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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE250; Special Conditions No. 23–190–SC]

Special Conditions: Aero Propulsion, Inc., Piper Model PA28–236; Installation of Societe de Motorisation Aeronautiques (SMA) Model SR305–230 Aircraft Diesel Engine (ADE) for Full Authority Digital Engine Control (FADEC) System and the Protection of the System From the Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These final special conditions are issued to Aero Propulsion, Inc., for Piper Model PA28–236 airplanes with a Societe de Motorisation Aeronautiques (SMA) Model SR305–230 ADE. The supplemental type certificate for these airplanes will have a novel or unusual design feature associated with the installation of an aircraft diesel engine that uses an electronic engine control system instead of a mechanical control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 9, 2006. Comments must be received on or before July 17, 2006.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE250, 901 Locust Street, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE250. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4135, fax: 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE250." The postcard will be date stamped and returned to the commenter.

Background

On August 20, 2003, Aero Propulsion, Inc., applied for a Supplemental Type Certification of Piper Model PA28–236 airplanes with the installation of an SMA Model SR305–230 engine. The airplane is powered by an SMA Model SR305–230 engine that is equipped with an electronic engine control system with full authority capability in these airplanes.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Aero Propulsion, Inc., must show that the Piper Model PA28–236 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in the original type certification basis of the Piper Model PA28–236 airplanes, as listed on Type Certificate No. 2A13 or the applicable regulations in effect on the date of application for the change; exemptions, if any; and the special conditions adopted by this rulemaking action. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The Model PA28–236 airplanes were originally certified under Part 3 of the Civil Air Regulations.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, CAR 3; 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model PA28–236 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the certification basis for the supplemental type certification basis in accordance with § 21.101. Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other models that are listed on the same type certificate to incorporate the same novel or unusual design features, the special conditions would also apply under the provisions of § 21.101.

Novel or Unusual Design Features

The Aero Propulsion, Inc., modified Piper Model PA28–236 airplanes will incorporate a novel or unusual design

feature, an engine that includes an electronic control system with FADEC capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved HIRF protection for electrical and electronic equipment. Since the electronic engine control system used on the Aero Propulsion, Inc., modified Piper Model PA28–236 airplanes will perform critical functions, provisions for protection from the effects of HIRF should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the Aviation Rulemaking Advisory Committee (ARAC) Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, the Joint Aviation Authorities (JAA), and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a FADEC is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (*e.g.*, radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (*e.g.*, automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the Aero Propulsion, Inc., modified Piper Model PA28–236 airplanes to provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–49.

Applicability

As discussed above, these special conditions are applicable to the Aero Propulsion, Inc., modified Piper Model PA28–236 airplanes. Should Aero Propulsion, Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. 2A13 to incorporate the same novel or unusual design features, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Aero Propulsion, Inc., modified Piper Model PA28–236 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, as the certification date for the Piper Model PA28–236 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR §§ 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Aero Propulsion, Inc., modified Piper Model PA28–236 airplanes.

1. *High Intensity Radiated Fields (HIRF) Protection.* In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz—100 kHz	50	50
100 kHz—500 kHz	50	50
500 kHz—2 MHz ..	50	50
2 MHz—30 MHz ...	100	100
30 MHz—70 MHz	50	50
70 MHz—100 MHz	50	50
100 MHz—200 MHz	100	100
200 MHz—400 MHz	100	100
400 MHz—700 MHz	700	50
700 MHz—1 GHz	700	100
1 GHz—2 GHz	2000	200
2 GHz—4 GHz	3000	200
4 GHz—6 GHz	3000	200
6 GHz—8 GHz	1000	200
8 GHz—12 GHz ...	3000	300
12 GHz—18 GHz	2000	200
18 GHz—40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

Or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show

compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. Data used for engine certification may be used, when appropriate, for airplane certification.

2. *Electronic Engine Control System.* The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–49. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

With respect to compliance with § 23.1309(e), the levels required for compliance shall be at the levels for catastrophic failure conditions.

Issued in Kansas City, Missouri on June 9, 2006.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–9410 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE252, Special Conditions No. 23–192–SC]

Special Conditions; Cessna Aircraft Company Model 510 Airplane; Full Authority Digital Engine Control (FADEC) System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cessna Aircraft Company, Model 510 airplane. This airplane will have a novel or unusual design feature(s) associated with the use of an electronic engine control system instead of a traditional mechanical control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 9, 2006. Comments must be received on or before July 17, 2006.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE252, Room 506, 901 Locust Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE252. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Aerospace Engineer, Standards Office (ACE–111), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, Room 301, 901 Locust Street, Kansas City, Missouri 64106; telephone (816) 329–4135, fax 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE252." The postcard will be date stamped and returned to the commenter.

Background

On January 28, 2004, Cessna Aircraft Company; One Cessna Boulevard; Post Office Box 7704; Wichita, KS 67277, applied to the FAA for a new Type Certificate for the Cessna Model 510 Mustang. The Cessna 510 will be approved under TC No. A24CE. The Model 510 is an all new, high performance, low-wing, aft fuselage mounted twin turbofan engine powered aircraft in the Normal Category including flight into known icing conditions and single pilot operations. The Model 510 is to use existing Cessna Citation construction materials and methods. The design criteria includes: 8,480 pounds maximum ramp weight, 8,395 pounds maximum takeoff weight, 250 KCAS/0.63 Mach VMO/MMO, and a 41,000 foot maximum altitude. The Model 510 airplane design includes digital electronic engine control systems, which were not envisaged and are not adequately addressed in 14 CFR part 23. The applicable existing regulations do not address electronic control systems since those were not envisioned at the time. Even though the engine control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (e.g., radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems. Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it not feasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Cessna Aircraft Company must show that the applicant meets the applicable provisions of 14 CFR part 23, effective February 1, 1965, as amended by Amendment 23–1 through Amendment 23–54, effective September 14, 2000; 14 CFR part 36, effective

December 1, 1969, through the amendment effective on the date of type certification; 14 CFR part 34; exemptions, if any; and the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the Cessna Aircraft Company Model 510 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Discussion

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The Model 510 will incorporate the following novel or unusual design features:

Digital electronic engine control systems. This special condition covers a digital electronic engine control system on the Cessna Aircraft Company Model 510 airplane.

Applicability

As discussed above, these special conditions are applicable to the Cessna Aircraft Company Model 510 airplane. Should Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Cessna Aircraft Company Model 510 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation Safety, Signs and Symbols

Citation

■ The authority citation for these Special Conditions is as follows:

Authority: 49 U.S.C. 106(g); 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Cessna Aircraft Company Model 510 airplane.

1. Electronic Engine Control System

The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–49. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

Issued in Kansas City, Missouri on June 9, 2006.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–9409 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25011; Directorate Identifier 2006–NM–118–AD; Amendment 39–14646; AD 2006–12–20]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model HS.125 Series 700A and 700B Airplanes; Model BAe.125 Series 800A (Including Variants C–29A and U–125), 800B, 1000A, and 1000B Airplanes; and Hawker 800 (Including Variant U–125A), 800XP, and 1000 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Raytheon Model BAe.125 series 800A (including variants C–29A and U–125), 800B, 1000A, and 1000B airplanes and Model Hawker 800 (including variant U–125A) and 1000 airplanes; and for certain Raytheon Model HS.125 series 700A and 700B airplanes and Model Hawker 800XP airplanes. This AD requires measuring the resistance of the current limiters for the PE, PS1, and PS2 busses, and replacing a current limiter with a new part if necessary. This AD also requires reporting certain information to the airplane manufacturer. This AD allows a records review for determining if suspect current limiters were installed, which may exempt airplanes from the required measurement. This AD results from reports that certain current limiters have opened within two to four hours after installation. We are issuing this AD to prevent loss of all primary electrical power, which could result in the airplane operating only under emergency power.

DATES: This AD becomes effective July 3, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 3, 2006.

We must receive comments on this AD by August 15, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Electrical Systems and Avionics, ACE–

119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

We have received several reports indicating that certain current limiters, part number (P/N) UAM100, have opened within two to four hours after installation. The current limiters are the primary bus feed for the PE, PS1, and PS2 busses. Three of the reports indicated that one or more of the current limiters opened in flight. Investigation has revealed that the supplier provided parts that did not meet specification, and that a specific batch of parts has exhibited the anomaly of opening. The suspect current limiters were delivered beginning February 1, 2006, and have picking tag purchase order (PO) 4501760749 or PO 4501743706. These suspect parts could be installed on any or all three busses. Loss of all three busses may occur, resulting in loss of all primary direct current electrical power. This condition, if not corrected, could result in the airplane operating only under emergency power.

Relevant Service Information

We have reviewed Raytheon Service Bulletin SB 24–3793, including Service Bulletin / Kit Drawing Report Fax, dated May 2006. The service bulletin describes the following procedures:

- Inspecting airplane maintenance records to determine if a 24-month inspection of the current limiters has been accomplished in accordance with the aircraft flexible maintenance schedule (AFMS) beginning February 1, 2006.
- Inspecting airplane maintenance records to determine if any current limiter, P/N UAM100, has been replaced on condition beginning February 1, 2006.
- Replacing any current limiter that meets either of the two conditions specified above and destroying the current limiter after removing it from the airplane.
- Measuring the resistance of any current limiter, P/N UAM100, whose batch cannot be verified (*i.e.*, the picking tag PO is unknown).
- Removing and destroying any current limiter, P/N UAM100, from picking tag PO 4501760749 or PO 4501743706 stored as a spare part.
- Reporting accomplishment of the service bulletin to the airplane manufacturer. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to prevent loss of all primary electrical power, which could result in the airplane operating only under emergency power. This AD requires measuring the resistance of the current limiters for the PE, PS1, and PS2 busses, and replacing a current limiter with a new part if necessary. This AD also requires reporting certain information to the airplane manufacturer. This AD allows a records review for determining if the most recent 24-month "F" or "F7" inspection, as applicable, and the most recent replacement of current limiters have been accomplished from February 1, 2006, through the effective date of this AD. (An "F" inspection is applicable to airplanes not on a phase program, and an "F7" inspection is applicable to airplanes on a phase program.) This AD also allows a records review for determining the picking tag PO of the current limiters. The records review may exempt airplanes from the required measurement. This AD differs from the referenced Raytheon service bulletin, as discussed under "Differences Between the AD and Service Bulletin."

Differences Between the AD and Service Bulletin

The effectivity of the service bulletin includes all airplanes that may have had one or more of the suspect current limiters installed on an airplane, regardless of whether those suspect parts would likely lead to an unsafe condition. The applicability of this AD instead applies only to airplanes on which an unsafe condition is likely to exist, if suspect parts are installed on an airplane. Therefore, this AD does not include Raytheon Model Hawker 850XP airplanes, Model DH.125 and BH.125 series airplanes, and certain Model HS.125 series airplanes. We have coordinated this difference with the manufacturer.

The service bulletin recommends inspecting aircraft maintenance records to determine if a 24-month inspection and on-condition replacement of the current limiters have been accomplished beginning February 1, 2006, which could have resulted in installing a suspect current limiter on the airplane. This AD instead requires measuring the resistance of all current limiters to verify that safe parts are installed on an airplane. In lieu of that requirement, this AD does allow a records review if the date of the most recent 24-month "F" or "F7" inspection, as applicable, and replacement of current limiters can be determined conclusively and shown to have not been accomplished from February 1, 2006, through the effective date of this AD. As an alternative to measuring the resistance, this AD also allows an operator to conduct a records review if the picking tag PO of the current limiters can be determined conclusively from that review and shown not to be from the batch of suspect parts.

Paragraph 3.A.(2) of the service bulletin specifies that for a current limiter: "The correct resistance should measure 0.00046 to 0.00056 ohms (0.45 to 0.56 milliohms)." We have verified with the manufacturer that the correct lower value is 0.46 milliohms, not 0.45 milliohms as specified in the service bulletin. We have included the correct measurement in paragraph (f) of this AD.

The service bulletin specifies to destroy suspect current limiters after removing them from an airplane and any suspect parts stored as spares. This AD, however, does not require destroying any current limiter.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include "Docket No. FAA–2006–25011; Directorate Identifier 2006–NM–118–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the

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

Examining the Docket

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

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 the regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–12–20 Raytheon Aircraft Company: Amendment 39–14646. Docket No. FAA–2006–25011; Directorate Identifier 2006–NM–118–AD.

Effective Date

(a) This AD becomes effective July 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Raytheon airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Model HS.125 series 700A and 700B airplanes, on which Raytheon Modification 252885 has been incorporated or British Aerospace 125 Service Bulletin SB 24–239–2885 has been accomplished.

(2) All Model BAe.125 series 800A (including variants C–29A and U–125), 800B, 1000A, and 1000B airplanes.

(3) All Model Hawker 800 (including variant U–125A) and 1000 airplanes; and Model Hawker 800XP airplanes, serial numbers 1 through 258768 inclusive.

Unsafe Condition

(d) This AD results from reports that certain current limiters have opened within two to four hours after installation. We are issuing this AD to prevent loss of all primary electrical power, which could result in the airplane operating only under emergency power.

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.

Resistance Measurement and Replacement if Necessary

(f) Within 30 days or 25 flight hours after the effective date of this AD, whichever occurs first: Measure the resistance of the applicable current limiters, part number (P/N) UAM100, in accordance with paragraph 3.A.(2) of the Accomplishment Instructions of Raytheon Service Bulletin SB 24–3793, dated May 2006. The applicable current limiters are listed in Table 1 of the service bulletin. If the measured resistance of a current limiter is less than 0.46 milliohms or greater than 0.56 milliohms, before further flight, replace the part with a new part in accordance with the service bulletin. The new part must not be from picking tag purchase order (PO) 4501760749 or PO 4501743706 and must be the correct resistance in the range of 0.46 milliohms to 0.56 milliohms.

Records Review

(g) A review of airplane maintenance records is acceptable in lieu of the resistance measurement required by paragraph (f) of this AD, if the criteria in paragraph (g)(1) or (g)(2) of this AD can be determined conclusively from that review.

(1) The records review determines conclusively the date of the most recent 24-month "F" or "F7" inspection, as applicable, of current limiters and the date of the most recent replacement of current limiters, and that the inspection and replacement were not accomplished from February 1, 2006, through the effective date of this AD.

(2) The records review determines conclusively the picking tag PO of the current limiters, and that the current limiters are not from picking tag PO 4501760749 or PO 4501743706.

Reporting Requirement

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD: Submit the Service Bulletin/Kit Drawing Report Fax (attached to Raytheon Service Bulletin SB 24–3793) to the Manager, Hawker Model Group, Raytheon Aircraft Company, Product Support Department (211), P.O. Box 85, Wichita, Kansas 67201–0085; fax (316) 676–3400. The report must include the results of the measurements required by paragraph (f) of this AD, the name(s) of the owner and operator of the airplane, the airplane registration number, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the measurements were accomplished after the effective date of this AD: Submit the report within 10 days after the inspection.

(2) If the measurements were accomplished before the effective date of this AD: Submit

the report within 10 days after the effective date of this AD.

Parts Installation

(i) As of the effective date of this AD, no person may install a current limiter, P/N UAM100, on any airplane, unless the part meets one of the criteria specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) The picking tag PO of the current limiter can be determined conclusively from a review of airplane maintenance records and shown not to be from picking tag PO 4501760749 or PO 4501743706.

(2) The resistance of the current limiter is measured and determined to be of the correct resistance in accordance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(k) You must use Raytheon Service Bulletin SB 24–3793, including Service Bulletin/Kit Drawing Report Fax, dated May 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085, 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 June 5, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5327 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22481; Directorate Identifier 2004–NM–176–AD; Amendment 39–14647; AD 2006–12–21]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) 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 Bombardier Model CL–600–2B19 (Regional Jet Series 100) airplanes. That AD currently requires revising the airplane flight manual (AFM) to provide the flightcrew with revised procedures for checking the flap system. The existing AD also requires revising the maintenance program to provide procedures for checking the flap system, and performing follow-on actions, if necessary. This new AD requires installing new flap actuators, a new or retrofitted air data computer, a new skew detection system, and new airspeed limitation placards; and revising the AFM to include revised maximum allowable speeds for flight with the flaps extended, and a new skew detection system/crosswind-related limitation for take-off flap selection. This AD results from a number of cases of flap system failure that resulted in a twisted outboard flap panel. We are issuing this AD to prevent an unannunciated failure of the flap system, which could result in a flap asymmetry and consequent reduced controllability of the airplane.

DATES: This AD becomes effective July 21, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 21, 2006.

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

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Daniel Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 98–20–01, amendment 39–10767 (63 FR 49661, September 17, 1998). The existing AD applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. That NPRM was published in the **Federal Register** on September 21, 2005 (70 FR 55315). That NPRM proposed to require installing new flap actuators, a new or retrofitted air data computer, a new skew detection system, and new airspeed limitation placards; and revising the AFM to include revised maximum allowable speeds for flight with the flaps extended, and a new skew detection system/crosswind-related limitation for take-off flap selection.

Comments

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

Request To Address Defective Parts Manufacturer Approval (PMA) Parts

Modification and Replacement Parts Association (MARPA) states that the NPRM specifies that the flap actuators be replaced in accordance with a manufacturer service bulletin, but that service bulletins are proprietary documents and are difficult to obtain for those who are not aircraft owners and/or operators. MARPA further states that when a service document is incorporated by reference into an airworthiness directive it loses its copyright status and becomes part of the public document. MARPA states that it

is not possible without reference to the service bulletin to determine precisely the actuators that are being replaced with "new and improved" actuators. For this reason, MARPA requests that the language in paragraph (h) of the NPRM be expanded to clarify its intent for those who do not have a copy of the referenced service information and, therefore, cannot determine the part number (P/N) of the actuators that are being replaced. MARPA requests that if certain P/Ns are now deemed to be not airworthy, the NPRM should be revised to identify those parts by P/N. MARPA further states that if these parts are not considered airworthy, the language in the NPRM should be expanded to embrace any approved PMA parts that have the same design data as the defective parts. MARPA states that these changes would assist parts sellers and maintenance, repair and overhaul (MRO) organizations to remove these parts from the supply stream, and producers of PMA parts would be apprised of the defects.

We concur with the commenter's general request that, if we know that an unsafe condition also exists in PMA parts, the AD should address those parts, as well as the original parts. In this case, the NPRM identifies in paragraph (k) parts that are now deemed not to be airworthy. The commenter's remarks are timely in that the Transport Airplane Directorate currently is in the process of reviewing this issue as it applies to transport category airplanes. We acknowledge that there may be other ways of addressing this issue to ensure that unsafe PMA parts are identified and addressed. Once we have thoroughly examined all aspects of this issue, including input from industry, and have made a final determination, we will consider whether our policy regarding addressing PMA parts in ADs needs to be revised. We consider that to delay this AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the final rule in this regard.

Request To Reference PMA Parts

MARPA also requests that any "new and improved" parts cited in the service bulletin to be installed be designated by P/N with the qualifying phrase "or other FAA-approved equivalent part," and that this phrase be appended to the list of approved part numbers. MARPA states that manufacturer service documents specify exclusively original equipment parts, and has never seen any service document that even acknowledges the existence of alternatively approved parts. In MARPA's experience, service bulletins from manufacturers specify exclusively original equipment manufacturer (OEM) parts, to the exclusion of other parts approved under 14 CFR part 21.303 (Parts Manufacturer Approval (PMA)). The commenter states that the proposed action is therefore in seeming conflict with the existing CFR.

We infer that the commenter would like the AD to permit installation of any equivalent PMA parts so that it is not necessary for an operator to request approval of an alternative method of compliance (AMOC) in order to install an "equivalent" PMA part. Whether an alternative part is "equivalent" in adequately resolving the unsafe condition can only be determined on a case-by-case basis based on a complete understanding of the unsafe condition. Our policy is that, in order for operators to replace a part with one that is not specified in the AD, they must request an AMOC. This is necessary so that we can make a specific determination that an alternative part is or is not susceptible to the same unsafe condition.

In response to the commenter's statement regarding 14 CFR 21.203, under which the FAA issues PMAs, this statement appears to reflect a misunderstanding of the relationship between ADs and the certification procedural regulations of part 21 of the Federal Aviation Regulations (14 CFR part 21). Those regulations, including section § 21.303 of the Federal Aviation Regulations (14 CFR 21.203), are intended to ensure that aeronautical products comply with the applicable airworthiness standards. But ADs are issued when, notwithstanding those procedures, we become aware of unsafe conditions in these products or parts. Therefore, an AD takes precedence over design approvals when we identify an unsafe condition, and mandating installation of a certain part number in an AD is not at variance with section § 21.303.

The AD provides a means of compliance for operators to ensure that the identified unsafe condition is addressed appropriately. For an unsafe condition attributable to a part, the AD normally identifies the replacement parts necessary to obtain that compliance. As stated in section 39.7 of the Federal Aviation Regulations (14 CFR 39.7), "Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section." Unless an operator obtains approval for an AMOC, replacing a part with one not specified by the AD would make the operator subject to an enforcement action and result in a civil penalty. No change to the AD is necessary in this regard.

