final Rule and their security program, the IAC would have to conduct an STA

[2] Security Directives constitute sensitive security information (SSI) that can be disclosed only to persons with a need to know, in accordance with 49 CFR part 1520.

[3] Security programs constitute SSI that can be disclosed only to persons with a need to know, in accordance with 49 CFR part 1520. Therefore, the security programs could only be distributed to affected aircraft operators, foreign air carriers, and IACs for comment.

and train a driver who may already have undergone an STA and had the training. This would be unnecessary and duplicative.

This is an important issue that bears both on the regulated parties' compliance and on aviation security. In recognition of this complex issue, and to facilitate a high level of compliance with the requirements of the Air Cargo Final Rule, TSA is extending the deadlines for STAs and training, as discussed below. TSA has provided more time for the STAs and training of the agents of airport operators, FACs and IACs than for employees because there are fewer employees than agents, and airport operators and air carriers have more control over their own direct employees, than agents.

CHRCs, STAs, and Identification Media for SIDA Access; Training

TSA has also received comments indicating that there will be hundreds, if not thousands, of airport employees who will be affected by the expansion of SIDA to include air operation areas regularly used to load cargo on, or unload cargo from, an aircraft that is operated under a full program or a full all-cargo program as specified in § 1542.205. These comments indicate that it will not be possible to subject each of these individuals to a CHRC, a name-based STA, SIDA training, or the appropriate personnel identification requirements by October 23, 2006.

Extension of Compliance Dates

For the above stated reasons, TSA has determined that the compliance date for STAs for employees of aircraft operators, FACs, and IACs under §§ 1544.228, 1546.213, 1548.15, and 1548.16 will be extended to March 15, 2007. STAs for agents of these entities will be extended to June 15, 2007.

The compliance date of November 22, 2006 for training is still applicable to employees of aircraft operators, foreign air carriers and IACs under § 1548.11. Because of the high volume of agents and the complications associated with carriers trying to determine which agents need STAs and training, however, TSA is extending the deadline for the training of IAC agents from November 22, 2006 to June 15, 2007.

Based on comments received, TSA is also extending the deadlines for subjecting each individual with unescorted access to a SIDA to a CHRC, to a name-based STA, to SIDA training, or to personnel identification requirements from October 23, 2006 to January 22, 2007. TSA is not changing the compliance date for submission and approval of the new SIDA boundaries, as there is no need to do so. Airport operators will already know where cargo is present and being loaded and unloaded; therefore, they will be able to comply with the October 23, 2006 compliance date.

Summary of Compliance Date Changes

TSA has made the following amendments to the Air Cargo Final Rule text: [4]

STAs/training and other requirements	Air Cargo Final Rule (May 26, 2006), as amended (June 2, 2006), compliance dates	Amended compliance dates
STAs for employees of aircraft operators, foreign air carriers and indirect air carriers (IACs) under §§ 1544.228, 1546.213, 1548.15.	December 1, 2006 ..	March 15, 2007.
STAs for agents of aircraft operators, foreign air carriers and IACs under §§ 1544.228, 1546.213, 1548.15.	December 1, 2006 ..	June 15, 2007.
STAs for IAC proprietors, general partners, officers, directors and certain owners under § 1548.16	December 1, 2006 ..	March 15, 2007.
Training of IAC employees under § 1548.11	November 22, 2006	Same.
Training of IAC agents under § 1548.11	November 22, 2006	June 15, 2007.
Establishing the boundaries of SIDA for air cargo areas under § 1542.205(a)(2)	October 23, 2006	Same.
CHRC, training, name-based STAs, and ID requirements for individuals with unescorted access to expanded SIDA under §§ 1542.205, 1542.209, 1542.211, 1542.213, and SDs.	October 23, 2006	January 22, 2007.

Good Cause for Immediate Adoption and Immediate Effective Date

TSA is issuing this amendment without providing the public prior notice and the opportunity for comment, and it has an effective date less than 30 days after publication in the **Federal Register**.

Sections 553(b) and (d) of the Administrative Procedure Act (APA) (5 U.S.C. 553) authorize agencies to dispense with certain notice procedures for rules when they find good cause to do so. Under section 553(b), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Section 553(d) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

TSA finds that providing an opportunity for prior notice and public comment on the extensions of the compliance dates in the provisions of the Air Cargo Final Rule identified in the IFR is unnecessary and contrary to the public interest. As detailed above, TSA believes that: (a) Regulated parties will have significant difficulty in complying with the regulations in the time specified; (b) no party will be adversely affected by the extensions; (c) the lack of notice will not cause any hardship; and (d) it would be impracticable to provide timely notice and opportunity to comment prior to the implementation dates currently set forth in the regulations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*) requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. TSA has determined that there are no current or new information collection requirements associated with this rule.

[4] All of the compliance dates were stated in the Air Cargo Final Rule text, except the requirement that airport operators extend the boundaries of the SIDA to cargo operations. The compliance date for this requirement is the effective date of the Air Cargo Final Rule: October 23, 2006.

Regulatory Analyses

Executive Order 12866 Assessment

In conducting these analyses, TSA has determined that this rulemaking is not a ''significant regulatory action'' as defined in the Executive Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), requires agencies to perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities when the Administrative Procedure Act (APA) requires notice and comment rulemaking. Consistent with the APA and for the reasons provided under ''Good Cause for Immediate Adoption,'' TSA is issuing this rule as an interim final rule. Accordingly, the regulatory flexibility analysis as described in the RFA is not required.