Request To Revise Cost Estimate

Air Wisconsin states that certain cost estimates in the NPRM are incorrect. Air Wisconsin states that the estimated hours for doing the following actions should be revised: Installing the provisions in accordance with Bombardier Service Bulletin 601R–27–115, Revision D, dated March 18, 2004, should be 200 hours; installing the actuators in accordance with Bombardier Service Bulletin 601R–27–114, Revision B, dated December 4, 2003, should be 20 hours; and installing the sensors and skew detection system (SDS) in accordance with Bombardier Service Bulletin 601R–27–116, Revision B, dated February 2, 2004, should be 4.5 hours for a total of 224.5 hours. The current estimate for doing those actions in the NPRM is 147 hours.

We disagree. The cost estimates in ADs represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. No change to the AD is necessary in this regard.

Request To Use Latest Revisions of Service Bulletins

Two commenters, Air Wisconsin and Comair, note that several of the service bulletins are not identified in the NPRM at their latest revision level. The commenters request that we update the AD to include the latest revisions of the service bulletins.

We agree. We have reviewed the latest revisions of the service bulletins, and the procedures therein are essentially the same as those in the service bulletins cited in the NPRM. Therefore, we have revised the AD to include references to the latest revisions of several service bulletins. We have also revised paragraph (j) of the AD, "Actions Accomplished in Accordance with Previous Revisions of Service Bulletins," to include reference to the applicable revision levels used before the effective date of this AD.

Request To Use Lower Flap Speed

Air Wisconsin and Comair also request that we eliminate the requirement in paragraphs (i)(3) and (i)(4) of the NPRM to raise flap speeds in accordance with Bombardier Service Bulletin 601R–11–080, dated

November 28, 2003. Air Wisconsin prefers to remain conservative and continue to use a lower flap speed. Comair states that other operators, if they choose to do so, should be allowed to use the higher speeds and remove the limitation placard. Comair has operated these airplanes in this condition (where the air data computer (ADC) puts the high speed cue at 230 for flaps 8 and 20, but the placard specified 215 for flaps 8 and 20), so there should be no additional operational issues. The high speed cue of 215 has worked well for Comair. Comair states that this cue is more conservative on the flap system and causes no operational concerns by differing from the ADC.

We disagree. The new placards and aural warnings are based on aircraft limitations. If operators use a placard that is not consistent with the aural warning, they are essentially using a placard as an operating limit rather than the aircraft limit, which is a deviation from the basis of certification. Normally, this kind of deviation is acceptable only as an interim solution under an AD while a final fix is being pursued. We cannot impose lower limits than those that are established by the certification requirements. However, operators may use lower flap speeds, since these are within the aircraft limitations. An operator may choose to fly at lower limits for fleet standardization and commonality. Those limits must be coordinated with the Principal Operations Inspector. No change to the AD is necessary in this regard.

Request To Clarify Terminating Action

Air Wisconsin requests that we make it clear that installing the skew detection system provides terminating action for all requirements of the AD. Air Wisconsin states that it was intended that incorporating the modifications would terminate the requirements of AD 98–20–01 (visual inspection of the flaps prior to each flight and maintenance action required after "Flap Fail" message). Air Wisconsin states that Canadian airworthiness directive CF–1998–14R4, dated June 1, 2004 (which is the parallel airworthiness directive for this AD), clearly indicates in Part VI, paragraph F, that compliance with the installation of the skew detection system provides terminating action for all requirements of that directive. Air Wisconsin states that this terminating action is not clearly indicated in the NPRM.

We partially agree. We agree that clarifying the terminating action would be helpful to operators. Paragraph (i) of the NPRM states, "Accomplishing the actions in paragraph (h) and (i) of this AD terminates the requirements of paragraphs (f) and (g) of this AD, and the Airplane Flight Manual (AFM) revisions required by those paragraphs may be removed from the AFM." Paragraphs (f) and (g) of the NPRM are a restatement of the requirements of AD 98–20–01. Therefore, we have changed paragraph (i) to state, "* * * terminates the requirements of paragraphs (f) and (g) of this AD (the requirements of AD 98–20–01)* * *." We disagree with adding the statement, "* * * provides terminating action for all requirements of this AD* * *." Certain requirements of the new AD remain in effect even after the actions in paragraphs (h) and (i) are accomplished, and therefore the statement regarding "all requirements" is incorrect. For example, the requirements of paragraph (k) of this AD, which prohibits installation of certain part numbers, remain in effect.

Request To Recognize Provisions of the Minimum Equipment List (MEL)

Air Wisconsin states that the NPRM does not recognize operation of the aircraft under the provisions of the MEL. Air Wisconsin explains that since the AD does not specifically address any provisions of the MEL, any existing provisions would not be affected.

We infer that Air Wisconsin requests that we revise the AD to include a reference to the MEL and a description of how it affects the MEL. We disagree. The AD does not specifically address any provisions of the MEL, and therefore any existing provisions are not affected. No change to the AD is necessary in this regard.

Request To Eliminate Decal-Removal Requirement

Air Wisconsin states that paragraph (i)(5) of the NPRM indicates that the decals installed on the flight deck can be removed. Air Wisconsin states that these decals were never a requirement of AD 98–20–01.

We infer that Air Wisconsin is requesting that we eliminate the decal-removal requirement in paragraph (i)(5) of the AD. We disagree. The installation of the decals that say "Visually inspect flaps prior to departure" was not a requirement of AD 98–20–01. However, those decals were installed on many airplanes in accordance with various AMOCs issued against that AD. Consequently, we wish to eliminate those decals from airplanes that may have had them installed as part of an AMOC against AD 98–20–01. Paragraph (i)(5) of this AD specifically states that it applies only to those airplanes. No change to the AD is necessary in this regard.

Request To Acknowledge Installation of Different Part Number

Comair requests that we revise paragraph (i)(2) of the AD to acknowledge the accomplishment of Bombardier Service Bulletin 601R–34–107. Comair explains that paragraph (i)(2) requires, in part, "install a new or retrofitted air data computer (ADC) in accordance with the accomplishment instructions of Bombardier Service Bulletin 601R–34–128, Revision B, dated September 7, 2001." Comair states that it has previously complied with Bombardier Service Bulletin 601R–34–107, "ADC Calibrated for RVSM" (Reduced Vertical Separation Minimum). The ADC incorporated during this service bulletin is P/N 822–0372–445.

We disagree with the need to change the AD in this regard. The AD mandates installation of a new or retrofitted ADC in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–34–128. The resultant ADC P/Ns after doing this installation are: 822–0372–154 without RVSM installed, or 822–0372–445 with RVSM installed. Both of these P/Ns meet the requirements of the AD. Bombardier Service Bulletin 601R–34–107 converts ADC P/N 822–0327–140 to P/N 822–0372–143. Since neither of these P/Ns have Bombardier Service Bulletin 601R–34–128 installed, neither complies with the intent of the AD. However, Bombardier Service Bulletin 601R–34–107 also converts P/N 822–0372–154 into P/N 822–0372–445. Both of these P/Ns are identified in Bombardier Service Bulletin 601R–34–128 and are, by definition, already acceptable. No change to the AD is necessary in this regard.

Explanation of Editorial Changes to Paragraphs (i)(1) and (i)(4)

In paragraph (i)(1) of the NPRM, we inadvertently specified October 27, 2004, as the date of Bombardier Service Bulletin 601R–27–115, Revision E. We have revised paragraph (i) of the AD to specify the correct issue date of this service bulletin, which is October 7, 2004. In paragraph (i)(4) of the NPRM, we inadvertently identified the Canadair Regional Jet AFM as CSP A–102. We have revised paragraph (i)(4) of the AD to refer to Canadair Regional Jet AFM, CSP A–012.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any

approved AMOC on any airplane to which the AMOC applies.

Clarification of Reporting Requirements

We have also clarified this action to specify that where Bombardier Service Bulletins 601R–27–111, dated March 6, 2000; 601R–27–115, Revision E, dated October 7, 2004; and 601R–34–128, Revision C, dated March 28, 2005; specify to submit certain information to the manufacturer, this AD does not include those requirements.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD. For all actions the average labor rate is $65 and the number of U.S.-registered airplanes is 651.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Revise the AFM (required by AD 98–20–01).	1	N/A	$65	$42,315
Revise the maintenance program (required by AD 98–20–01).	1	N/A	65	42,315
Install ADC (new action)	1	The manufacturer states that it will supply required parts to the operators at no cost.	65	42,315
Install #3 and #4 flap actuators (new action).	18	The manufacturer states that it will supply required parts to the operators at no cost.	1,170	761,670
Install skew detection system (new action).	147	The manufacturer states that it will supply required parts to the operators at no cost.	9,555	6,220,305
Install new airspeed limitation placards (new action).	1	The manufacturer states that it will supply required parts to the operators at no cost.	65	42,315
Revise the AFM (new action)	1	N/A	65	42,315

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 39–10767 (63 FR 49661, September 17, 1998) and by adding the following new airworthiness directive (AD):

2006–12–21 Bombardier, Inc. (Formerly Canadair): Amendment 39–14647. Docket No. FAA–2005–22481; Directorate Identifier 2004–NM–176–AD.

Effective Date

(a) This AD becomes effective July 21, 2006.

Affected ADs

(b) This AD supersedes AD 98–20–01.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 400) airplanes, certificated in any category, serial numbers 7003 through 7903 inclusive.

Unsafe Condition

(d) This AD results from a number of cases of flap system failure that resulted in a twisted outboard flap panel. We are issuing this AD to prevent an unannunciated failure of the flap system, which could result in a flap asymmetry and consequent reduced controllability of the airplane.

Compliance

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

Restatement of the Requirements of AD 98–20–01:

Note 1: Bombardier Service Letter RJ–SL–27–002A, dated April 8, 1998, and Service Letter RJ–SL–27–037, dated July 2, 1998, may provide operators with additional information concerning the actions required

by this AD. However, accomplishment of the procedures specified in these service letters should not be considered to be an acceptable method of compliance with the requirements of this AD.

(f) Within 10 days after October 2, 1998 (the effective date of AD 98–20–01), accomplish the requirements of paragraphs (f)(1), (f)(2), and (f)(3) of this AD.

(1) Revise the Limitations Section of the FAA-approved airplane flight manual (AFM) to include the following procedures and Figures 1 and 2 of this AD. After accomplishing the actions in paragraphs (h) and (i) of this AD, remove the revisions required by this paragraph of this AD from the AFM.

"Air Operator Actions

Important: If the outboard flap position is outside the "GO" range, as shown in figure 2., further flight is prohibited until required maintenance actions have been accomplished.

1. Touch-and-go landings for the purposes of training must be accomplished using a flap setting of 20 degrees for the entire procedure.

2. (a) Take-off flaps must be set prior to departure, and

(b) An external visual check must be accomplished to detect any twisting, skewing, or abnormal deformation of the flaps, using the information given in Figures 1 and 2.

Note 1: If the outboard flap position is outside the "GO" range as shown in figure 2., further flight is prohibited until required maintenance actions have been accomplished.

Note 2: This visual check must be accomplished either by a member of the flight crew or by maintenance personnel, and the results reported directly to the pilot-in-command prior to take-off.

3. If any additional change to the flap position is necessary, prior to take-off, accomplish the visual check specified by the preceding paragraph 2. (b)."

(2) Revise the Normal Procedures Section of the FAA-approved AFM to include the following procedures:

"To minimize a possible flap twist in flight when operating flaps, operate the flap selector sequentially, stopping at each setting (*i.e.*, 0 degrees, 8 degrees if applicable, 20 degrees, 30 degrees, 45 degrees; or operate the flap selector in reverse order), and waiting for the flaps to reach each position before selecting the next setting. Monitor the control wheel for abnormal control wheel angles during each transition in flap position.

Note: This procedure is not applicable during a go-around or during any emergency aircraft handling procedure where prompt flap retraction is required. In these cases, follow the applicable AFM procedures."

(3) Revise the Abnormal Procedures Section of the FAA-approved AFM to include the following procedures.

"If abnormal aileron control wheel angles develop during flap operation with the autopilot on, or if the aircraft rolls without pilot input with the autopilot off (with or without a 'FLAPS FAIL' caution message), perform the following actions:

1. If flaps are being extended, immediately return the flaps to the previously selected position (*e.g.*, for flaps selected from 8 degrees to 20 degrees, re-select 8 degrees).

2. If flaps are being retracted, the flap selector should remain in the currently selected position (*e.g.*, for flaps selected from 20 degrees to 8 degrees, leave selector at 8 degrees).

3. Do not attempt to operate the flaps any further.

4. If the flaps are engaged, disconnect the autopilot.

Note: When disconnecting the autopilot, anticipate an out-of-trim situation and hold the aileron control wheel in its current position.

5. For landing, perform the "Flaps Failure" procedure for the following conditions:

(a) If an abnormal aileron control wheel angle to the left develops, do not land if a crosswind from the left is greater than 20 knots.

(b) If an abnormal aileron control wheel angle to the right develops, do not land if a crosswind from the right is greater than 20 knots.

6. After landing, do not attempt to retract the flaps. Record the event in the Aircraft Maintenance Log Book and notify the person responsible for maintenance."

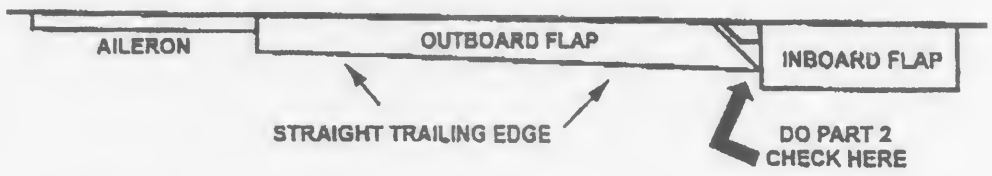
BILLING CODE 4910–13–U

NORMAL/ABNORMAL OUTBOARD FLAP CONFIGURATION IN TAKE-OFF POSITION

Note: View looking forward on left wing trailing edge (right side opposite).

1. NORMAL

A normal outboard flap has a straight trailing edge, and the inboard corner is slightly above (i.e. higher) than the inboard flap.



2. ABNORMAL

The following are indications of an outboard flap with a twist, skew or abnormal deformation:

- Noticeable curve in the trailing edge
- Buckled top or bottom surface
- Higher than normal position of the inboard trailing edge corner

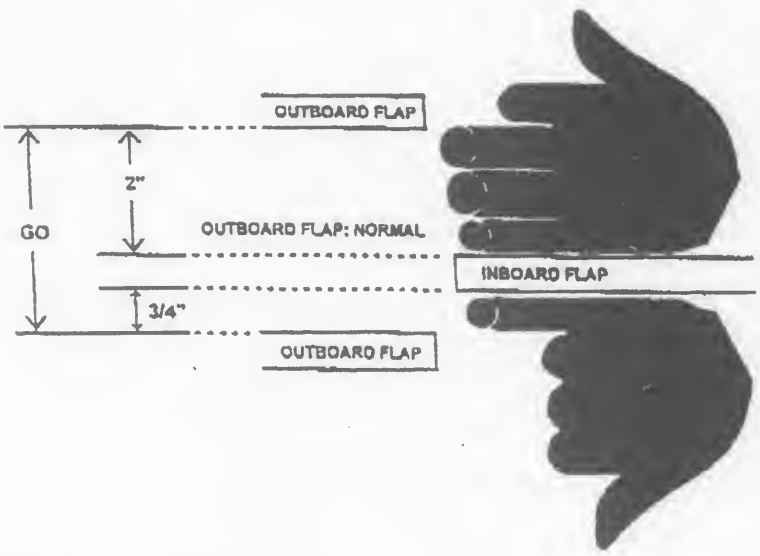
Figure 1. Normal/Abnormal Outboard flap Configuration in Take-off Position"

OUTBOARD FLAP GO/NO-GO CRITERIA IN TAKE-OFF POSITION

NOTE 1. These criteria are applicable for any size of hand.
2. View looking forward on left wing trailing edge (right side opposite).

If the outboard flap position is outside the "GO" range as shown below further flight is prohibited.

1. FLAPS AT 8 DEGREES



2. FLAPS AT 20 DEGREES

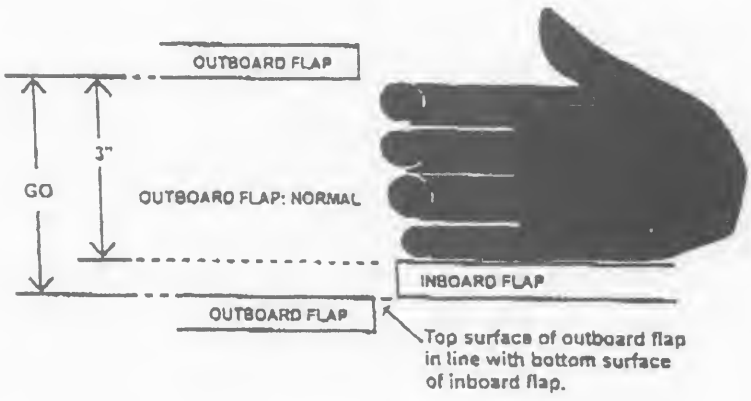


Figure 2. Outboard Flap Go/No-Go Criteria in Take-off Position"

(g) Within 10 days after October 2, 1998, revise the FAA-approved maintenance program to include the following procedures and Figures 1 and 2 of this AD:

"Maintenance Procedure

Whenever a "FLAPS FAIL" caution message occurs, carry out the following procedures after landing:

Note: These procedures are to be accomplished by maintenance personnel only.

1. Check that there have been no other "FLAPS FAIL" caution messages reported within the previous 72 hours. If a previous message has been reported, prior to further flight, perform the actions required in the following Maintenance Action section. If no previous "FLAPS FAIL" caution message has been reported, continue with the following:

2. Carry out an external visual check of each outboard flap for evidence of twisting, skewing, or abnormal deformation. (Reference Figures 1 and 2.)

3. If there is no evidence of twisting, skewing, or abnormal deformation, proceed as follows:

(a) Reset the flap system ONLY ONCE by cycling circuit breakers CB1–F4 and CB2–F4.

(b) If the system does not reset (*i.e.*, the "FLAPS FAIL" caution message is still posted), prior to further flight, perform the actions required in the following Maintenance Action section.

(c) If the system resets, cycle the flaps to 45 degrees and back to 0 degrees. Continued flap operation for up to a maximum of 72 hours is then permitted as long as no additional "FLAPS FAIL" caution message is indicated.

(d) If an additional "FLAPS FAIL" caution message occurs within the period of 72 hours, as specified above, prior to further flight, perform the actions required in the following Maintenance Action section.

(e) Within 72 hours, even if no further "FLAPS FAIL" messages have been indicated, perform the actions required in the following Maintenance Action section.

4. If there is evidence of twisting, skewing, or abnormal deformation, PRIOR TO FURTHER FLIGHT, perform the actions required in the following Maintenance Action section.

Maintenance Action

Whenever the outboard flap position indicator is outside the "GO" range as shown in Figure 2, or whenever directed to do so by the Maintenance Procedure above, perform the following procedures:

A. Interrogate the flap electronic control unit (FECU) per Fault Isolation Manual, Section 27–50–00, "Flaps Fault Isolation," and rectify as applicable.

B. Visually check each flap for evidence of twisting, skewing, or abnormal deformation.

1. If there is no evidence of twisting, skewing, or abnormal deformation, manually isolate any jammed, disconnected, or dragging component; and rectify all discrepant conditions.

2. If there is evidence of twisting, skewing, or abnormal deformation, replace both actuators and any discrepant flap panel with new or serviceable components. In addition, inspect flexible shaft(s) inboard of the most outboard actuator removed for discrepancies, and replace any discrepant flexible shaft with a new or serviceable flexible shaft.

Note: An acceptable procedure for testing the flap drive breakaway input torque is detailed in Aircraft Maintenance Manual Temporary Revision 27–203, Task 27–53–00–750–802, dated July 17, 1998.

C. Within 3 days after identifying a flap panel twist or logging a "FLAPS FAIL" caution message, notify Bombardier Aerospace, via the Canadair Regional Jet Action Center, of all findings and actions taken."

New Requirements of the AD

Install New Flap Actuators

(h) Within 12 months after the effective date of this AD: Install new Number 3 and Number 4 flap actuators in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–114, excluding Appendix A, Revision C, dated November 9, 2004. The actions in paragraph (h) of this AD must be accomplished prior to or concurrently with the actions in paragraph (i) of this AD.

Install Skew Detection System (SDS) and Air Data Computer

(i) Within 30 months after the effective date of this AD, but after the actions required by paragraph (h) of this AD have been accomplished: Install the SDS in accordance with paragraphs (i)(1), (i)(2), (i)(3), (i)(4), and (i)(5) of this AD. These actions must be accomplished in the order stated in this paragraph. Accomplishing the actions in paragraphs (h) and (i) of this AD terminates the requirements of paragraphs (f) and (g) (the requirements of AD 98–20–01) of this AD, and the AFM revisions required by those paragraphs may be removed from the AFM.