TSA notes, however, that we have analyzed the small business impacts of the air cargo rulemaking that this IFR amends. A Final Regulatory Flexibility Analysis (FRFA) was placed on the public docket in the Regulatory Impact Analysis document for the Air Cargo Final Rule issued on May 26, 2006. The extension of the compliance dates in this IFR provides more flexibility than the final rule.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this rulemaking and has determined that it will not create any unnecessary obstacles to foreign commerce.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

Executive Order 13132, Federalism

TSA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact Analysis

The energy impact of the action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects

49 CFR Part 1544

Air carriers, Aircraft, Aviation safety, Freight forwarders, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1546

Aircraft, Aviation safety, Foreign Air Carriers, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1548

Air transportation, Reporting and recordkeeping requirements, Security measures.

The Amendment

■ For the reasons set forth above, the Transportation Security Administration amends title 49 of the Code of Federal Regulations, parts 1544, 1546, and 1548, as follows:

PART 1544—AIRCRAFT OPERATOR SECURITY: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 1. The authority citation for part 1544 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

■ 2. Revise § 1544.228(d) to read as follows:

§ 1544.228 Access to cargo: Security threat assessments for cargo personnel in the United States.

* * * * *

(d) Operators must comply with the requirements of this section not later than March 15, 2007, for direct employees and not later than June 15, 2007, for agents.

PART 1546—FOREIGN AIR CARRIER SECURITY

■ 3. The authority citation for part 1546 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44914, 44916–44917, 44935–44936, 44942, 46105.

■ 4. Revise § 1546.213(d) to read as follows:

§ 1546.213 Access to cargo: Security threat assessments for cargo personnel in the United States.

* * * * *

(d) Operators must comply with the requirements of this section not later than March 15, 2007, for direct employees and not later than June 15, 2007, for agents.

PART 1548—INDIRECT AIR CARRIER SECURITY

■ 5. The authority citation for part 1548 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44913–44914, 44916–44917, 44932, 44935–44936, 46105.

■ 6. Revise § 1548.11(d) to read as follows:

§ 1548.11 Training and knowledge for individuals with security-related duties.

* * * * *

(d) Operators must comply with the requirements of this section not later than November 22, 2006, for direct employees and not later than June 15, 2007, for agents.

■ 7. Revise § 1548.15(d) to read as follows:

§ 1548.15 Access to cargo: Security threat assessments for individuals having unescorted access to cargo.

* * * * *

(d) Operators must comply with the requirements of this section not later than March 15, 2007, for direct employees and not later than June 15, 2007, for agents.

■ 8. Revise § 1548.16(a) to read as follows:

§ 1548.16 Security threat assessments for each proprietor, general partner, officer, director, and certain owners of the entity.

(a) Each indirect air carrier, or applicant to be an indirect air carrier, must ensure that each proprietor, general partner, officer, director, and owner of the entity has successfully completed a Security Threat Assessment under part 1540, subpart C, of this chapter. Each indirect air carrier must comply with the requirements of this section not later than March 15, 2007.

* * * * *

Issued in Arlington, Virginia, on October 20, 2006.

Robert D. Jamison,

Deputy Administrator.

[FR Doc. 06–8904 Filed 10–23–06; 2:47 pm]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 138/P.L. 109–354

To revise the boundaries of John H. Chafee Coastal Barrier Resources System Jekyll Island Unit GA-06P. (Oct. 16, 2006; 120 Stat. 2017)

H.R. 479/P.L. 109–355

To replace a Coastal Barrier Resources System map relating to Coastal Barrier Resources System Grayton Beach Unit FL-95P in Walton County, Florida. (Oct. 16, 2006; 120 Stat. 2018)

H.R. 3508/P.L. 109–356

2005 District of Columbia Omnibus Authorization Act (Oct. 16, 2006; 120 Stat. 2019)

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Byron Nelson Congressional Gold Medal Act (Oct. 16, 2006; 120 Stat. 2044)

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Long Island Sound Stewardship Act of 2006 (Oct. 16, 2006; 120 Stat. 2049)

H.R. 5381/P.L. 109–360

National Fish Hatchery System Volunteer Act of 2006 (Oct. 16, 2006; 120 Stat. 2058)

S. 2562/P.L. 109–361

Veterans' Compensation Cost-of-Living Adjustment Act of 2006 (Oct. 16, 2006; 120 Stat. 2062)

H.R. 233/P.L. 109–362

Northern California Coastal Wild Heritage Wilderness Act (Oct. 17, 2006; 120 Stat. 2064)

H.R. 4957/P.L. 109–363

To direct the Secretary of the Interior to convey the Tylersville division of the Lamar National Fish Hatchery and Fish Technology Center to the State of Pennsylvania, and for other purposes. (Oct. 17, 2006; 120 Stat. 2074)

H.R. 5122/P.L. 109–364

John Warner National Defense Authorization Act for the Financial Year 2007 (Oct. 17, 2006; 120 Stat. 2083)

H.R. 6197/P.L. 109–365

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S. 3930/P.L. 109–366

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