(1) Install the electrical provisions for the SDS in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–115, Revision E, dated October 7, 2004. Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(2) Install and activate the SDS in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–116, Revision C, dated August 26, 2004; and install a new or retrofitted air data computer (ADC) in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–34–128, Revision C, dated March 28, 2005. Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(3) Install new airspeed limitation placards in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–11–080, Revision A, dated October 11, 2005.

(4) Revise the Limitations section of the AFM to include the information specified in Canadair Temporary Revision (TR) RJ/128, dated November 28, 2003, to Canadair Regional Jet AFM, CSP A–012, to include revised V_{FE} values, and a new SDS and crosswind-related limitation for take-off flap selection.

Note 2: The action in paragraph (i)(4) of this AD may be accomplished by inserting a copy of Canadair TR RJ/128 in the AFM. When this temporary revision has been incorporated into the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revision is identical to that specified in Canadair TR RJ/128.

(5) For airplanes on which decals stating "Visually inspect flaps prior to departure" have been installed in production or in accordance with an alternative method of compliance (AMOC) granted by the FAA: After the installation required by paragraphs (h)(1), (i)(1), (i)(2), (i)(3), and (i)(4) of this AD, remove the decals in accordance with Part A of Bombardier Service Bulletin 601R–27–111, dated March 6, 2000. Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Actions Accomplished in Accordance With Previous Revisions of Service Bulletins

(j) Actions accomplished before the effective date of this AD according to the service bulletins identified in paragraphs (j)(1), (j)(2), (j)(3), and (j)(4) of this AD, are considered acceptable for compliance with the corresponding action specified in paragraphs (h) and (i) of this AD.

(1) For the action in paragraph (h) of this AD: Bombardier Service Bulletin 601R–27–114, dated March 22, 2002; Revision A, dated November 6, 2002; or Revision B, dated December 4, 2003.

(2) For the actions in paragraph (i)(1) of this AD: Bombardier Service Bulletin 601R–27–115, Revision D, dated March 18, 2004.

(3) For the actions in paragraph (i)(2) of this AD: Bombardier Service Bulletin 601R–27–116, dated July 23, 2003; Revision A, dated September 10, 2003; or Revision B, dated February 2, 2004; and Bombardier Service Bulletin 601R–34–128, Revision B, dated September 7, 2001.

(4) For the actions in paragraph (i)(3) of this AD: Bombardier Service Bulletin 601R–11–080, dated November 28, 2003.

Parts Installation

(k)(1) As of 12 months after the effective date of this AD, no person may install on any airplane a flap actuator with part numbers (P/Ns) 601R93103–5, –6. –7, –8, –9, –10, –11, –12, –17, and –18 (Vendor P/Ns 853D100–7, –8, –9, –10, –11, –12, –13, –14, –17 and –18).

(2) As of 12 months after the effective date of this AD, no person may install on any airplane a flap actuator with P/Ns 601R93104–5, –6, –7, –8, –9 and –10 (Vendor P/Ns 854D100–7, –8, –9, –10, –11 and –12).

(3) As of 30 months after the effective date of this AD, no person may install on any airplane an ADC with P/Ns 822–0372–140 and –143.

AMOCs

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to

which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously according to AD 98–20–01, are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(m) Canadian airworthiness directive CF–1998–14R4, dated June 1, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(n) You must use the service information listed in Table 1 of this AD, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Service information	Revision level	Date
Bombardier Service Bulletin 601R–11–080	A	October 11, 2005.
Bombardier Service Bulletin 601R–27–111	Original	March 6, 2000.
Bombardier Service Bulletin 601R–27–114, excluding Appendix A	C	November 9, 2004.
Bombardier Service Bulletin 601R–27–115	E	October 7, 2004.
Bombardier Service Bulletin 601R–27–116	C	August 26, 2004.
Bombardier Service Bulletin 601R–34–128	C	March 28, 2005.
Canadair Temporary Revision RJ/128 to the Canadair Regional Jet Airplane Flight Manual, CSP A–012.	Original	November 28, 2003.

Issued in Renton, Washington, on June 5, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5326 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23173; Directorate Identifier 2005–NM–190–AD; Amendment 39–14644; AD 2006–12–18]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Short Brothers Model SD3 airplanes. This AD requires installing additional fuel tank bonding jumpers, performing an in-place resistance check of the float switches, inspecting certain internal components of the fuel tanks, and performing related corrective actions if necessary. This AD also requires revisions to the Airworthiness Limitations section of the Instructions for Continued Airworthiness, and to the airplane flight manual procedures for operation during icing conditions and fuel system failures. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent ignition sources inside the fuel tanks, which could lead to fire or explosion.

DATES: This AD becomes effective July 21, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 21, 2006.

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

Contact Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Short Brothers Model SD3 airplanes. That supplemental NPRM was published in the **Federal Register** on April 12, 2006 (71 FR 18686). That supplemental NPRM proposed to require installing additional fuel tank bonding jumpers, performing an in-place resistance check of the float switches, inspecting certain internal components of the fuel tanks, and performing related corrective actions if necessary. That supplemental NPRM also proposed to require revisions to the Airworthiness Limitations section of the Instructions for Continued Airworthiness, and to the airplane flight manual (AFM) procedures for operation during icing conditions and fuel system failures.

Comments

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

Clarification of Service Information

We have revised the reference to the advance amendment bulletin specified in paragraph (f) of this AD. Rather than one bulletin, there are four bulletins, each applicable to a certain model airplane. The information in each

bulletin revises the applicable AFM for that model airplane.

Conclusion

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

Costs of Compliance

This AD affects about 54 airplanes of U.S. registry. The average labor rate is estimated to be $80 per work hour.

The required revisions to the AFM and airplane maintenance manual (AMM) will take about 1 work hour per airplane. Based on these figures, the estimated cost of the required revisions for U.S. operators is $4,320, or $80 per airplane.

The required resistance check, inspections, and jumper installations, will take about 40 work hours per airplane. Required parts will cost about $10 per airplane. Based on these figures, the estimated cost of these required actions for U.S. operators is $173,340, or $3,210 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–12–18 Short Brothers PLC: Amendment 39–14644. Docket No. FAA–2005–23173; Directorate Identifier 2005–NM–190–AD.

Effective Date

(a) This AD becomes effective July 21, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Shorts Model SD3–60 SHERPA, SD3-SHERPA, SD3–30, and SD3–60 airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (i) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent ignition sources inside the fuel tanks, which could lead to fire or explosion.

Compliance

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

Revision of Airplane Flight Manual (AFM)

(f) Within 30 days after the effective date of this AD, revise the Limitations and Normal Procedures sections of the AFMs as specified in Table 1 of this AD to include the information in the applicable Shorts advance amendment bulletins as specified in Table 1 of this AD. The advance amendment bulletins address operation during icing conditions and fuel system failures. Thereafter, operate the airplane according to the limitations and procedures in the applicable advance amendment bulletin.

Note 2: The requirements of paragraph (f) of this AD may be done by inserting a copy of the applicable advance amendment bulletin into the AFM. When the applicable advance amendment bulletin has been included in general revisions of the AFM, the general revisions may be inserted into the AFM and the advance amendment bulletin may be removed, provided the relevant information in the general revision is identical to that in the advance amendment bulletin.

TABLE 1.—AFM REVISIONS

Airplane model	Shorts advance amendment bulletin	To AFM
SD3–30	1/2004, dated July 13, 2004	SBH.3.2, SBH.3.3, SBH.3.6, SBH.3.7, SBH.3.8, and SB.3.9.
SD3–60	1/2004, dated July 13, 2004	SB.4.3, SB.4.6, and SB.4.8.
SD3–60 SHERPA	1/2004, dated July 13, 2004	SB.5.2.

TABLE 1.—AFM REVISIONS—Continued

Airplane model	Shorts advance amendment bulletin	To AFM
SD3–SHERPA	1/2004, dated July 13, 2004	SB.6.2.

Revision of Airworthiness Limitation (AWL) Section

(g) Within 180 days after the effective date of this AD: Revise the AWL section of the Instructions for Continued Airworthiness by incorporating airplane maintenance manual (AMM) sections 5–20–01 and 5–20–02 as introduced by the Shorts temporary revisions (TR) specified in Table 2 of this AD into the AWL section of the AMMs for the airplane models specified in Table 2. Thereafter, except as provided by paragraph (i) of this AD, no alternative structural inspection intervals may be approved for the longitudinal skin joints in the fuselage pressure shell.

Note 3: The requirements of paragraph (g) of this AD may be done by inserting a copy of the applicable TR into the applicable AMM. When the TR has been included in general revisions of the AMM, the general revisions may be inserted in the AMM and the TR may be removed, provided the relevant information in the general revision is identical to that in the TR.

TABLE 2.—AMM TEMPORARY REVISIONS

Airplane model	Temporary revision	Dated	To AMM
SD3–30	TR330–AMM–13	June 21, 2004	SD3–30 AMM.
SD3–30	TR330–AMM–14	June 21, 2004	SD3–30 AMM.
SD3–60	TR360–AMM–33	July 27, 2004	SD3–60 AMM.
SD3–60	TR360–AMM–34	July 27, 2004	SD3–60 AMM.
SD3–60 SHERPA	TRSD360S–AMM–14	July 29, 2004	SD3–60 SHERPA AMM.
SD3–60 SHERPA	TRSD360S–AMM–15	July 29, 2004	SD3–60 SHERPA AMM.
SD3–SHERPA	TRSD3S–AMM–15	July 28, 2004	SD3 SHERPA AMM.
SD3–SHERPA	TRSD3S–AMM–16	July 28, 2004	SD3 SHERPA AMM.

Resistance Check, Inspection, and Jumper Installation

(h) Within 180 days after the effective date of this AD: Perform the insulation resistance check, general visual inspections, and bonding jumper wire installations; in accordance with Shorts Service Bulletin SD330–28–37, SD360–28–23, SD360 SHERPA–28–3, or SD3 SHERPA–28–2; all dated June 2004; as applicable. If any defect or damage is discovered during any inspection or check required by this AD, before further flight, repair the defect or damage using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (CAA) (or its delegated agent).

Note 4: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) British airworthiness directive G–2004–0021 R1, dated September 15, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use the applicable service information specified in Table 3, Table 4, and Table 5 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. (The document number of the advance amendment bulletins is listed only on page 1 of those documents.) The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland, 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.*

TABLE 3.—SHORTS TEMPORARY REVISIONS INCORPORATED BY REFERENCE

Temporary revision	Dated	To airplane maintenance manual
TR330–AMM–13	June 21, 2004	SD3–30.
TR330–AMM–14	June 21, 2004	SD3–30.
TR360–AMM–33	July 27, 2004	SD3–60.
TR360–AMM–34	July 27, 2004	SD3–60.
TRSD360S–AMM–14	July 29, 2004	SD3–60 SHERPA.
TRSD360S–AMM–15	July 29, 2004	SD3–60 SHERPA.
TRSD3S–AMM–15	July 28, 2004	SD3 SHERPA.
TRSD3S–AMM–16	July 28, 2004	SD3 SHERPA.

TABLE 4.—SHORTS ADVANCE AMENDMENT BULLETINS INCORPORATED BY REFERENCE

Advance amendment bulletin	To airplane flight manual
1/2004, dated July 13, 2004	SBH.3.2, SBH.3.3, SBH.3.6, SBH.3.7, SBH.3.8, and SB.3.9.
1/2004, dated July 13, 2004	SB.4.3, SB.4.6, and SB.4.8.
1/2004, dated July 13, 2004	SB.5.2.
1/2004, dated July 13, 2004	SB.6.2.

TABLE 5.—SHORTS SERVICE BULLETINS INCORPORATED BY REFERENCE

Service bulletin	Dated
SD330–28–37	June 2004.
SD360–28–23	June 2004.
SD360 SHERPA–28–3	June 2004.
SD3 SHERPA–28–2	June 2004.

Issued in Renton, Washington, on June 5, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5288 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23334; Directorate Identifier 2005–CE–53–AD; Amendment 39–14651; AD 2006–12–25]

RIN 2120–AA64

Airworthiness Directives; General Machine—Diecron, Inc. Actuator Nut Assembly for the Right Main Landing Gear Installed on Certain Raytheon Aircraft Company (Formerly Beech) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for General Machine—Diecron, Inc. (GMD) actuator nut assembly, part number (P/N) GMD115–810029–17 and P/N GMD115–810029–23, that are installed on certain Raytheon Aircraft Company (Raytheon) (formerly Beech) airplanes that are not equipped with a hydraulic main landing gear (MLG) or modified to a hydraulic MLG. This AD requires you to determine by maintenance records check and/or inspection whether any actuator nut assembly, P/N GMD115–810029–17 or P/N GMD115–810029–23, is installed on the right main MLG actuator, and, if installed, requires you to replace it with a new actuator nut assembly, P/N GMD115–810029–23B or FAA-approved equivalent P/N. This AD results from several reports of failures of the actuator nut assembly, P/N GMD115–810029–17 and P/N GMD115–810029–23. We are issuing this AD to prevent failure of the actuator nut assembly for the right MLG actuator, which could result in failure of the MLG. This failure could prevent the extension or retraction of the MLG.

DATES: This AD becomes effective on July 28, 2006.

As of July 28, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact General Machine—Diecron, Inc., 3131 U.S. Highway 41, Griffin, Georgia 30224, telephone: (770) 228–6200; facsimile: (770) 228–6299.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–23334; Directorate Identifier 2005–CE–53–AD.

FOR FURTHER INFORMATION CONTACT: Don Buckley, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30337–2748, telephone: (770) 703–6086; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

On January 30, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to the GMD actuator nut assembly, P/N GMD115–810029–17 or P/N GMD115–810029–23, that is installed on certain airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 3, 2006 (71 FR 5796). The NPRM proposed to require you to determine by maintenance records check and/or inspection whether any actuator nut assembly, P/N GMD115–810029–17 or P/N GMD115–810029–23, is installed on the right MLG actuator, and, if installed, would require you to replace it with a new actuator nut assembly, P/N GMD115–810029–23B or FAA-approved equivalent P/N.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Include the Raytheon (Military) Models A200 (C–12A) and A200 (C–12C) Airplanes in the List of "Airplanes Affected"

One commenter writes that the applicability of the proposed AD needs to be expanded. The commenter explains that the Raytheon military Models A200 (C–12A) and A200 (C–12C) airplanes with standard landing gear have the same actuator assemblies as the airplanes listed in the NPRM, and could have the affected P/N nut installed.

We disagree with the commenter that the applicability of the proposed AD needs to be expanded. Although a limited number of the affected actuator assemblies were installed on Models A200 (C–12A) and A200 (C–12C) airplanes, the military operates these airplanes and removed the affected parts from service before the issuance of the NPRM. Paragraph (e)(4) of this AD prohibits the subject actuator nut assembly from being installed on these airplanes in the future. The AD specifies that it applies to the subject actuator nut assembly "installed on, but not limited to" specific models listed.

We are not changing the final rule AD based on this comment.

Comment Issue No. 2: Clarify Applicability of AD by Identifying Raytheon as the Manufacturer of the Affected Airplane Models

Two commenters recommend that it should be stated at the beginning of the document that these defective parts are installed on Raytheon airplanes. The commenter explains that stating this early in the AD action would be better form and result in a more easily comprehended document.

The FAA agrees with the commenters. We will change the final rule to clearly identify that the affected actuator

assemblies are installed on certain Raytheon airplane models.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 1,629 airplanes in the U.S. registry.

We estimate the following costs to do the maintenance records check and/or inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 = $80	Not Applicable	$80	1,629 × $80 = $130,320.

We estimate the following costs to do any necessary replacements of the actuator nut assembly that would be required based on the results of this inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
4 work-hours × $80 = $320	$1,700	$2,020

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "Docket No. FAA–2005–23334; Directorate Identifier 2005–CE–53–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2006–12–25 General Machine—Diecron, Inc.: Amendment 39–14651; Docket No. FAA–2005–23334; Directorate Identifier 2005–CE–53–AD.

Effective Date

(a) This AD becomes effective on July 28, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD affects any actuator nut assembly, part number (P/N) GMD115–810029–17 or P/N GMD115–810029–23, for the right main landing gear (MLG) actuator installed on, but not limited to, the following Raytheon Aircraft Company (Raytheon) (formerly Beech) airplanes that are certificated in any category and not equipped with a hydraulic MLG or modified to a hydraulic MLG.

Models	Serial Nos.
(1) F90	LA–2 through LA–225 (except aircraft that incorporate Beech Kit No. 90–8011).
(2) 99, 99A, A99, and B99	U–1 through U–49 and U51 through U164 (except aircraft that incorporate Beech Kit No. 99–8010–1 or factory installed hydraulic landing gear).
(3) 100 and A100	B–1 through B–94, B–100 through B–204, and B–206 through B–247.
(4) B100	BE–1 through BE–137.

Models	Serial Nos.
(5) 200	BB–2, BB–6 through BB–733, BB–735 through BB–792, BB–794 through BB–828, BB–830 through BB–853, BB–872, BB–873, BB–892, BB–893, and BB–912 (except aircraft that incorporate Beech Kit No. 101–8018).
(6) B200	BB–734, BB–793, BB–829, BB–854 through BB–870, BB–874 through BB–891, BB–894, BB–896 through BB–911, BB–913 through BB–1157, BB–1159 through BB–1166, and BB–1168 through BB–1192 (except aircraft that incorporate Beech Kit No. 101–8018).
(7) 200T and B200T	BT–1 through BT–30 (except aircraft that incorporate Beech Kit No. 101–8018).
(8) 200C and B200C	BL–1 through BL–72 (except aircraft that incorporate Beech Kit No. 101–8018).
(9) 200CT and B200CT	BN–1 through BN–4 (except aircraft that incorporate Beech Kit No. 101–8018).
(10) A200CT (FWC–12D)	FG–1 and FG–2 (except aircraft that incorporate Beech Kit No. 101–8018).

Unsafe Condition

(d) This AD results from several reports of failures of the actuator nut assembly, P/N GMD115–810029–17 and P/N GMD115–810029–23, on the right MLG actuator. The actions specified in this AD are intended to prevent failure of the actuator nut assembly for the right MLG actuator, which could result in failure of the MLG. This failure could prevent the extension or retraction of the MLG.

Compliance

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Maintenance Records Check: (i) Check the maintenance records to determine whether the following replacements have been made: (A) Actuator nut assembly, P/N GMD115–810029–17, for the right MLG actuator; or (B) Actuator nut assembly, P/N GMD115–810029–23, for the right MLG actuator. (ii) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may make this check. You must make an entry into the aircraft records that shows compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within the next 50 hours time-in-service (TIS) or 30 calendar days after July 28, 2006 (the effective date of this AD), whichever occurs first, unless already done.	No special procedures necessary to check the maintenance records.
(2) If you find as a result of the check required by paragraph (e)(1) of this AD that there is no record of the specified assembly replacement, inspect the airplane for installation of the following: (i) Actuator nut assembly, P/N GMD115–810029–17, for the right MLG actuator; or (ii) Actuator nut assembly, P/N GMD115–810029–23, for the right MLG actuator. (iii) You may choose to do the inspection without doing the maintenance records check.	Within the next 50 hours TIS or 30 calendar days after July 28, 2006 (the effective date of this AD), whichever occurs first, unless already done.	Follow General Machine Diecron, Inc. Service Bulletin GM–D 32–30–01/102505, dated November 21, 2005.
(3) If during the check required by paragraph (e)(1) or the inspection required by paragraph (e)(2) of this AD, you find either actuator nut assembly, P/N GMD115–810029–17 or P/N GMD115–810029–23, for the right MLG actuator, replace the specific assembly, with a new actuator nut assembly, P/N GMD115–810029–23B or FAA-approved equivalent P/N.	Before further flight after the check required by paragraph (e)(1) or the inspection required by paragraph (e)(2) of this AD.	Follow General Machine Diecron, Inc. Service Bulletin GM–D 32–30–01/102505, dated November 21, 2005.
(4) Do not install any actuator nut assembly, P/N GMD115–810029–17 or P/N GMD115–810029–23, for the right MLG actuator.	As of July 28, 2006 (the effective date of this AD).	Not Applicable.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, ATTN: Don Buckley, Aerospace Engineer, FAA, Atlanta ACO, Airframe and Propulsion Branch, ACE–117A, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30337–2748, telephone: (770) 703–6086; facsimile: (770) 703–6097, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(g) You must do the actions required by this AD following the instructions in General Machine Diecron, Inc. Service Bulletin GM-D 32–30–01/102505, dated November 21, 2005. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact General Machine—Diecron, Inc., 3131 U.S. Highway 41, Griffin, Georgia 30224, telephone: (770) 228–6200; facsimile: (770) 228–6299. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–23334; Directorate Identifier 2005–CE–53–AD.

Issued in Kansas City, Missouri, on June 9, 2006.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5429 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–10–AD; Amendment 39–14650; AD 2006–12–24]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for General Electric Company (GE) CF6–45/–50 series turbofan engines. That AD currently requires an initial and repetitive on-wing visual inspection of the side links of the five-link forward mount assembly for cracks, and replacement of the side links and pylon attachment bolts and inspection of the fail-safe bolt and platform lug if the side links are cracked. That AD also requires a shop-level refurbishment of the side links as a terminating action to the on-wing inspection program. This ad requires inspecting and refurbishing the side link at every exposure of the side link. This AD also requires the same actions on certain part number side links installed on CF6–80A turbofan engines. This AD results from a report of a cracked side link. We are issuing this AD to prevent failure of the side links and possible engine separation from the airplane.

DATES: This AD becomes effective July 21, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 21, 2006.

ADDRESSES: You can get the service information identified in this AD from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246.

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

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (617) 238–7192; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CF6–45/–50 series turbofan engines. We published the proposed AD in the **Federal Register** on December 12, 2005 (70 FR 73391). That action proposed to require inspecting and refurbishing the side links of the five-link forward mount assembly at every exposure of the side link. That action also proposed to require the same actions on certain part number side links installed on CF6–80A turbofan engines.

Examining the AD Docket

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

Comments

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

Definition of Exposure

One commenter proposes that the definition of exposure be revised as follows: " * * * removal of one or more bolts attaching the side links to the fan frame front HPC case or removal of the bolt attaching the side link to the mount platform *while the engine is not installed.*" This commenter believes that the definition of exposure used in the proposed AD will create an undue burden on line maintenance operations, and will eliminate any on-wing maintenance on the link and associated hardware. They also believe the proposed definition will force operators to replace the link assembly even for bolt removal to facilitate other maintenance and unrelated minor discrepancies. We do not agree that the definition of exposure should be relaxed to facilitate on-wing maintenance. The opportunity for coating distress of the links occurs each time a bolt is removed, regardless of where or when the removal occurs. This definition of exposure protects against coating distress that can lead to stress corrosion cracking of the links. We did not change the AD.

Threshold Since Last Refurbishment

One commenter requests that a threshold since the last refurbishment be allowed and that exposure be further defined to allow for staggering of serviceable assemblies within a prescribed threshold since last refurbishment. This commenter believes that there may be instances where an operator staggers a serviceable mount assembly from one engine to another, without that assembly going into the shop. We do not agree that a threshold since the last refurbishment should be allowed to facilitate staggering of serviceable assemblies. The opportunity for coating distress occurs each time a side link bolt is removed, regardless of when the last refurbishment may have occurred. As noted above, this definition of exposure protects against coating distress that can lead to stress corrosion cracking of the links. We did not change the AD.

Clarification of Previous On-wing Inspection Requirement

One commenter requests clarification of the previous on-wing inspection requirement. This commenter notes that the original AD required an on-wing visual inspection and the proposed rule does not. They asked if this was intentional or an oversight. Although the proposed rule did not clearly state that the previous on-wing inspection requirement was being replaced by a shop-level inspection, the FAA's actions are intentional. The accomplishment instructions in the referenced service bulletins include fluorescent particle inspection or magnetic particle inspection as part of the refurbishment process required at each exposure. Experience proves that these in-shop inspections are more effective in detecting distress in the links than the previous on-wing visual inspection requirement. The requirement for refurbishment at each exposure in this final rule will prevent stress corrosion cracking of the links. We did not change the AD.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 195 engines installed on U.S. registered airplanes per year. We also estimate that it will take 8.0 workhours per engine to perform the actions, and that the average labor rate is $65 per workhour. This AD does not require parts. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $101,400 per year.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 95–ANE–10–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–9346 (60 FR 46758, September 8, 1995) and by adding a new airworthiness directive, Amendment 39–14650, to read as follows:

2006–12–24 General Electric Company: Amendment 39–14650. Docket No. 95–ANE–10–AD.

Effective Date

(a) This AD becomes effective July 21, 2006.

Affected ADs

(b) This AD supersedes AD 95–17–15, Amendment 39–9346.

Applicability

(c) This AD applies to General Electric (GE) CF6–45/–50 and CF6–80A turbofan engines with left-hand side links part numbers (P/Ns) 9204M94P01, 9204M94P03, and 9346M99P01, and right-hand side links, P/Ns 9204M94P02, 9204M94P04, and 9346M99P02, installed on the five-link forward engine mount assembly (also known as Configuration 2). These engines are installed on, but not limited to, Boeing DC10–15, DC10–30, 767, and 747 series airplanes and Airbus Industrie A300 and A310 series airplanes.

Unsafe Condition

(d) This AD results from a report of a cracked side link. We are issuing this AD to prevent failure of the side links and possible engine separation from the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed at every exposure of the side link.

Inspecting and Refurbishing the Side Links

(f) Inspect and refurbish each side link at every exposure of the side links. Use the following GE Aircraft Engines (GEAE) service bulletins (SBs):

(1) For CF6–45/–50 series engines, use 3.A. through 3.E. of the Accomplishment Instructions of GEAE SB CF6–50 S/B 72–1255, dated January 26, 2005.

(2) For CF6–80A series engines, use 3.A. through 3.E. of the Accomplishment Instructions of GEAE SB CF6–80A S/B 72–0797, dated January 26, 2005.

Definition of Exposure of Side Link

(g) A side link is exposed when one or more bolts that attach the side links to the fan frame—front high pressure compressor case are removed, or when the bolt attaching the side link to the mount platform is removed.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(i) You must use General Electric Aircraft Engines Service Bulletins CF6–50 S/B 72–1255, dated January 26, 2005, and CF6–80A S/B 72–0797, dated January 26, 2005 to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of these service bulletins in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy of this service information from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Related Information

(j) None.

Issued in Burlington, Massachusetts, on June 8, 2006.

Thomas Boudreau,

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

[FR Doc. 06–5426 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24173; Directorate Identifier 2005–NM–262–AD; Amendment 39–14652; AD 2006–12–26]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200, –300, and –300ER Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 777–200, –300, and –300ER series airplanes. This AD requires a one-time inspection of the first bonding jumper aft of the bulkhead fitting to detect damage or failure and to determine the mechanical integrity of its electrical bonding path, and repair if necessary; measuring the bonding resistance between the fitting for the fuel feed tube and the front spar in the left and right main fuel tanks, and repairing the bonding if necessary; and applying additional sealant to completely cover the bulkhead fittings inside the fuel tanks. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent arcing or sparking during a lightning strike at the interface between the bulkhead fittings of the engine fuel feed tube and the front spar inside the fuel tank. This arcing or sparking could provide a potential ignition source inside the fuel tank,

which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD becomes effective July 21, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 21, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6500; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 777 airplanes. That NPRM was published in the **Federal Register** on March 21, 2006 (71 FR 14126). That NPRM proposed to require a one-time inspection of the first bonding jumper aft of the bulkhead fitting to detect damage or failure and to determine the mechanical integrity of its electrical bonding path, and repair if necessary; measuring the bonding resistance between the fitting for the fuel feed tube and the front spar in the left and right main fuel tanks, and repairing the bonding if necessary; and applying additional sealant to completely cover the bulkhead fittings inside the fuel tanks.

Comments

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

Support for the NPRM

Boeing concurs with the NPRM.

Request To Revise the Service Bulletin

Japan Airlines (JAL) suggests that Boeing should revise Boeing Special Attention Service Bulletin 777–28–0044, Revision 1, dated December 20, 2005, to incorporate the repair instructions for the bonding path rather than having them separate from the service bulletin. (This service bulletin was referenced as the appropriate source of service information for accomplishing the actions in the NPRM.) JAL states that it would be simpler if the AD referred to the service bulletin for the whole work instructions, including all repair procedures.

We partially agree. We agree with JAL that having all repair procedures in one place can be simpler for operators. We do not agree that Boeing should revise its service bulletin for this reason, nor can we request a manufacturer to revise a service bulletin to make addressing an unsafe condition more convenient. Waiting to include a revised service bulletin in this action would delay addressing an unsafe condition. In addition, manufacturers' service information often refers to procedures in various maintenance manuals for a number of reasons (*e.g.*, to keep procedures in the service bulletin from becoming too cumbersome, or because the procedure is an industry best practice). In this case, the referenced service bulletin refers to Chapter 28–00–00 of the Boeing 777 Aircraft Maintenance Manual (AMM) for doing the general visual inspection of the first bonding jumper aft of the bulkhead fitting to detect damage or failure and to determine the mechanical integrity of its electrical bonding path. We assume some of JAL's issue stems from the statement in paragraph (f)(1) of the NPRM that these conditions must be repaired according to a method we approve, and that Chapter 28–00–00 of the Boeing 777 AMM is one approved method. We included that statement in paragraph (f)(1) because although the service bulletin implies repair for the bonding path in accordance with the AMM chapter, the statement in the service bulletin is not explicit and could be confusing. We have not changed the final rule in this regard.

Request To Revise Cost Estimate

Air Transport Association (ATA), on behalf of American Airlines, requests that we revise the cost estimate. American Airlines quotes an "AD memo" that reads "FAA estimates that 46 airplanes of U.S. registry would be affected by this rulemaking." American Airlines points out that it has 45 affected airplanes, and that there are three other U.S. operators that also have affected airplanes. American Airlines also does not concur with the statement in the NPRM that the cost of the proposed actions would be $640 per airplane for eight hours of work. Although American Airlines understands that the FAA does not consider access time when calculating the cost to comply with an AD, American Airlines believes it is important to note that this inspection and sealant application requires complete draining and venting of the fuel tanks, which alone could take eight hours. In total, American Airlines estimates the inspection and sealant application will require approximately 48 work hours per airplane at a cost of $202,586.

We partially agree with the commenters. We agree that there are more than 45 airplanes of U.S. registry affected by the actions in the NPRM. We are not familiar with an "AD memo," which could have been a summary of the NPRM initiated by another source. The number of affected airplanes listed in the NPRM is 131 rather than 45. We have revised the "Costs of Compliance" paragraph to reflect this information.

We do not agree with revising the number of work hours in the cost estimate. As American Airlines points out, we do not consider access time when calculating the cost of an AD. The cost information below describes only the direct costs of the specific actions required by this AD. Based on the best data available, the manufacturer provided the number of work hours (8) necessary to do the required actions. This number represents the time necessary to perform only the actions actually required by this AD. We recognize that, in doing the actions required by an AD, operators may incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions excludes the costs of the time required to gain access and close up, as American points out, but it also excludes other incidental costs such as the time necessary for planning, or time for other administrative actions. All of these costs may vary significantly among operators and are almost impossible to calculate. We have not changed the final rule in this regard.

Explanation of Change in Applicability

We have revised the applicability of this final rule to match the most current

type certificate data sheet for the affected airplanes.

Conclusion

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

Costs of Compliance

There are about 497 airplanes of the affected design in the worldwide fleet. This AD affects about 131 airplanes of U.S. registry. The actions take about 8 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $83,840, or $640 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–12–26 Boeing: Amendment 39–14652. Docket No. FAA–2006–24173; Directorate Identifier 2005–NM–262–AD.

Effective Date

(a) This AD becomes effective July 21, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200, –300, and –300ER series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 777–28–0044, Revision 1, dated December 20, 2005.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent arcing or sparking during a lightning strike at the interface between the bulkhead fittings of the engine fuel feed tube and the front spar inside the fuel tank. This arcing or sparking could provide a potential ignition source inside the fuel tank, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Inspection and Corrective Actions

(f) Within 60 months after the effective date of this AD, do the actions specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD for the bulkhead fittings of the engine fuel feed tube for the left and right main fuel tanks. Do all actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–28–0044, Revision 1, dated December 20, 2005.

(1) Do a general visual inspection of the first bonding jumper aft of the bulkhead fitting to detect damage or failure and to determine the mechanical integrity of its electrical bonding path. If any damage or failure is found during this inspection or if the mechanical integrity of the bonding path is compromised: Before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Chapter 28–00–00 of the Boeing 777 Aircraft Maintenance Manual is one approved method.

(2) Measure the bonding resistance between the fitting for the fuel feed tube and the front spar in the left main fuel tank. If the bonding resistance exceeds 0.001 ohm: Before further flight, repair the bonding in accordance with the service bulletin.

(3) Apply additional sealant to completely cover the bulkhead fitting inside the fuel tank.

Actions Accomplished in Accordance With Previous Revision of Service Bulletin

(g) Actions done before the effective date of this AD in accordance with Boeing Special Attention Service bulletin 777–28–0044, dated February 3, 2005, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(i) You must use Boeing Special Attention Service Bulletin 777–28–0044, Revision 1, dated December 20, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 8, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5428 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21331; Directorate Identifier 2005–NE–07–AD; Amendment 39–14604; AD 2006–10–21]

RIN 2120–AA64

Airworthiness Directives; Engine Components Incorporated (ECi) Reciprocating Engine Connecting Rods; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2006–10–21. That AD applies to Engine Components Incorporated (ECi) reciprocating engine connecting rods. We published AD 2006–10–21 in the **Federal Register** on May 18, 2006, (71 FR 28769). An incorrect amendment number exists under the § 39.13 amended heading. This document corrects the amendment number. In all other respects, the original document remains the same.

DATES: *Effective Date:* Effective June 16, 2006.

FOR FURTHER INFORMATION CONTACT: Peter Hakala, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76193; telephone (817) 222–5145; fax (817) 222–5785.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc. 06–4046, that applies to Engine Components Incorporated (ECi) reciprocating engine connecting rods was published in the **Federal Register** on May 18, 2006, (71 FR 28769). The following correction is needed:

§ 39.13 [Corrected]

■ On page 28771, in the third column, under § 39.13 [Amended], in the fifth and sixth lines, "Amendment 39–14605" is corrected to read "Amendment 39–14604".

Issued in Burlington, MA, on June 9, 2006.

Thomas A. Boudreau,

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

[FR Doc. 06–5427 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25030; Directorate Identifier 2006–NM–109–AD; Amendment 39–14649; AD 2006–12–23]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The existing AD currently requires initial and repetitive inspections of the elevator tab assembly to find any damage or discrepancy; and corrective actions if necessary. This new AD adds certain new inspections and removes certain existing inspections. This AD results from additional reports of airframe vibrations of the elevator tab during flight on airplanes inspected per the existing AD; subsequently, considerable damage was done to the elevator tab, elevator, and horizontal stabilizer. In several incidents, a portion of the elevator tab separated from the airplane. We are issuing this AD to prevent excessive in-flight vibrations of the elevator tab, which could lead to loss of the elevator tab and consequent loss of controllability of the airplane.

DATES: This AD becomes effective July 3, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 3, 2006.

On February 19, 2002 (67 FR 1603, January 14, 2002), the Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 737–55A1070, Revision 1, including appendices A, B, and C, dated May 10, 2001.

We must receive any comments on this AD by August 15, 2006.

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

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

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

You may examine the contents of 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., Room PL–401, Washington, DC. This docket number is FAA–2006–25030; the directorate identifier for this docket is 2006–NM–109–AD.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On December 28, 2001, we issued AD 2002–01–01, amendment 39–12592 (67 FR 1603, January 14, 2002). That AD applies to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That AD requires initial and repetitive inspections of the elevator tab assembly to find any damage or discrepancy; and corrective actions if necessary. That AD resulted from several reports indicating high-frequency airframe vibrations of the elevator tab during flight. The actions specified in that AD are intended to prevent excessive in-flight vibrations of the elevator tab, which could lead to loss of the elevator tab and consequent loss of controllability of the airplane.

Actions Since AD was Issued

Since we issued AD 2002–01–01, we have received additional reports of airframe vibrations of the elevator tab during flight on airplanes inspected per

that AD. Subsequently, considerable damage was done to the elevator tab, elevator, and horizontal stabilizer. In several incidents, a portion of the elevator tab separated from the airplane. The vibrations of the elevator tab are due to wear of the hinges and the control system, which causes the assembly to loosen. Improper maintenance can also be a factor. Excessive in-flight vibrations of the elevator tab could lead to loss of the elevator tab and consequent loss of controllability of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–55A1070, Revision 2, dated April 20, 2006. (Revision 1 of the service bulletin was cited in the existing AD as the appropriate source of service information for accomplishing the required actions.) Revision 2 is similar to Revision 1; however, among other things, Revision 2 removes procedures for elevator tab free-play checks with the clamped hinge fitting bolt and the nut loose. Revision 2 also adds procedures for detailed inspections of the tab mechanism, and various inspections of the tab mast fitting.

In addition, the corrective actions specified in Revision 2 are more comprehensive than those given in Revision 1. Specifically, the corrective actions include, among other things: repairing, replacing, reworking and checking tolerances of the reworked configuration to confirm the adequacy of certain corrective actions, and torquing certain components, as applicable. The corrective actions also specify the replacement of any damaged or discrepant part with a new part, or repair, as applicable. Discrepancies include loose or missing parts or excessive wear. The service bulletin recommends contacting the manufacturer for repair instructions. The service bulletin also recommends reporting the inspection results to the manufacturer.

The compliance times for the initial inspections are as follows:

- Before the accumulation of 4,500 total flight cycles for airplanes on which the inspections specified in Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001, have not been done;
- Within 1,500 flight cycles or 2,000 flight hours, whichever is first, after the last inspection completed in accordance with Boeing Service Bulletin 737–55A1070, Revision 1, for airplanes on which the inspections specified in the service bulletin have been done; and
- Within 1,500 flight cycles or 2,000 flight hours, whichever is first, after the last inspection completed in accordance with Boeing Service Bulletin 737–55A1070, Revision 1, for the one-time inspections for certain airplanes with configurations of graphite elevators with aluminum/fiberglass tabs.

For all airplanes, the compliance times for the repetitive inspections range between 1,500 flight cycles or 2,000 flight hours (whichever is first), and 4,500 flight cycles or 6,000 flight hours (whichever is first), depending on the inspection type. The compliance time for accomplishing certain corrective actions is before further flight.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to supersede AD 2002–01–01. This new AD retains the requirements of the existing AD. This AD also requires accomplishing the actions specified in Revision 2 of the service information described previously, except as discussed under "Differences Between AD and Service Bulletin."

Differences Between AD and Service Bulletin

Service Bulletin 737–55A1070, Revision 2, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this AD requires repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

The service bulletin specifies that if the total tab hinge free-play sum is more than a certain measurement, the corrective action may be done either within 30 days after the inspection, or before the next revenue flight, depending on the measurement. However, this AD requires that all corrective actions be done before further flight.

Where the service bulletin specifies reporting the inspection results to the manufacturer, this AD does not require such reporting.

Although the service bulletin uses the term "check" for certain inspections, this AD uses the term "inspection."

Clarification of Grace Period

Footnote (a) in Table 1 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–55A1070, Revision 2, specifies the following: "For airplanes on which the initial actions required by Table 1 are due within 30 days after the release date of Service Bulletin 737–55A1070, Revision 2, the inspections and corrective actions defined by Service Bulletin 737–55A1070 Rev. 1 may be used." Paragraph (l) of this AD provides a corresponding 30-day deferral before Revision 2 must be used to do the initial actions, except that the 30-day time frame begins at the effective date of this AD.

Changes to Existing AD

This AD retains certain requirements of AD 2002–01–01. Since AD 2002–01–01 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2002–01–01	Corresponding requirement in this AD
Paragraph (a)	paragraph (f).
Paragraph (b)	paragraph (g).
Paragraph (c)	paragraph (h).

We have revised paragraph (d) of the existing AD to clarify the appropriate procedure for notifying the principal inspector before using any approved Alternative Methods of Compliance (AMOC) on any airplane to which the AMOC applies.

We have changed all references to a "detailed visual inspection" in the existing AD to "detailed inspection" in this AD.

In addition, we have revised paragraphs (a)(1) and (a)(2) of the existing AD (paragraphs (f)(1) and (f)(2) of this AD) to include a reference to the effective date of the existing AD. This information was omitted inadvertently from the existing AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and

was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include "Docket No. FAA–2006–25030; Directorate Identifier 2006–NM–109–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

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 the regulation:

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

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

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

We prepared 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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12592 (67 FR 1603, January 14, 2002) and adding the following new airworthiness directive (AD):

2006–12–23 Boeing: Amendment 39–14649. Docket No. FAA–2006–25030; Directorate Identifier 2006–NM–109–AD;

Effective Date

(a) This AD becomes effective July 3, 2006.

Affected ADs

(b) This AD supersedes AD 2002–01–01.

Applicability

(c) This AD applies to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, line numbers 1 through 3132 inclusive, certificated in any category.

Unsafe Condition

(d) This AD results from additional reports of airframe vibrations of the elevator tab during flight on airplanes inspected per the existing AD; subsequently, considerable damage was done to the elevator tab, elevator, and horizontal stabilizer. In several incidents, a portion of the elevator tab separated from the airplane. We are issuing this AD to prevent excessive in-flight vibrations of the elevator tab, which could lead to loss of the elevator tab and consequent loss of controllability of the airplane.

Compliance

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

Restatement of the Requirements of AD 2002–01–01

Initial/Repetitive Inspections

(f) Do the applicable initial detailed/free-play inspections of the elevator tab assembly on the left and right sides of the airplane to find any damage or discrepancy per Work Package I of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001; at the times specified in paragraph (f)(1) or (f)(2) of this AD, as applicable. Repeat the free-play inspections after that at intervals not to exceed 1,500 flight cycles or 2,000 flight hours, whichever comes first, per either Work Package II or Work Package III of the service bulletin, until paragraph (i) of this AD has been accomplished.

Note 1: There is a one-way interchangeability between the free-play inspections specified in Work Packages II and III. The repetitive free-play inspections specified in Work Package II can be replaced by the repetitive free-play inspections specified in Work Package III at the repetitive inspection intervals specified in paragraph (f) of this AD. But the repetitive free-play inspections specified in Work Package III cannot be replaced by the repetitive free-play inspections specified in Work Package II.

(1) For airplanes having less than 4,500 total flight cycles as of February 19, 2002 (the effective date of AD 2002–01–01): Before the accumulation of 4,500 total flight cycles or within 120 days after February 19, 2002, whichever comes later.

(2) For airplanes having 4,500 or more total flight cycles as of February 19, 2002: Do the inspections at the times specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, as applicable.

(i) Within 120 days after February 19, 2002.

(ii) If the initial inspections were done before February 19, 2002, per Boeing All Operator Telex M–7200–00–00034, dated February 15, 2000: Within 1,500 flight cycles or 2,000 flight hours after February 19, 2002, whichever comes later.

Note 2: Initial inspections done before February 19, 2002, per Boeing Alert Service Bulletin 737–55A1070, dated January 13,

2000, are considered acceptable for compliance with the initial inspections required by paragraph (f) of this AD.

(g) Within 4,500 flight cycles or 6,000 flight hours, whichever comes first, after doing the initial inspections required by paragraph (f) of this AD: Do the free-play inspections of the elevator tab assembly on the left and right sides of the airplane to find any damage or discrepancy per Work Package III of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001. Repeat the inspections after that at intervals not to exceed 4,500 flight cycles or 6,000 flight hours, whichever comes first, until paragraph (i) of this AD has been accomplished.

Corrective Actions

(h) If any damage or discrepancy is found after doing any inspection required by paragraph (f) or (g) of this AD, before further flight, do the applicable corrective action per the Accomplishment Instructions of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001.

New Requirements of This AD

Initial/Repetitive Inspections/Corrective Actions

(i) Do the applicable inspections of the elevator tab assembly on the left and right sides of the airplane to find any damage or discrepancy by doing all the actions, including rework and all corrective actions, as specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1070, Revision 2, dated April 20, 2006, except as provided by paragraphs (j) and (k) of this AD. Do the applicable actions at the applicable time specified in Table 1, Table 2, or Table 3 of paragraph 1.E., "Compliance," of the service bulletin; except that where the service bulletin specifies a time frame "after the release date" of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD. All corrective actions must be done before further flight. Repeat the inspections specified in Table 3 of paragraph 1.E., "Compliance," of the service bulletin at the applicable time specified in the table. Accomplishing the actions required by paragraph (i) of this AD ends the requirements of paragraphs (f), (g), and (h) of this AD.

(j) If any damage or discrepancy is found during any inspection required by paragraph (i) of this AD, and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph of (m) of this AD.

(k) Where Boeing Alert Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001, or Revision 2, dated April 20, 2006, specifies reporting the inspection results to the manufacturer, this AD does not require such reporting.

Actions Done in Accordance With Revision 1 of Service Bulletin

(l) Footnote (a) in Table 1 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–55A1070, Revision 2, specifies the following: "For airplanes on which the initial actions required by Table 1 are due within 30 days after the release date of Service Bulletin 737–55A1070, Revision 2, the inspections and corrective actions defined by Service Bulletin 737–55A1070 Rev. 1 may be used." This paragraph of this AD provides a corresponding 30-day deferral before Revision 2 must be used to do the initial actions, except that the 30-day time frame begins at the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) AMOCs approved previously in accordance with AD 2002–01–01, are approved as AMOCs for the corresponding provisions of paragraphs (f), (g), and (h) of this AD.

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

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

Material Incorporated by Reference

(n) You must use Boeing Service Bulletin 737–55A1070, Revision 1, including appendices A, B, and C, dated May 10, 2001; or Boeing Alert Service Bulletin 737–55A1070, Revision 2, dated April 20, 2006; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 737–55A1070, Revision 2, dated April 20, 2006, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On February 19, 2002 (67 FR 1603, January 14, 2002), the Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 737–55A1070, Revision 1, including appendices A, B, and C, dated May 10, 2001.

(3) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on June 7, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5430 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24949; Directorate Identifier 2006–NM–110–AD; Amendment 39–14626; AD 2006–12–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A318, A319, A320, and A321 airplanes. This AD requires inspecting to determine the part number and serial number of the fuel tank boost pumps and, for airplanes with affected pumps, revising the Airplane Flight Manual (AFM) and the FAA-approved maintenance program. This AD also provides for optional terminating action for compliance with the revisions to the AFM and the maintenance program. This AD results from a report that a fuel tank boost pump failed in service, due to a detached screw of the boost pump housing that created a short circuit between the stator and rotor of the boost pump motor and tripped a circuit breaker. We are issuing this AD to ensure that the flightcrew is aware of procedures to prevent the presence of a combustible air-fuel mixture in the fuel tank boost pump, which, in the event of electrical arcing in the pump motor, could result in an explosion and loss of the airplane.

DATES: This AD becomes effective July 3, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 3, 2006.

We must receive comments on this AD by August 15, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the

instructions for sending your comments electronically.

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

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA) notified us that an unsafe condition may exist on certain Airbus Model A318, A319, A320, and A321 airplanes. The EASA advises that an operator reported the failure of a fuel tank boost pump in service. Subsequent investigation revealed that one of two screws that hold the gas return connector to the top of the boost pump housing had become unscrewed. The screw fell into the boost pump motor and created a short circuit between the stator and rotor, which caused a circuit breaker to trip.

It was determined from further investigation that the screw came loose because of an inadequate screw locking mechanism and because the screw had not been tightened to the correct torque value. This failure mode was not identified during the design review conducted by the manufacturer in accordance with Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83). This condition, if not corrected, could lead to a screw becoming detached, which could compromise the integrity of the explosion-proof housing of the boost pump motor and create a potential ignition source. We are issuing this AD to ensure that the flightcrew is aware of procedures to prevent the presence of a combustible air-fuel mixture in the fuel tank boost pump, which, in the event of electrical arcing in the pump motor, could result in an explosion and loss of the airplane.

Relevant Service Information

Airbus has issued Temporary Revision (TR) 4.03.00/28, dated May 4, 2006. The TR describes a revision to the Airbus A318/A319/A320/A321 AFM. The revision specifies conditions under which the center tank fuel boost pumps must be turned off to ensure that the center tank fuel boost pumps remain immersed in fuel during flight.

The EASA mandated the TR to ensure that the center fuel tank boost pumps are immersed in fuel at all times during flight. The EASA also mandated "AFM and Airworthiness limitations" to ensure that the pumps are turned off during refueling and that the pumps are immersed in fuel at all times during ground fuel transfer and defueling. The EASA issued emergency airworthiness directive 2006–0106–E, dated May 2, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, "Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness," dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to ensure that the flightcrew is aware of procedures to prevent the presence of a combustible air-fuel mixture in the fuel tank boost pump, which, in the event of electrical arcing in the pump motor, could result in an explosion and loss of the airplane. This AD requires inspecting to determine the part number and serial number of the fuel tank boost pumps and, for airplanes with affected pumps, revising the AFM to require including the information in the TR, and revising the AFM and the FAA-approved maintenance program to mandate the limitations described earlier. This AD also provides for optional terminating action for compliance with the revisions to the AFM and the maintenance program.

Differences Between the EASA Emergency Airworthiness Directive and This AD

The EASA emergency airworthiness directive specifies to revise the AFM "from the effective date of this AD;" however, this AD requires revising the AFM within 10 days after the effective date of this AD.

The EASA emergency airworthiness directive applies to Airbus Model A318, A319, A320, and A321 airplanes equipped with Eaton Aerospace Limited fuel pumps, having part number (P/N) 568–1–27202–005 with serial number (S/N) 6137 and subsequent. However, this AD applies to all Model A318, A319, A320, and A321 airplanes, and requires that operators perform an inspection to determine the P/N and S/N of the fuel tank boost pumps within 10 days after the effective date of this AD.

In addition, the EASA emergency airworthiness directive does not specify a terminating action; however, this AD specifies that replacing all subject fuel tank boost pumps with boost pumps not having the identified P/N and S/N is acceptable as an optional terminating action for compliance with the revisions specified for the AFM and maintenance program revisions.

Interim Action

We consider this AD interim action. If final action is later identified, we may consider further rulemaking then.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include "Docket No. FAA–2006–24949; Directorate Identifier 2006–NM–110–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

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 the regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–12–02 Airbus: Amendment 39–14626. Docket No. FAA–2006–24949; Directorate Identifier 2006–NM–110–AD.

Effective Date

(a) This AD becomes effective July 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A318, A319, A320, and A321 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report that a fuel tank boost pump failed in service, due to a detached screw of the boost pump housing that created a short circuit between the stator and rotor of the boost pump motor and tripped a circuit breaker. We are issuing this AD to ensure that the flightcrew is aware of procedures to prevent the presence of a combustible air-fuel mixture in the fuel tank boost pump, which, in the event of electrical arcing in the pump motor, could result in an explosion and loss of the airplane.

Compliance

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

Part and Serial Number Inspection

(f) Within 10 days after the effective date of this AD, inspect to determine the part number (P/N) and serial number (S/N) of each fuel tank boost pump installed in the wing and center fuel tanks. A review of maintenance records may be performed instead of the required inspection if the P/N and S/N of the fuel boost pump can be conclusively determined from that review. For any airplane not equipped with any Eaton Aerospace Limited (formerly FR–HITEMP Limited) fuel pump having P/N 568–1–27202–005 with S/N 6137 and subsequent: No further action is required by this AD for that airplane except as described in paragraph (i) of this AD.

Revisions to the Airplane Flight Manual (AFM) and the Maintenance Program

(g) For airplanes equipped with one or more Eaton Aerospace Limited (formerly FR–HITEMP Limited) fuel boost pumps, having P/N 568–1–27202–005 with S/N 6137 and subsequent: Prior to further flight after accomplishing the inspection required by paragraph (f) of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Revise the Limitations section of the Airbus A318/A319/A320/A321 AFM and the FAA-approved maintenance program by incorporating the following. This may be accomplished by inserting copies of this AD into the AFM and the maintenance program.

"Apply the following procedure at each fuel loading:

Refueling:

Before refueling, all pumps must be turned off, in order to prevent them from automatically starting during the refueling process.

Ground fuel transfer:

For all aircraft, do not start a fuel transfer from any wing tank, if it contains less than 700 kg (1550 lb) of fuel.

For A318, A319, and A320 aircraft with a center tank, do not start a fuel transfer from the center tank, if it contains less than 2,000 kg (4,500 lb) of fuel.

If a tank has less than the required quantity, it is necessary to add fuel (via a transfer from another tank or refueling) to enable a transfer to take place.

Defueling:

For all aircraft, when defueling the wings, do not start the fuel pumps if the fuel quantity in the inner tank (wing tank for A321) is below 700 kg (1,550 lb). If the fuel on the aircraft is not sufficient to achieve the required fuel distribution, then transfer fuel or refuel the aircraft to obtain the required fuel quantity in the wing tank.

For A318, A319, and A320 aircraft with a center tank, when performing a pressure defuel of the center tank, make sure that the center tank contains at least 2,000 kg (4,500 lb) of fuel. If it has less than the required quantity, then transfer fuel to the center tank. Defuel the aircraft normally, and turn OFF the center tank pumps immediately after the FAULT light on the corresponding pushbutton-switch comes on."

(2) Revise the Limitations section of the AFM to incorporate the changes specified in Airbus Temporary Revision (TR) 4.03.00/28, dated May 4, 2006. This may be accomplished by inserting a copy of the TR into the AFM. When general revisions of the AFM have been issued that incorporate the revisions specified in the TR, the copy of the TR may be removed from the AFM, provided the relevant information in the general revision is identical to that in TR 4.03.00/28.

Optional Terminating Action

(h) Replacement of all subject fuel boost pumps on any airplane with boost pumps having a P/N other than P/N 568–1–27202–005; or with boost pumps, P/N 568–1–27202–005, having a S/N other than 6137 and subsequent; constitutes terminating action for this AD, and the limitations required by paragraph (g) of this AD may be removed from the AFM and the maintenance program for that airplane.

Parts Installation

(i) As of the effective date of this AD, no person may install a boost pump, P/N 568–1–27202–005, having S/N 6137 and subsequent, on any airplane.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) The European Aviation Safety Agency (EASA) emergency airworthiness directive 2006–0106–E, dated May 2, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Airbus Temporary Revision 4.03.00/28, dated May 4, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. (The approval date of Airbus Temporary Revision 4.03.00/28 is only indicated on page one of the document.) The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 7, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5425 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24431; Directorate Identifier 2006–NM–011–AD; Amendment 39–14648; AD 2006–12–22]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A319, A320, and A321 airplanes. This AD requires a detailed inspection for cracks and marks on the carbon blades of the ram air turbine (RAT), and replacement of the RAT with a new or serviceable RAT if necessary. This AD results from a report of three chord-wise cracks on the aft side of one carbon blade of a certain RAT. We are issuing this AD to detect and correct cracks and/or marks on the RAT carbon blades, which could result in reduced structural integrity of the carbon blade, and consequent loss of the RAT as a source of hydraulic and electrical power in an emergency.

DATES: This AD becomes effective July 21, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 21, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A319, A320, and A321 airplanes. That NPRM was published in the **Federal Register** on April 13, 2006 (71 FR 19136). That NPRM proposed to require a detailed inspection for cracks and marks on the carbon blades of the ram air turbine (RAT), and replacement of the RAT with a new or serviceable RAT if necessary.

Comments

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

Conclusion

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

Costs of Compliance

This AD will affect about 34 airplanes of U.S. registry. The required inspection will take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is $2,720, or $80 per airplane.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations

for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–12–22 Airbus: Amendment 39–14648. Docket No. FAA–2006–24431; Directorate Identifier 2006–NM–011–AD.

Effective Date

(a) This AD becomes effective July 21, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to airplanes identified in Table 1 of this AD, certificated in any category; except those airplanes on which no modification/replacement of the ram air turbine (RAT) has been done since incorporating Airbus modification 27014 (installation of a Sundstrand RAT, part number (P/N) 766352) or 28413 (reinstallation of the Dowty RAT) in production.

TABLE 1.—APPLICABILITY

Airbus model	Equipped with
(1) A320 airplanes	A Sundstrand RAT, P/N 762308, installed by incorporating Airbus modification 27189 in production.
(2) A319 and A321 airplanes	A Sundstrand RAT, P/N 762308, installed by incorporating Airbus modification 25364 in production or Airbus Service Bulletin A320–29–1075 in service.

Unsafe Condition

(d) This AD results from a report of three chord-wise cracks on the aft side of one carbon blade of a certain RAT. We are issuing this AD to detect and correct cracks and/or marks on the RAT carbon blades, which could result in reduced structural integrity of the carbon blade, and consequent loss of the RAT as a source of hydraulic and electrical power in an emergency.

Compliance

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

Inspection and Replacement

(f) Within 600 flight hours after the effective date of this AD, do a detailed inspection for cracks and marks on the carbon blades of the RAT, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1124, dated November 23, 2005. If any crack or mark is found to be outside the limits specified in the service bulletin, before further flight, replace the RAT with a new or serviceable RAT in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Parts Installation

(g) As of the effective date of this AD, no person may install a Sundstrand RAT, P/N 762308, on any airplane, unless it has been inspected in accordance with paragraph (f) of this AD and found to be within the limits specified in the referenced service bulletin.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) French airworthiness directive F–2005–212, issued December 21, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A320–29–1124, dated November 23, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 7, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5424 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4062 and 4063

RIN 1212–AB03

Liability Pursuant to Section 4062(e) of ERISA

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule provides a formula for computing liability under section 4063(b) of the Employee Retirement Income Security Act of 1974 ("ERISA") when there is a substantial cessation of operations by an employer as described by section 4062(e) of ERISA. That section provides, among other things, that when a section 4062(e) event occurs, liability arises under section 4063 of ERISA. However, the method described in section 4063 for determining liability is impracticable when applied to a section 4062(e) event. This rule, which is narrow in scope, provides a practicable and transparent formula for calculating employer liability when a section 4062(e) event occurs. This rulemaking is part of the PBGC's ongoing effort to streamline regulation and improve administration of the pension insurance program.

EFFECTIVE DATE: July 17, 2006. For a discussion of applicability of these amendments, see the Applicability section in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, Legislative and Regulatory Department, or James L. Beller, Jr., Attorney, Legislative and Regulatory Department, PBGC, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users should call the Federal relay service by dialing 711 and ask for 202–326–4024.)

SUPPLEMENTARY INFORMATION: On February 25, 2005, (at 70 FR 9258), the Pension Benefit Guaranty Corporation (PBGC) published a proposed rule modifying 29 CFR parts 4062 (Liability for Termination of Single-employer Plans) and 4063 (Withdrawal Liability; Plans under Multiple Controlled Groups). Six comment letters were received on the proposed rule and are addressed below. The regulation is being issued substantially as proposed with one clarification.

Section 4062(e) of ERISA provides special rules that apply when "an employer ceases operations at a facility in any location and, as a result of such cessation of operations, more than 20 percent of the total number of his employees who are participants under a plan established and maintained by him are separated from employment" (a "section 4062(e) event"). In the case of a section 4062(e) event, the employer "shall be treated with respect to that plan as if he were a substantial employer under a plan under which more than one employer makes contributions and the provisions of §§ 4063, 4064, and 4065 shall apply." [1]

Thus, if a section 4062(e) event occurs, the provisions of ERISA section 4063 (among other provisions) apply to the employer. Section 4063(b) imposes liability upon a substantial employer that withdraws from a multiple employer plan. This section 4063(b) liability represents the withdrawing employer's share of the liability to the PBGC under section 4062(b) that would arise if the plan were to terminate without enough assets to pay all benefit liabilities. The section 4063(b) liability payment made by the employer is held in escrow by the PBGC for the benefit of the plan. If the plan terminates within five years, the section 4063(b) liability payment is treated as part of the plan's assets. If the plan does not terminate within five years, the liability payment is returned to the employer. The statute also provides that, in lieu of the liability payment, the contributing sponsor may be required to furnish a bond to the PBGC in an amount not exceeding 150% of the section 4063(b) liability.

The statute also specifies a method of computing the amount of the section 4063(b) liability. Section 4063(b) provides that "[t]he amount of liability shall be computed on the basis of an amount determined by the [PBGC] to be the amount described in section 4062 for the entire plan, as if the plan had been terminated by the [PBGC] on the date of the withdrawal, multiplied by a fraction (1) the numerator of which is the total amount required to be contributed to the plan by such contributing sponsor for the last 5 years ending prior to the withdrawal, and (2) the denominator of which is the total amount required to be contributed to the plan by all contributing sponsors for such last 5 years."

In sum, section 4063(b) imposes liability and provides a method for determining the amount of that liability—*i.e.*, for determining the withdrawing employer's portion of the liability to the PBGC under section 4062(b) that would arise if the plan terminated.

Section 4062(e) provides that, when a section 4062(e) event occurs, the employer is treated as a substantial employer under a multiple employer plan. Thus, section 4062(e) creates liability that is analogous to the section 4063(b) liability arising when a substantial employer withdraws from a multiple employer plan. Section 4062(e) does not, however, provide any details as to how this analogy is to be implemented—*i.e.*, how the liability is to be apportioned with respect to the cessation of operations.

As explained above, when a substantial employer withdraws from a multiple employer plan, section 4063(b) allocates liability to that withdrawing employer based upon the ratio of the employer's required contributions to all required contributions for the five years preceding the withdrawal. The PBGC has found, in general, that application of this statutory allocation formula is relatively straightforward when determining the liability of a withdrawing substantial employer from a multiple employer plan because it is generally easy to verify what contributions were required to be made by the withdrawing employer and what contributions were required to be made by all of the contributing employers.[2]

In contrast, when there is a section 4062(e) event, there is by definition only one employer that contributes to the plan. When there is only one employer, the numerator and denominator used to determine the liability under section 4063(b) would always be equal. Thus, the literal application of the allocation method described in section 4063(b) to determine the liability arising upon a section 4062(e) event is impracticable. Instead, the PBGC has been using the method prescribed in this rule to determine that liability on a case-by-case basis.

Section 4063(b) of ERISA provides that "in addition to and in lieu of" the manner of computing the liability

[1] A section 4062(e) event is similar to an active participant reduction reportable under part 4043. Often (but not always), a facility closing that results in a section 4062(e) event also results in a reportable event described in 29 CFR 4043.21 (active participant reduction). The reporting requirements for these two types of events are separate.

[2] When there have been no required contributions for the plan for the past five years, the contribution method results in an undefined fraction of zero divided by zero. This presents a problem for determining liability under the contribution method of section 4063 in the context of a section 4062(e) event.

prescribed in that provision, the PBGC "may also determine the liability on any other equitable basis prescribed by the [PBGC] in regulations." Pursuant to that authority, the PBGC is prescribing in this rule a simple, practicable, and equitable method for determining the liability for a section 4062(e) event. Specifically, under this rule, the section 4062(e) liability equals the liability under section 4062(b) multiplied by a fraction (1) the numerator of which is the number of the employer's employees who are participants under the plan and are separated from employment as a result of the cessation of operations, and (2) the denominator of which is the total number of the employer's current employees, as determined immediately before the cessation of operations, who are participants under the plan. The liability under section 4062(b) is determined as if the plan had been terminated by the PBGC immediately after the cessation of operations rather than "on the date of the withdrawal" (as specified in section 4063(b)), which does not literally apply in the case of a section 4062(e) event.

By providing a simple and transparent method for determining the amount of this liability, this rule will allow plan sponsors who experience a section 4062(e) event (or believe they may experience a section 4062(e) event) to more readily determine their liability (or expected liability). Although this final rule specifies a method for determining the amount of the liability imposed by statute, it does not affect the imposition of liability. Moreover, because this method has generally been followed on a case-by-case basis, the final rule will have little or no effect on the amount of liability.

Nothing in this final rule affects the computation of liability incurred when there is a withdrawal of a substantial employer from a multiple employer plan under ERISA section 4063.

Comments

Six comment letters on the proposed rule were received: two from associations of employee benefits professionals, two from employee benefits consulting firms, one from a large domestic corporation, and one from an individual. Two commenters commended the PBGC for proposing a method for calculating the liability for a section 4062(e) event. Commenters made four major recommendations, asking for:

Clarification on how to determine the denominator of the fraction set forth in the proposed rule for determining employer liability pursuant to ERISA section 4062(e);

Additional guidance on a variety of interpretive issues relating to ERISA section 4062(e);

A regulatory exemption from ERISA section 4062(e) liability for small plans (generally, those with fewer than 500 participants); and

A cap on liability in the formula for calculating the ERISA section 4062(e) liability because the proposed formula could lead to unreasonable results.

Clarification of Liability Calculation

The final rule clarifies that the denominator used for determining the employer liability pursuant to section 4062(e) equals the total number of the employer's current employees, as determined immediately before the cessation of operations, who are participants under the plan. The denominator does not include all participants in the plan, such as retirees and other former employees who separated from employment before the cessation of operations. In addition, the regulation includes an example for further clarification.

Additional Guidance

Several commenters asked for additional guidance on a number of issues relating to section 4062(e) that were not addressed in the proposed regulations. For instance, commenters asked for guidance on what constitutes a "cessation of operations," whether a sale of assets constitutes a cessation of operations, what is meant by a "facility in any location," which employees are treated as separated as a result of the cessation, how to provide notice, and other issues. One commenter opposed the imposition of 4062(e) liability pending further guidance.

The PBGC agrees that additional guidance in this area is warranted. However, this rule is narrow in scope and is intended to address one overarching aspect of ERISA § 4062(e)—the formula for calculating employer liability. As commenters point out, there are other interpretive issues that may arise under ERISA § 4062(e), but these issues remain outside of the scope of this rulemaking. The PBGC plans to issue additional guidance as appropriate, recognizing that such guidance would provide valuable assistance to plan administrators, employers, and participants, especially in determining whether and when a section 4062(e) event has occurred. When formulating guidance related to ERISA § 4062(e), the PBGC will take these commenters' concerns into consideration. In the interim, these issues will continue to be resolved on a case-by-case basis.

Small Plan Exemption

One commenter asked for a regulatory exemption from ERISA section 4062(e) liability for small plans (generally, those with fewer than 500 participants). This request also is beyond the scope of this rulemaking. As discussed above, this rule addresses only the formula for calculating the section 4062(e) liability. The PBGC will consider this request as it formulates additional guidance in this area.

Cap on Liability

Two commenters expressed concern that the proposed formula for determining the section 4062(e) liability could result in an "unreasonable" outcome. Both commenters noted that the liabilities of separated participants might represent a small percentage of all liabilities, yet the section 4062(e) liability imposed by the rule could be substantially larger. For instance, if the facility that closed had recently been opened with all newly hired employees, the benefit liabilities associated with those separated employees could be quite small. If those separated employees represented 25% of the employer's employees participating in the plan, the liability determined using the fraction prescribed in the proposed rule would be 25% of the plan underfunding. Both commenters asked that the final rule provide that the section 4062(e) liability be limited to a fraction of the unfunded liability based upon benefit liabilities attributable to participants who separated as a result of the cessation of operations.

The PBGC considered a number of approaches, including ones based on the liabilities associated with the separated participants. It rejected a liabilities-based approach primarily because it found that employers had great difficulty separating liabilities by employee group—thus, this sort of liabilities-based approach would not provide a simple, predictable formula for determining section 4062(e) liability. Moreover, the liabilities-based approach would not necessarily provide a result more in line with statutory intent than would the headcount approach prescribed in this rule.

These comments assume that there is in fact a theoretically exact amount of section 4062(e) liability that should arise in each case and from which a large deviation would be "unreasonable." One comment also seems to assume that the section 4062(e) liability amount should never include amounts that are not directly attributable to unfunded benefit liabilities of the participants who

separated from service as a result of the cessation of operations. This is contrary to what Congress prescribed for determining liability for a substantial employer under ERISA section 4063, the section under which section 4062(e) liability is to be determined.

The method prescribed by Congress for calculating liability for a substantial employer that withdraws from a multiple employer plan establishes the underfunded liability for which the withdrawing employer is responsible. It is not an exact calculation of the unfunded benefit liabilities for all of the employer's employees or former employees that participated in the plan. As explained before in the proposed rule and above, the substantial employer's liability under section 4063 is based on the employer's required contributions for the last five years. Obviously, this 5-year contribution method only approximates the unfunded liabilities attributable to all of the substantial employer's participants. Moreover, in a multiple employer plan, there may be unfunded benefit liabilities not attributable to the withdrawing substantial employer's participants for which the substantial employer is nevertheless partially responsible. The substantial employer's liability is a portion of the plan's total unfunded liability. This total unfunded liability, for instance, may include unfunded liabilities attributable to employees of employers who have withdrawn from the plan but owed no section 4063(b) liability because they were not substantial employers.

The headcount method in this rule provides a simple, practicable, and equitable method for determining employer liability under section 4062(e). The headcount method attributes to the employer responsibility for an appropriate amount of plan underfunding upon the cessation of operations in much the same way that ERISA section 4063 attributes to a substantial employer responsibility for a portion of plan underfunding upon withdrawal. Moreover, the liability amount (whether pursuant to a section 4062(e) event or withdrawal of a substantial employer) goes to the plan if the plan terminates within 5 years; otherwise the liability amount is returned to the employer.

Other Comments

One commenter expressed concern about the hardship on employers arising from the imposition of section 4062(e) liability, noting that "the PBGC's proposal to calculate and assess pension liability when a facility shuts down may have the unintended consequence of making defined benefit plans more difficult and costlier to maintain or continue." Another commenter opposed the proposed rule on similar grounds, noting that it could unnecessarily restrict business decisions. That commenter also suggested that the PBGC should study what impact the rule would have had if it had been implemented several decades ago.

This final rule will have little effect on either the imposition or amount of section 4062(e) liability. As stated in the preamble to the proposed rule (70 FR at 9259), this rule simply provides a method of calculating the section 4062(e) liability and does not affect the imposition of such liability, which is statutorily imposed. Moreover, because historically 4062(e) cases have generally been resolved on a case-by-case basis using the method set forth in this rule, the rule will have little or no effect on the amount of liability.

One commenter asked the PBGC to communicate its current practice with respect to the many substantive and interpretative questions related to ERISA section 4062(e) before changing that practice. The PBGC has no generally applicable practice with respect to section 4062(e). As stated above, the PBGC currently handles ERISA section 4062(e) liability on a case-by-case basis. However, in these cases, it has generally imposed liability based on headcount, often as part of a negotiated settlement.

One commenter said that the proposal would "exacerbate incongruity between congressional intent, legislation, and regulation," since it would apply one form of liability calculation in the multiple employer context and another form of liability calculation (*i.e.*, ERISA § 4062(e) liability under this rule) to plans with one employer. As explained above and in the proposed rule, it is impracticable to use the allocation method described in section 4063(b) (which applies to a withdrawal from a multiple employer plan) to determine the liability arising upon a section 4062(e) event. Moreover, while withdrawal from a multiple employer plan and a section 4062(e) event are analogous events, they are not equivalent. As explained, the headcount method provides a simple, practicable, and equitable method for determining ERISA § 4062(e) liability, which is analogous to the method used for determining liability for a substantial employer that withdraws from a multiple employer plan.

One commenter asked for clarification of the effective date of the regulation and, in particular, clarification that it does not apply retroactively. The preamble to this rule contains a section on applicability.

Applicability

This rule applies to section 4062(e) events occurring on or after July 17, 2006. However, as noted in the proposed rule (and above), the rule will have little or no effect on the imposition or amount of liability-the liability is statutorily imposed and the amount of liability is generally determined on a case-by-case basis using the method prescribed in this rule.

Compliance With Rulemaking Guidelines

The PBGC has determined, in consultation with the Office of Management and Budget, that this final rule is a "significant regulatory action" under Executive Order 12866. The Office of Management and Budget, therefore, has reviewed this notice under Executive Order 12866.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this final rule would not have a significant economic impact on a substantial number of small entities. A section 4062(e) event is generally not relevant for small employers. Most small employers sponsoring defined benefit plans tend not to have multiple operations. For these small employers, the shutdown of operations almost always would be accompanied by plan termination. Section 4062(e) protection is only relevant when the plan is ongoing after the cessation of operations. Thus, the change will not have a significant economic impact on a substantial number of small entities. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of subjects

29 CFR Part 4062

Employee Benefit Plans, Pension insurance, Reporting and recordkeeping requirements

29 CFR Part 4063

Employee Benefit Plans, Pension insurance, Reporting and recordkeeping requirements

■ For the reasons set forth above, the PBGC amends parts 4062 and 4063 of 29 CFR chapter LX as follows:

PART 4062—LIABILITY FOR TERMINATION OF SINGLE-EMPLOYER PLANS

■ 1. The authority citation for Part 4062 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367, 1368.

§ 4062.1 [Amended]

■ 2. Amend § 4062.1 by adding the following sentence after the first sentence of the paragraph:

§ 4062.1 Purpose and Scope

* * * This part also sets forth rules for determining the amount of liability incurred under section 4063 of ERISA pursuant to the occurrence of a cessation of operations as described by section 4062(e) of ERISA. * * *

§ 4062.3 [Amended]

■ 3. In paragraph (b) of § 4062.3, remove the references to "§ 4062.8(c)" and "4062.8(b)" and add the references to "§ 4062.9(c)" and "§ 4062.9(b)" in their places, respectively.

§ 4062.7 [Amended]

■ 4. In paragraph (a) of § 4062.7, remove the reference to "§ 4062.8" and add in its place the reference to "§ 4062.9".

§ 4062.8 through § 4062.10 [Redesignated]

■ 5. Redesignate §§ 4062.8, 4062.9, and 4062.10 as §§ 4062.9, 4062.10, and 4062.11, respectively.

■ 6. Add new § 4062.8 to read as follows:

§ 4062.8 Liability pursuant to section 4062(e).

(a) *Liability amount.* If, pursuant to section 4062(e) of ERISA, an employer ceases operations at a facility in any location and, as a result of such cessation of operations, more than 20% of the total number of the employer's employees who are participants under a plan established and maintained by the employer are separated from employment, the PBGC will determine the amount of liability under section 4063(b) of ERISA to be the amount described in section 4062 of ERISA for the entire plan, as if the plan had been terminated by the PBGC immediately after the date of the cessation of operations, multiplied by a fraction—

(1) The numerator of which is the number of the employer's employees who are participants under the plan and are separated from employment as a result of the cessation of operations; and

(2) The denominator of which is the total number of the employer's current employees, as determined immediately before the cessation of operations, who are participants under the plan.

(b) *Example.* Company X sponsors a pension plan with 50,000 participants of which 20,000 are current employees and 30,000 are retirees or deferred vested participants. On a PBGC termination basis, the plan is underfunded by $80 million. Company X ceases operations at a facility resulting in the separation from employment of 5,000 employees, all of whom are participants in the pension plan. A section 4062(e) event has occurred, and the PBGC will determine the amount of employer liability under section 4063(b) of ERISA. The numerator described in paragraph (a)(1) of this section is 5,000 and the denominator described in paragraph (a)(2) of this section is 20,000. Therefore, the amount of liability under section 4063(b) of ERISA pursuant to section 4062(e) is $20 million (5,000/20,000 × $80 million).

PART 4063—LIABILITY OF SUBSTANTIAL EMPLOYER FOR WITHDRAWAL FROM SINGLE-EMPLOYER PLANS UNDER MULTIPLE CONTROLLED GROUPS AND OF EMPLOYER EXPERIENCING A CESSATION OF OPERATION

■ 7. The authority citation for part 4063 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

■ 8. Revise paragraph (a) of § 4063.1 to read as follows:

§ 4063.1 Cross-references

(a) Part 4062 of this chapter sets forth rules for determination and payment of the liability incurred, under section 4062(b) of ERISA, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of ERISA. Part 4062 also sets forth rules for determining the amount of liability incurred under section 4063 of ERISA pursuant to the occurrence of a cessation of operations as described by section 4062(e) of ERISA.

* * * * *

Issued in Washington, DC, this 13th day of June, 2006.

Elaine L. Chao,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

Judith R. Starr,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. E6–9503 Filed 6–15–06; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–06–052]

RIN 1625–AA87

Security Zone; Severn River and College Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; correction.

SUMMARY: The Coast Guard published a document in the **Federal Register** on June 1, 2006 (71 FR 31088), correcting the coordinates described in the security zone. However, that correction contained an incorrect section number. This document corrects that section number.

DATES: The correction to this rule is effective May 25, 2006. The rule itself is effective May 26, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–06–052 and are available for inspection or copying at Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ronald L. Houck, Waterways Management Division, U.S. Coast Guard Sector Baltimore, telephone 410–576–2674, Fax 410–576–2553.

SUPPLEMENTARY INFORMATION: In FR Doc. E6–8428 appearing on page 31088 in the **Federal Register** of June 1, 2006, the following correction to the section number is made:

§ 165.35–T05–052 [Corrected]

■ 1. On page 31088, in the third column, correct the bold heading four lines below the **SUPPLEMENTARY INFORMATION** heading to read "§ 165.T05–052 [Corrected]".

■ 2. On page 31088, in the third column, in the second and third lines of instruction 1., correct the section number and heading to read "§ 165.T05–052 Severn River and College Creek, Annapolis, MD".

Dated: June 9, 2006.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. E6–9411 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AB70

Sale and Disposal of National Forest System Timber; Modification of Timber Sale Contracts in Extraordinary Conditions; Noncompetitive Sale of Timber

AGENCY: Forest Service, USDA.

ACTION: Interim final rule; request for comment.

SUMMARY: This interim final rule revises regulations at Title 36, Code of Federal Regulations, part 223, on noncompetitive disposal of timber and other forest products based on the Secretary of Agriculture's determination that extraordinary conditions exist. The rule will expand upon the 1996 interim final rule currently applicable to certain sales in Washington and Oregon. The 1996 interim final rule defines extraordinary conditions to mean those circumstances where a contract must be changed to prevent environmental degradation or resource damage, or as the result of administrative appeals, litigation, court orders, or catastrophic events and applies throughout the National Forest System. This rule permits, without advertisement, timber or forest products from outside the area specified in the contract to replace material deleted from the contract when such extraordinary conditions exist. Replacement material must come from the same national forest as the subject contract and the decision to replace must be made in compliance with all applicable laws and regulations. The value of replacement material may not exceed the value of the material it is replacing by more than 10% or $10,000, whichever is less, as determined by standard Forest Service appraisal methods. The intended effect of this rule is to reduce damage claims by offering replacement material of similar volume, quantity, value, access and topography in lieu of contract cancellations or partial cancellations.

DATES: *Effective Date:* This rule is effective June 16, 2006.

Comment Date: Comments must be received in writing on or before August 15, 2006.

ADDRESSES: Send written comments by U.S. Mail to Director of Forest Management; USDA Forest Service; 1400 Independence Avenue, SW., Mailstop 1103; Washington, DC 20250–1103; by e-mail to *reptbr@fs.fed.us;* or by facsimile to (202) 205–1045.

The public may inspect comments received on this rule in the Office of the Director, Forest Management Staff, Forest Service, USDA, 201 14th Street, SW., Washington, DC 20250. Parties wishing to view comments are requested to call ahead (202) 205–1496 to ease entry into the building.

FOR FURTHER INFORMATION CONTACT: Forest Management Staff personnel, Lathrop Smith (202) 205–0858, or Richard Fitzgerald (202) 205–1753.

SUPPLEMENTARY INFORMATION:

Background

The National Forest Management Act (NFMA), codified in part at Title 16 U.S.C. 472a(d), requires the Secretary of Agriculture to advertise all sales of forest products unless the appraised value of the sale is less than $10,000, or the Secretary determines that extraordinary conditions exist, as defined by regulation. The requirement to advertise sales unless extraordinary conditions exist applies to the substitution of timber outside a sale contract area.

District court injunctions in *NFRC* v. *Glickman*, (No. 95–6244–HO (D. Or.)) required the Forest Service to take immediate action pursuant to section 2001(k) of the 1995 Rescissions Act to award and release certain timber sales offered or awarded between October 1, 1990 and July 27, 1995. Concurrently the Forest Service needed to modify many of these sales to meet standards and guidelines of the 1994 Northwest Forest Plan Amendment before they were awarded or released. Given the duty to comply with the district court's injunction, and the urgent need to modify these timber sales to meet standards and guidelines of the 1994 Northwest Forest Plan Amendment, in 1996 the Secretary promulgated an interim final rule set out at 36 CFR 223.85(b), that defined extraordinary conditions for sales released pursuant to section 2001(k) of the 1995 Rescissions Act (61 FR 14618, April 3, 1996).

The 1996 interim final rule allows substituting timber from outside the sale area specified in the contract, without advertisement, on specific timber sales in Washington and Oregon affected by section 2001(k) of the fiscal year 1995 Rescissions Act (Pub. L. 104–19), that were previously subject to section 318 of the fiscal year 1990 Interior and Related Agencies Appropriations Act (Pub. L. 101–121, 103 Stat. 745). One of the primary reasons for promulgating this rule was the recognition that the event or situation causing a need for replacement timber generally precludes obtaining suitable replacement timber from within the original contract area. The 1996 rule does not place any restrictions on where outside the contract area of 2001(k) sales replacement timber may be obtained. Hence, replacement timber for sales in Washington and Oregon could come from any national forest in the system.

Pursuant to the advertising requirements of 16 U.S.C. 472a(d), material found outside the contract area must be offered competitively to other potential contractors, unless the Secretary of Agriculture determines that extraordinary conditions exist. The current rule at 36 CFR 223.85(b) is limited to 2001(k) sales and does not authorize contract modifications that add or replace material from outside the contract area of non-2001(k) sales.

Prior to NFMA, the Government Accountability Office (formerly the General Accounting Office) held that substitution of timber outside the contract area for timber in the contract area violated the Agency's authority to sell timber (Letter to Mr. Secretary, 1973 WL 7905 (Comp. Gen.), B–177602 (1973)). Since the passage of NFMA, but in the absence of a regulation defining "extraordinary conditions," the Agriculture Board of Contract Appeals has decided similarly in several cases. See Appeal of Summit Contractors, (1986 WL 19566 (AGBCA), Nos. 81–252–1, No. 83–312–1 (Jan. 8, 1986), and Appeal of Jay Rucker, 1980 WL 2345 (AGBCA) Nos. 79–211A, 79–211B (June 11, 1980). See also, *Croman Corporation* v. *United States*, 31 Fed. Cl. 741, 746–47 (August 16, 1994)).

Developing case law on environmental and related statutes and regulations, such as the Endangered Species Act, the Clean Water Act, and the Clean Air Act, in conjunction with finding new information on the environmental effects and resource impacts of various activities on National Forest System land, has led to constantly changing and more rigorous management requirements.

Before authorizing activities on National Forest System lands, the Forest Service must ensure compliance with applicable laws and regulations and with conditions on the ground at the time of the authorization. Even so, after entering into timber sale contracts, environmental changes may occur such as the listing of a new species on the endangered species list, or a catastrophic event may occur, such as a large wildfire resulting in the need to modify the contracts. Also, court orders and decisions resulting from environmental litigation may require making changes to existing contracts even when those contracts are not

specifically named in the litigation if they are similar to contracts that were named. When this occurs, it is essential for Forest Service officials to have flexibility to adjust management activities and contractual arrangements without incurring enormous financial liability. At the time a sale is sold, there is no way to accurately predict what future litigation or environmental changes may occur that will result in the sale contract needing to be changed. Each occurrence is a unique situation that constitutes an extraordinary condition. The Forest Service needs the ability to provide replacement timber or forest products for contracts that must be modified to prevent environmental degradation or resource damage, or as a result of administrative appeals, litigation, court orders, or catastrophic events that occur after contract award. Thus, the Forest Service is revising the regulations on noncompetitive sale of timber and other forest products based on the Secretary of Agriculture's determination that extraordinary conditions exist whenever a timber or forest products contract needs to be modified or canceled to address such unexpected changes. This provides contracting officers with an opportunity to avert costly claims by providing replacement timber or forest products from outside the contract area.

Comments on the 1996 Interim Final Rule at 36 CFR 223.85(b)

The comment period for the 1996 interim final rule ended May 20, 1996. Because that interim final rule is similar to this interim final rule, those comments are being incorporated as background information for this rule. Two respondents submitted comments; one from a timber purchaser and one from a Federal agency. One respondent stated that this rule should apply agency-wide to provide broad authority to the Forest Service to prevent harvesting in areas under contract that are found to be environmentally sensitive and to give the Forest Service greater ability to negotiate modifications rather than canceling contracts and paying large damage claims. The Forest Service concurs with this recommendation and has incorporated it in this rule, but with limitations addressed in the following paragraph.

One respondent expressed a need to allow replacement timber to come from other districts or other forests if needed to protect fish and wildlife resources. The Forest Service agrees in part with this recommendation and did that under *NFRC* v. *Glickman* on the basis that the 1995 Rescissions Act provided the independent authority to provide replacement timber in this manner. But the Forest Service found that going beyond the boundaries of the administrative unit where the original contract was let to find replacement timber often created other problems including greater difficulty in finding similar timber that could be harvested at comparable prices, increased National Environmental Policy Act costs, and interference with timber sale programs on other units. Because of those experiences, this interim final rule limits substitution to within the boundaries of the national forest where the subject contract is found. Confining replacement timber to the original national forest has the advantages of allowing individual Forest Supervisors to evaluate the pros and cons of substituting timber and forest products on their units based on the specific circumstances. This would lessen administrative, resource, and monetary effects to the purchaser and Forest Service. It also ensures accountability to the Forest Service administrative unit which offered the original contract.

Good Cause Statement

This rule is being promulgated as an interim final rule for the following reasons: (1) Existing regulations at 36 CFR 223.85(b) already permit going outside of a contract area to find replacement timber for sales subject to section 2001(k) of the 1995 Rescissions Act. This rule expands the existing regulation to more than just those 2001(k) sales; (2) This rule is not expected to be controversial. Only two respondents provided comments during the comment period for the 1996 interim final rule at 36 CFR 223.85(b) that established a foundation for this rule. Both of those respondents supported going outside the contract area to find replacement timber; (3) Comments received in response to the proposed FS–2400–6 and FS–2400–6T timber sale contracts (68 FR 70758), and the interim integrated resource contracts FS–2400–13 and FS–2400–13T (69 FR 59577) supported searching for replacement timber outside the contract area as an alternative to contract cancellation or partial cancellation. No comments were received opposing seeking replacement timber outside of the contract area; (4) Establishing a process for the Forest Service to provide replacement timber from outside the contract area has been a longstanding issue with timber purchasers and the forest products industry. By making this rule effective immediately upon publication, the Forest Service can finally resolve this issue by incorporating the change in the FS–2400–6 and FS–2400–6T contracts which are in the final stages of revision; and (5) By making this rule effective immediately upon publication, the Government may be able to provide replacement timber in lieu of paying damages on sales that are cancelled before notice, comment and publication of a final rule could be accomplished. During fiscal years 2004, 2005, and the first quarter of 2006, the Forest Service paid a little more than $4.6 million in damages associated with litigation and changes in environmental conditions affecting existing contracts. The Forest Service currently has approximately $60 million in unresolved claims associated with litigation and changes in environmental conditions affecting existing contracts. Many of these claims may have been averted if replacement timber could have been provided from outside the contract area. Some of these claims could still be resolved by providing replacement timber from outside the contract area in lieu of the Forest Service paying monetary damages. This interim final rule helps to reduce payment of costly claims and as such, implementation should not be delayed.

Explanation of Revisions to 36 CFR Part 223, Subpart B

This interim final rule revises the current paragraph (b) at 36 CFR 223.85 by correcting the reference to "16 U.S.C. 472(d)" to "16 U.S.C. 472a(d)." This interim final rule also adds paragraph (c), which defines "extraordinary conditions" and allows forest officers, without advertisement, to make modifications to awarded timber and forest products contracts to replace timber or forest products from outside the area specified in the contract. But, it does place limits on substituting timber or forest products not contained in the 1996 regulation in that replacement timber or forest products for non-2001(k) sales must be from the same National Forest as the subject contract, must not exceed the value of the material it is replacing by more than 10% or $10,000, whichever is less, and must comply with laws and regulations applicable to any new timber sale including, but not limited to, the National Forest Management Act of 1976 as amended, the Endangered Species Act of 1973 as amended, the National Environmental Policy Act of 1970 as amended, and the Appeals Reform Act as amended. This interim final rule authorizes the Forest Service and the purchaser to search for, within the same national forest as the subject sale, replacement timber of similar volume, quantity, value, access, and

topography, and to adjust stumpage prices to account for differences between replacement timber and timber deleted. The Forest Service and purchaser shall make good faith efforts to identify replacement timber within these parameters. When replacement timber or forest products agreeable to both parties is identified, the contract will be modified to reflect the changes associated with the substitution, including a rate redetermination. Concurrently, both parties will sign an agreement waiving any future claims for damages associated with the deleted timber or forest products except those specifically provided for under the contract up to the time of the modification. Either party may opt to end the search if satisfactory replacement timber or forest products cannot be found. Although the objective will be to replace timber of equal quantity and value, exact matches are unlikely and in some cases will exceed the value of the timber it is replacing. However, the interim final rule specifies that the value of replacement material may not exceed the value of the material it is replacing by more than 10% or $10,000, whichever is less, as determined by standard Forest Service appraisal methods. To the extent that contract cancellations and partial cancellations are avoided, the effect of this rule will be to allow purchasers to harvest timber as expected when they entered into the timber sale contract and will also provide the Forest Service an opportunity to mitigate potential damage claims that may arise as the result of a cancellation or partial cancellation of the contract.

Regulatory Certifications

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this rule is not subject to OMB review under Executive Order 12866.

Moreover, this rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). An initial small entities flexibility assessment has been made and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA. The rule has no adverse or special impacts on small business, small not-for-profit organizations, or small units of the Government because it imposes no additional requirements on the affected public.

Environmental Impact

This rulemaking action falls within a category of actions excluded from documentation in an environmental impact statement or an environmental assessment. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The Agency's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist, which would require preparation of an environmental assessment or environmental impact statement for this rule.

No Takings Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that the rule will not pose the risk of a taking of private property, as the rule is limited to the establishment of administrative procedures.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this rule, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) this rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Federalism

The Agency has considered this rule under the requirements of Executive Order 13132, Federalism. The Agency has made a preliminary assessment that the rule conforms with the federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government. Based on comments received on this interim final rule, the Agency will consider if any additional consultation will be needed with State and local governments prior to adopting a final rule.

Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Therefore, advance consultation with Tribes is not required.

Controlling Paperwork Burdens on the Public

This rule does not require any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 not already approved for use and, therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National Forest, Reporting and record keeping requirements, Timber sales.

■ For the reasons set forth in the preamble, the Forest Service proposes to amend part 223 of title 36 of the Code of Federal Regulations as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

Subpart B—Timber Sale Contracts

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

■ 2. Amend § 223.85 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 223.85 Noncompetitive sale of timber.

* * * * *

(b) Extraordinary conditions, as provided for in 16 U.S.C. 472a(d), are defined to include the potential harm to natural resources, including fish and wildlife, and related circumstances arising as a result of the award or release of timber sale contracts pursuant to section 2001(k) of Public Law 104–19 (109 Stat. 246). Notwithstanding the provisions of paragraph (a) of this section or any other regulation in this part, for timber sale contracts that have been or will be awarded or released pursuant to section 2001(k) of Public Law 104–19 (109 Stat. 246), the Secretary of Agriculture may allow forest officers to, without advertisement, modify those timber sale contracts by substituting timber from outside the sale area specified in the contract for timber within the timber sale contract area.

(c) Extraordinary conditions, as provided for in 16 U.S.C. 472a(d), includes those conditions under which contracts for the sale or exchange of timber or other forest products must be suspended, modified, or terminated under the terms of such contracts to prevent environmental degradation or resource damage, or as the result of administrative appeals, litigation, court orders, or catastrophic events. Notwithstanding the provisions of paragraph (a) of this section or any other regulation in this part, when such extraordinary conditions exist on sales not addressed in paragraph (b) of this section, the Secretary of Agriculture may allow forest officers to, without advertisement, modify those contracts by substituting timber or other forest products from outside the contract area specified in the contract for timber or forest products within the area specified in the contract. When such extraordinary conditions exist, the Forest Service and the purchaser shall make good faith efforts to identify replacement timber or forest products of similar volume, quality, value, access, and topography. When replacement timber or forest products agreeable to both parties is identified, the contract will be modified to reflect the changes associated with the substitution, including a rate redetermination. Concurrently, both parties will sign an agreement waiving any future claims for damages associated with the deleted timber or forest products, except those specifically provided for under the contract up to the time of the modification. If the Forest Service and the purchaser cannot reach agreement on satisfactory replacement timber or forest products, or the proper value of such material, either party may opt to end the search. Replacement timber or forest products must come from the same national forest as the original contract, and must meet agency requirements for compliance with applicable laws and regulations. Replacement timber or forest products must also come from an area included in an approved National Environmental Policy Act decision in which the appeals process has been exhausted. The value of replacement timber or forest products may not exceed the value of the material it is replacing by more than 10% or $10,000, whichever is less as determined by standard Forest Service appraisal methods.

Dated: June 7, 2006.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. E6–9424 Filed 6–15–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

RIN 0750–AF25

Defense Federal Acquisition Regulation Supplement; Contractor Personnel Authorized to Accompany U.S. Armed Forces (DFARS Case 2005–D013)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement DoD policy regarding contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States. The rule addresses the status of contractor personnel as civilians accompanying the U.S. Armed Forces and the responsibilities of the combatant commander regarding the protection of contractor personnel.

DATES: *Effective date:* June 16, 2006.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before August 15, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2005–D013, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2005–D013 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule revises DFARS Subpart 225.74 and the clause at DFARS 252.225–7040 to implement the policy in DoD Instruction 3020.41, Contractor Personnel Authorized to Accompany the U.S. Armed Forces, dated October 3, 2005. DoD Instruction 3020.41 is available via the Internet at *http://www.dtic.mil/whs/directives/corres/html/302041.htm.*

The DFARS changes address the following areas:

1. Contractor participation in hostilities

Prior to this interim rule, paragraph (b) of the clause at DFARS 252.225–7040 prohibited contractor personnel from using force or otherwise directly participating in acts likely to cause actual harm to enemy armed forces. The interim rule revises the clause to provide for contractor personnel other than private security contractor personnel to use deadly force against enemy armed forces only in self-defense. Private security contractor personnel are also authorized to use deadly force when necessary to execute their security mission to protect assets/persons, consistent with the mission statement contained in their contract. It is the responsibility of the combatant commander to ensure that private security contract mission statements do not authorize the performance of any inherently Governmental military functions, such as preemptive attacks,

or any other types of attacks. Otherwise, civilians who accompany the U.S. Armed Forces lose their law of war protection from direct attack if and for such time as they take a direct part in hostilities.

2. Government support

Prior to this interim rule, paragraph (c) of the clause at 252.225–7040 required the combatant commander to develop a security plan for protection of contractor personnel through military means unless the terms of the contract placed the responsibility with another party. In accordance with DoD Instruction 3020.41, paragraph 6.3.4., this interim rule revises the clause to limit the requirement for the combatant commander to develop such a security plan to those locations where there is not sufficient or legitimate civil authority and the combatant commander decides that it is in the interests of the Government to provide security.

Paragraph (c)(3) of the clause at 252.225–7040 requires the contractor to provide support for its personnel, except as otherwise specified in the contract. This interim rule adds text at 225.7402–3(b) to state that the Government will provide logistical or security support only when the appropriate agency official, in accordance with agency guidance, determines that Government provision of such support is needed to ensure continuation of essential contractor services and that the contractor cannot obtain adequate support from other sources. This interim rule also adds text at 225.7402–3(c)(4) to require that the contract specify whether the support is to be provided on a reimbursable basis, citing the authority for the reimbursement.

3. Authorized to accompany the U.S. Armed Forces

The phrase "supporting a force" is replaced with "authorized to accompany U.S. Armed Forces" throughout the rule.

4. Other military operations

The scope of the DFARS policy is changed, from "other military operations or exercises designated by the combatant commander," to "other military operations" and "military exercises designated by the combatant commander." A definition of "other military operations" is added to paragraph (a) of the clause at 252.225–7040.

5. Not active duty

Paragraph (b)(4) is added to the clause at 252.225–7040 to clarify that service performed by contractor personnel subject to the clause is not active duty or service under 38 U.S.C. 106.

6. Letter of Authorization and Common Access Card

Paragraph (c)(4) is added to the clause at 252.225–7040 to address requirements for contractor personnel to have a letter of authorization, for consistency with the policy at 225.7402–3(d). Also, text has been added to paragraph (e)(1)(iii) of the clause to address requirements for Common Access Cards issued to deploying personnel to contain the access permissions allowed by the letter of authorization.

7. Training

Paragraphs (e)(1)(v) and (vi) are added to the clause at 252.225–7040 to address additional pre-deployment training requirements relating to personal security and isolated personnel.

8. Military Extraterritorial Jurisdiction Act and other applicable statutes

Paragraph (e)(2) is added to the clause at 252.225–7040 to address the requirement for the contractor to notify its personnel that—

- The Military Extraterritorial Jurisdiction Act (18 U.S.C. 3621, *et seq.*) and some other statutes may apply to contractor personnel who commit offenses outside the United States; and
- When there is a formal declaration of war by Congress, contractor personnel authorized to accompany U.S. Armed Forces may be subject to prosecution under the Uniform Code of Military Justice.

9. Deployment centers

Paragraph (f)(1) of the clause at 252.225–7040 is amended to clarify that the deployment center must ensure that all deployment requirements are met.

10. Personnel data list

Paragraph (g)(1) of the clause at 252.225–7040 is revised to clarify requirements for the contractor to establish and maintain a personnel data list.

11. Military clothing and protective equipment

Paragraph (i) of the clause at 252.225–7040 is amended to clarify requirements relating to military clothing and protective equipment.

12. Weapons

Paragraph (j) of the clause at 252.225–7040 is revised to clarify requirements relating to situations where contractor personnel are authorized to carry weapons. A statement has also been added to clarify that the liability for use of any weapon by contractor personnel rests solely with the contractor and the contractor employee using such weapon.

13. Personnel recovery

Paragraph (n) of the clause at 252.225–7040 is amended to include additional terms ("isolated" and "detained") to cover all situations in which an employee might need to be recovered.

14. Changes

Paragraph (p) of the clause at 252.225–7040 is amended to include "place of performance" as a condition that is subject to change, in addition to those authorized by the Changes clause. Although paragraph (c) of the clause already addresses site changes, the term "place of performance" has a broader applicability, since the term "site" is normally associated with construction contracts.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because application of the rule is limited to those contracts that involve contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2005–D013.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq. Although the contract clause requires contractors to maintain certain information regarding their personnel, DoD believes

that this requirement is usual and customary and does not exceed what a contractor would maintain in the normal course of business.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements DoD Instruction 3020.41, Contractor Personnel Authorized to Accompany the U.S. Armed Forces, dated October 3, 2005. Existing DFARS requirements prohibit contractor personnel from using force or otherwise directly participating in acts likely to cause actual harm to enemy armed forces. In accordance with DoD Instruction 3020.41, this interim rule revises the DFARS to provide for contractor personnel to use deadly force against enemy armed forces in self-defense or in the performance of a contract for private security services. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 212, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Section 212.301 is amended by revising paragraph (f)(vii) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(vii) Use the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, as prescribed in 225.7402–4.

* * * * *

PART 225—FOREIGN ACQUISITION

■ 3. Sections 225.7402 through 225.7402–4 are revised to read as follows:

225.7402 Contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States.

225.7402–1 Scope.

This section applies to contracts that involve contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States in—

(a) Contingency operations;

(b) Humanitarian or peacekeeping operations;

(c) Other military operations; or

(d) Military exercises designated by the combatant commander.

225.7402–2 Definitions.

Combatant commander, other military operations, and *theater of operations,* as used in this section, have the meaning given in the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.

225.7402–3 Government support.

(a) Government support that may be authorized or required for contractor personnel performing in a theater of operations may include, but is not limited to, the types of support listed in PGI 225.7402–3(a).

(b) The agency shall provide logistical or security support only when the appropriate agency official, in accordance with agency guidance, determines in coordination with the combatant commander that—

(1) Government provision of such support is needed to ensure continuation of essential contractor services; and

(2) The contractor cannot obtain adequate support from other sources.

(c) The contracting officer shall—

(1) Ensure that the contract contains valid terms, approved by the combatant commander, that specify the responsible party, if a party other than the combatant commander is responsible for providing protection to the contractor personnel performing in the theater of operations as specified in 225.7402–1;

(2) Specify in the terms of the contract, if medical or dental care is authorized beyond the standard specified in paragraph (c)(2)(i) of the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States;

(3) Provide direction to the contractor, if the contractor is required to reimburse the Government for medical treatment or transportation of contractor personnel to a selected civilian facility in accordance with paragraph (c)(2)(ii) of the clause at 252.225–7040; and

(4) Specify in the contract any other Government support to be provided, and whether this support is provided on a reimbursable basis, citing the authority for the reimbursement.

(d) Contractor personnel must have a letter of authorization (LOA) issued by a contracting officer in order to process through a deployment center or to travel to, from, or within the theater of operations. The LOA also will identify any additional authorizations, privileges, or Government support that the contractor personnel are entitled to under the contract. For a sample LOA, see PGI 225.7402–3(d).

225.7402–4 Contract clauses.

(a) Use the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, in solicitations and contracts when contract performance requires that contractor personnel accompany U.S. Armed Forces deployed outside the United States in—

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations;

(3) Other military operations; or

(4) Military exercises designated by the combatant commander.

(b) For additional guidance on clauses to consider when using the clause at 252.225–7040, see PGI 225.7402–4(b).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.225–7040 is revised to read as follows:

252.225–7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.

As prescribed in 225.7402–4(a), use the following clause: Contractor Personnel Authorized To Accompany U.S. Armed Forces Deployed Outside The United States (JUN 2006)

(a) *Definitions.* As used in this clause—

Combatant Commander means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

Other military operations means a range of military force responses that can be projected to accomplish assigned tasks. Such operations may include one or a combination of the following: Civic action, humanitarian assistance, civil affairs, and other military activities to develop positive relationships with other countries; confidence building and other measures to reduce military tensions; military presence; activities to convey messages to adversaries; military

deceptions and psychological operations; quarantines, blockades, and harassment operations; raids; intervention operations; armed conflict involving air, land, maritime, and strategic warfare operations; support for law enforcement authorities to counter international criminal activities (terrorism, narcotics trafficking, slavery, and piracy); support for law enforcement authorities to suppress domestic rebellion; and support for insurgency, counterinsurgency, and civil war in foreign countries.

Theater of operations means an area defined by the combatant commander for the conduct or support of specified operations.

(b) *General.*

(1) This clause applies when Contractor personnel are authorized to accompany U.S. Armed Forces deployed outside the United States in—

(i) Contingency operations;

(ii) Humanitarian or peacekeeping operations;

(iii) Other military operations; or

(iv) Military exercises designated by the Combatant Commander.

(2) Contract performance in support of U.S. Armed Forces deployed outside the United States may require work in dangerous or austere conditions. The Contractor accepts the risks associated with required contract performance in such operations.

(3) Contractor personnel are civilians accompanying the U.S. Armed Forces.

(i) Except as provided in paragraph (b)(3)(ii) of this clause, Contractor personnel are not authorized to use deadly force against enemy armed forces other than in self-defense.

(ii) Private security Contractor personnel are authorized to use deadly force only when necessary to execute their security mission to protect assets/persons, consistent with the mission statement contained in their contract.

(iii) Civilians who accompany the U.S. Armed Forces lose their law of war protection from direct attack if and for such time as they take a direct part in hostilities.

(4) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) *Support.* (1)(i) The Combatant Commander will develop a security plan for protection of Contractor personnel in locations where there is not sufficient or legitimate civil authority, when the Combatant Commander decides it is in the interests of the Government to provide security because—

(A) The Contractor cannot obtain effective security services;

(B) Effective security services are unavailable at a reasonable cost; or

(C) Threat conditions necessitate security through military means.

(ii) The Contracting Officer shall include in the contract the level of protection to be provided to Contractor personnel.

(iii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.

(2)(i) Generally, all Contractor personnel authorized to accompany the U.S. Armed Forces in the theater of operations may be provided resuscitative care, stabilization, hospitalization at level III military treatment facilities, and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized unless specified elsewhere in this contract.

(3) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the theater of operations under this contract.

(4) Contractor personnel must have a letter of authorization issued by the Contracting Officer in order to process through a deployment center or to travel to, from, or within the theater of operations. The letter of authorization also will identify any additional authorizations, privileges, or Government support that Contractor personnel are entitled to under this contract.

(d) *Compliance with laws and regulations.* The Contractor shall comply with, and shall ensure that its personnel authorized to accompany U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

(1) United States, host country, and third country national laws;

(2) Treaties and international agreements;

(3) United States regulations, directives, instructions, policies, and procedures; and

(4) Orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(e) *Pre-deployment requirements.* (1) The Contractor shall ensure that the following requirements are met prior to deploying personnel in support of U.S. Armed Forces. Specific requirements for each category may be specified in the statement of work or elsewhere in the contract.

(i) All required security and background checks are complete and acceptable.

(ii) All deploying personnel meet the minimum medical screening requirements and have received all required immunizations as specified in the contract. The Government will provide, at no cost to the Contractor, any theater-specific immunizations and/or medications not available to the general public.

(iii) Deploying personnel have all necessary passports, visas, and other documents required to enter and exit a theater of operations and have a Geneva Conventions identification card, or other appropriate DoD identity credential, from the deployment center. Any Common Access Card issued to deploying personnel shall contain the access permissions allowed by the letter of authorization issued in accordance with paragraph (c)(4) of this clause.

(iv) Special area, country, and theater clearance is obtained for personnel. Clearance requirements are in DoD Directive 4500.54, Official Temporary Duty Abroad, and DoD 4500.54–G, DoD Foreign Clearance Guide. Contractor personnel are considered non-DoD personnel traveling under DoD sponsorship.

(v) All personnel have received personal security training. At a minimum, the training shall—

(A) Cover safety and security issues facing employees overseas;

(B) Identify safety and security contingency planning activities; and

(C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract.

(2) The Contractor shall notify all personnel who are not a host country national, or who are not ordinarily resident in the host country, that—

(i) Such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more

than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States in accordance with the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3621, et seq.);

(ii) Pursuant to the War Crimes Act (18 U.S.C. 2441), Federal criminal jurisdiction also extends to conduct that is determined to constitute a violation of the law of war when committed by a civilian national of the United States;

(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of U.S. diplomatic, consular, military or other U.S. Government missions outside the United States (18 U.S.C. 7(9)); and

(iv) When there is a formal declaration of war by Congress, Contractor personnel authorized to accompany U.S. Armed Forces may be subject to prosecution under the Uniform Code of Military Justice.

(f) *Processing and departure points.* Deployed Contractor personnel shall—

(1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of Contractor personnel and to ensure that all deployment requirements are met, including the requirements specified in paragraph (e)(1) of this clause;

(2) Use the point of departure and transportation mode directed by the Contracting Officer; and

(3) Process through a Joint Reception Center (JRC) upon arrival at the deployed location. The JRC will validate personnel accountability, ensure that specific theater of operations entrance requirements are met, and brief Contractor personnel on theater-specific policies and procedures.

(g) *Personnel data list.*

(1) In accordance with DoD Instruction 3020.41, Contractor Personnel Authorized to Accompany the U.S. Armed Forces, the Contractor shall establish and maintain with the designated Government official a current list of all Contractor personnel that deploy with or otherwise provide support in the theater of operations to U.S. Armed Forces as specified in paragraph (b)(1) of this clause. The list shall include each individual's general location in the theater of operations. The Contracting Officer will inform the Contractor of the Government official designated to receive this data and the appropriate automated system(s) to use for this effort.

(2) The Contractor shall ensure that all employees on the list have a current DD Form 93, Record of Emergency Data Card, on file with both the Contractor and the designated Government official.

(h) *Contractor personnel.* (1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this clause. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall have a plan on file showing how the Contractor would replace employees who are unavailable for deployment or who need to be replaced during deployment. The Contractor shall keep this plan current and shall provide a copy to the Contracting Officer upon request. The plan shall—

(i) Identify all personnel who are subject to military mobilization;

(ii) Detail how the position would be filled if the individual were mobilized; and

(iii) Identify all personnel who occupy a position that the Contracting Officer has designated as mission essential.

(i) *Military clothing and protective equipment.*

(1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must—

(i) Wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures; and

(ii) Carry the written authorization with them at all times.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(3) The deployment center, or the Combatant Commander, shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of Contractor personnel.

(4) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(j) *Weapons.* (1) If the Contractor requests that its personnel performing in the theater of operations be authorized to carry weapons, the request shall be made through the Contracting Officer to the Combatant Commander, in accordance with DoD Instruction 3020.41, paragraph 6.3.4.1 or, if the contract is for security services, paragraph 6.3.5.3. The Combatant Commander will determine whether to authorize in-theater Contractor personnel to carry weapons and what weapons and ammunition will be allowed.

(2) If the Contracting Officer, subject to the approval of the Combatant Commander, authorizes the carrying of weapons—

(i) The Contracting Officer may authorize the Contractor to issue Contractor-owned weapons and ammunition to specified employees; or

(ii) The *[Contracting Officer to specify the appropriate individual, e.g., Contracting Officer's Representative, Regional Security Officer]* may issue Government-furnished weapons and ammunition to the Contractor for issuance to specified Contractor employees.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained to carry and use them—

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and

(iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition.

(4) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(5) Upon redeployment or revocation by the Combatant Commander of the Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(k) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the theater of operations.

(l) *Purchase of scarce goods and services.* If the Combatant Commander has established an organization for the theater of operations whose function is to determine that certain items are scarce goods or services, the Contractor shall coordinate with that organization local purchases of goods and services designated as scarce, in accordance with instructions provided by the Contracting Officer.

(m) *Evacuation.* (1) If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to United States and third country national Contractor personnel.

(2) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location sufficient to meet obligations under this contract.

(n) *Next of kin notification and personnel recovery.* (1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is isolated, missing, detained, captured, or abducted.

(2) In the case of isolated, missing, detained, captured, or abducted Contractor personnel, the Government will assist in personnel recovery actions in accordance with DoD Directive 2310.2, Personnel Recovery.

(o) *Mortuary affairs.* Mortuary affairs for Contractor personnel who die while accompanying the U.S. Armed Forces will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.

(p) *Changes.* In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in the place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph (p) shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts when subcontractor personnel are authorized to accompany U.S. Armed Forces deployed outside the United States in—

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations;

(3) Other military operations; or

(4) Military exercises designated by the Combatant Commander.

(End of clause)

[FR Doc. E6–9499 Filed 6–15–06; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[DFARS Case 2004–D031]

48 CFR Part 219

Defense Federal Acquisition Regulation Supplement; Sole Source 8(a) Awards to Small Business Concerns Owned by Native Hawaiian Organizations

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement DoD appropriations act provisions permitting the award of sole source contracts to small business concerns owned by Native Hawaiian Organizations. The rule applies to manufacturing contracts exceeding $5,000,000 and non-manufacturing contracts exceeding $3,000,000 that are awarded under the Small Business Administration's 8(a) Program.

DATES: *Effective Date:* June 16, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2004–D031.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 70 FR 43072 on July 26, 2005, to implement Section 8021 of the DoD Appropriations Act for Fiscal Year 2004 (Pub. L. 108–87) and Section 8021 of the DoD Appropriations Act for Fiscal Year 2005 (Pub. L. 108–287). In addition to providing funding for the DoD Indian Incentive Program, these statutes required that small business concerns owned by Native Hawaiian Organizations be provided the same status as Indian tribes and Alaska Native Corporations with regard to sole source contract awards under the Small Business Administration's 8(a) Program. The interim rule amended DFARS 219.805–1 to reflect this requirement.

Three sources submitted comments on the interim rule. All three supported the rule and recommended that the rule be made permanent. DoD has adopted the interim rule as a final rule, with additional changes to reflect the provisions of Section 8020 of the DoD Appropriations Act for Fiscal Year 2006 (Pub. L. 109–148). Section 8020 established a permanent requirement for provision of Native Hawaiian Organizations with the same status as Indian tribes and Alaska Native Corporations under the 8(a) Program.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This rule amends the DFARS to implement DoD appropriations act provisions permitting the award of sole source contracts to small business concerns owned by Native Hawaiian Organizations. The rule applies to manufacturing contracts exceeding $5,000,000 and non-manufacturing contracts exceeding $3,000,000 that are awarded under the Small Business Administration's 8(a) Program. The objective of the rule is to provide small business concerns owned by Native Hawaiian Organizations the same status that is provided to Indian tribes and Alaska Native Corporations under the 8(a) Program. Awards to these entities are exempt from the competition requirements that otherwise would apply to award of manufacturing contracts exceeding $5,000,000 and non-manufacturing contracts exceeding $3,000,000 under the Program. The rule will benefit small business concerns owned by Native Hawaiian Organizations, by permitting sole source contract awards to these concerns.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR Part 219, which was published at 70 FR 43072 on July 26, 2005, is adopted as a final rule with the following change:

PART 219—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR Part 219 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 219.805–1 is amended by revising paragraph (b)(2)(A) to read as follows:

219.805–1 General.

(b)(2)(A) For acquisitions that exceed the competitive threshold, the SBA also may accept the requirement for a sole source 8(a) award on behalf of a small business concern owned by a Native Hawaiian Organization (Section 8020 of Pub. L. 109–148).

* * * * *

[FR Doc. E6–9506 Filed 6–15–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750–AF32

Defense Federal Acquisition Regulation Supplement; Berry Amendment Exceptions—Acquisition of Perishable Food, and Fish, Shellfish, or Seafood (DFARS Case 2006–D005)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 831 of the National Defense Authorization Act for Fiscal Year 2006 and Section 8118 of the Defense Appropriations Act for Fiscal Year 2005. These statutes relate to the acquisition of perishable foods for DoD activities located outside the United States, and the acquisition of domestic fish, shellfish, and seafood.

DATES: *Effective date:* June 16, 2006.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 15, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D005, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2006–D005 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2533a (the Berry Amendment) requires DoD to acquire certain items from domestic sources, unless an exception applies. The requirements of 10 U.S.C. 2533a are implemented at DFARS 225.7002, and the exceptions are listed at DFARS 225.7002–2. This interim rule amends the exceptions at DFARS 225.7002–2 to implement Section 831 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163) and Section 8118 of the Defense Appropriations Act for Fiscal Year 2005 (Pub. L. 108–287). Section 831 of Public Law 109–163 amended 10 U.S.C. 2533a(d)(3) to expand the exception that permits the acquisition of non-domestic perishable foods by activities located outside the United States, to also permit the acquisition of such foods by activities that are making purchases on behalf of activities located outside the United States. Section 8118 of Public Law 108–287 established a permanent requirement for the acquisition of domestic fish, shellfish, and seafood, including fish, shellfish, and seafood contained in foods manufactured or processed in the United States. This requirement previously had been included in Defense Appropriations Acts on an annual basis.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to: (1) The acquisition of perishable foods for DoD activities located outside the United States; and (2) continuation of the existing requirement for the acquisition of domestic fish, shellfish, and seafood. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006-D005.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 831 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163), which became effective upon enactment on January 6, 2006. Section 831 facilitates the acquisition of perishable foods for personnel of activities located outside the United States, by expanding the exception to domestic source requirements for those acquisitions. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 225.7002–2 is amended by revising paragraphs (e) and (l) to read as follows:

225.7002–2 Exceptions.

* * * * *

(e) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities.

* * * * *

(l) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. However, in accordance with Section 8118 of the DoD Appropriations Act for Fiscal Year 2005 (Pub. L. 108–287), this exception does not apply to fish, shellfish, or seafood manufactured or processed in the United States or fish, shellfish, or seafood contained in foods manufactured or processed in the United States.

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[FR Doc. E6–9485 Filed 6–15–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 237

RIN 0750–AF37

Defense Federal Acquisition Regulation Supplement; Security-Guard Services Contracts (DFARS Case 2006–D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 344 of the National Defense Authorization Act for Fiscal Year 2006. Section 344 extends, through September 30, 2007, the period during which contractor performance of security-guard functions at military installations or facilities is authorized to fulfill additional requirements resulting from the terrorist attacks on the United States on September 11, 2001.

DATES: *Effective date:* June 16, 2006.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before August 15, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D011, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2006–D011 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Robin Schulze, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received generally will be posted without change to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2465 prohibits DoD from entering into contracts for the performance of firefighting or security-guard functions at military installations or facilities, unless an exception applies. Section 332 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314) provided temporary authority for DoD to waive the prohibition at 10 U.S.C. 2465, to fulfill additional requirements for security-guard functions at military installations or facilities resulting from the terrorist attacks on the United States on September 11, 2001. This authority applied to security-guard functions performed through December 1, 2005. Section 324 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–175) conditionally extended the expiration date of this authority to September 30, 2006. Section 344 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163) has extended the authority through September 30, 2007. This interim rule amends DFARS 237.102–70 to reflect the new expiration date.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule may provide opportunities for small business concerns to receive contracts for the performance of security-guard functions at military installations or facilities, the economic impact is not expected to be substantial. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D011.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 344 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). Section 344 extends, through September 30, 2007, the period during which contractor performance of security-guard functions at military installations or facilities is authorized to fulfill additional requirements resulting from the terrorist attacks on the United States on September 11, 2001. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 237 is amended as follows:

PART 237—SERVICE CONTRACTING

■ 1. The authority citation for 48 CFR part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 237.102–70 is amended by revising paragraph (d)(3) to read as follows:

237.102–70 Prohibition on contracting for firefighting or security-guard functions.

* * * * *

(d) * * *

(3) Contract performance will not extend beyond September 30, 2007.

[FR Doc. E6–9486 Filed 6–15–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AF43

Defense Federal Acquisition Regulation Supplement; Free Trade Agreement—El Salvador, Honduras, and Nicaragua (DFARS Case 2006–D019)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the Dominican Republic-Central America-United States Free Trade Agreement with respect to El Salvador, Honduras, and Nicaragua. The Free Trade Agreement waives the applicability of the Buy American Act for some foreign supplies and construction materials and specifies procurement procedures designed to ensure fairness.

DATES: *Effective date:* June 16, 2006.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 15, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D019, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2006–D019 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS provisions and clauses to implement the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR) with respect to El Salvador, Honduras, and Nicaragua. Congress approved the CAFTA–DR in the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109–53). Other signatory countries to the CAFTA–DR are Costa Rica, the Dominican Republic, and Guatemala. The DFARS will be further amended when the CAFTA–DR takes effect for these countries. The CAFTA–DR waives the applicability of the Buy American Act for some foreign supplies and construction materials and specifies procurement procedures designed to ensure fairness.

For supply and service contracts, the CAFTA–DR has the same dollar threshold as the other Free Trade Agreements ($64,786), except that the Morocco Free Trade Agreement has a higher threshold that is equal to the threshold for the World Trade Organization Government Procurement Agreement ($193,000); and the North American Free Trade Agreement (NAFTA) has a lower threshold with respect to supply contracts involving Canada ($25,000). For construction contracts, the CAFTA–DR and the Morocco Free Trade Agreement have the same threshold as the Australia Free Trade Agreement, the Chile Free Trade Agreement, the Singapore Free Trade Agreement, and the World Trade Organization Government Procurement Agreement ($7,407,000), which is lower than the NAFTA threshold of $8,422,165 for construction contracts. Therefore, the DFARS provision and clause that implement the Free Trade Agreements below the World Trade Organization Government Procurement Agreement threshold (DFARS 252.225–7035 and 252.225–7036) apply to end products from all Free Trade Agreement countries except Morocco. The construction contract clause that implements trade agreements (DFARS 252.225–7045) applies to all designated country construction material except Mexican construction material, because Canada, the other NAFTA country, is a member of the World Trade Organization Government Procurement Agreement.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up DoD procurement to the products of El Salvador, Honduras, and Nicaragua, DoD does not believe there will be a significant economic impact on U.S. small businesses. DoD applies the trade agreements to only those non-defense items listed at DFARS 225.401–70, and procurements that are set aside for small businesses are exempt from application of the trade agreements. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D019.

C. Paperwork Reduction Act

This interim rule affects the certification and information collection requirements in the provisions at DFARS 252.225–7020 and 252.225–7035, currently approved under Office of Management and Budget Control Number 0704–0229. The impact, however, is negligible.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements the Dominican Republic-Central America-United States Free Trade Agreement with respect to El Salvador, Honduras, and Nicaragua, as approved by Congress in Public Law 109–53. The Free Trade Agreement waives the applicability of the Buy American Act for some foreign supplies and construction materials from El Salvador, Honduras, and Nicaragua, and specifies procurement procedures designed to ensure fairness. The Free Trade

Agreement became effective for El Salvador on March 1, 2006, and for Honduras and Nicaragua on April 1, 2006. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

252.212–7001 [Amended]

■ 2. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read "(JUN 2006)";

■ b. In paragraph (b), in entry "252.225–7021", by removing "(FEB 2006)" and adding in its place "(JUN 2006)"; and

■ c. In paragraph (b), in entry "252.225–7036", by removing "(JUN 2005)" and adding in its place "(JUN 2006)".

■ 3. Section 252.225–7013 is amended by revising the clause date and paragraph (a)(2) to read as follows:

252.225–7013 Duty-Free Entry.

* * * * *

Duty-Free Entry (JUN 2006)

(a) * * *

(2) *Eligible product* means—

(i) *Designated country end product* as defined in the Trade Agreements clause of this contract;

(ii) *Free Trade Agreement country end product,* other than a *Moroccan end product,* as defined in the Buy American Act-Free Trade Agreements-Balance of Payments Program clause of this contract; or

(iii) *Canadian end product* as defined in Alternate I of the Buy American Act-Free Trade Agreements-Balance of Payments Program clause of this contract.

* * * * *

■ 4. Section 252.225–7021 is amended by revising the clause date and paragraphs (a)(3)(ii) and (iv) to read as follows:

252.225–7021 Trade agreements.

* * * * *

Trade Agreements (JUN 2006)

(a) * * *

(3) * * *

(ii) A Free Trade Agreement country (Australia, Canada, Chile, El Salvador, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

* * * * *

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, Grenada, Guatemala, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

* * * * *

■ 5. Section 252.225–7035 is amended by revising the clause date and paragraphs (a), (b)(2), (c)(2)(ii), and Alternate I to read as follows:

252.225–7035 Buy American Act-Free Trade Agreements-Balance of Payments Program Certificate.

* * * * *

Buy American Act-Free Trade Agreements-Balance of Payments Program Certificate (JUN 2006)

(a) *Definitions. Domestic end product, Free Trade Agreement country, Free Trade Agreement country end product, foreign end product, Moroccan end product, qualifying country end product,* and *United States* have the meanings given in the Buy American Act-Free Trade Agreements-Balance of Payments Program clause of this solicitation.

(b) * * *

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Moroccan end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) * * *

(2) * * *

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Moroccan end products:

(Line Item Number) (Country of Origin)

* * * * *

Alternate I (JUN 2006)

As prescribed in 225.1101(9), substitute the phrase "*Canadian end product*" for the phrases "*Free Trade Agreement country*", "*Free Trade Agreement country end product*", and "*Moroccan end product*" in paragraph (a) of the basic provision; and substitute the phrase "Canadian end products" for the phrase "Free Trade Agreement country end products other than Moroccan end products" in paragraphs (b)(2) and (c)(2)(ii) of the basic provision.

■ 6. Section 252.225–7036 is amended as follows:

■ a. By revising the clause date;

■ b. By removing paragraph (a)(4);

■ c. By redesignating paragraph (a)(5) as paragraph (a)(4), and paragraphs (a)(6) through (9) as paragraphs (a)(8) through (11) respectively;

■ d. By adding new paragraphs (a)(5) through (7); and

■ e. By revising paragraph (c) to read as follows:

252.225–7036 Buy American Act-Free Trade Agreements-Balance of Payments Program.

* * * * *

Buy American Act-Free Trade Agreements-Balance of Payments Program (JUN 2006)

(a) * * *

(5) *Free Trade Agreement country* means Australia, Canada, Chile, El Salvador, Honduras, Mexico, Morocco, Nicaragua, or Singapore;

(6) *Free Trade Agreement country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(7) *Moroccan end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but

for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

* * * * *

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Moroccan end products, or other foreign end products in the Buy American Act-Free Trade Agreements-Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Moroccan end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Moroccan end product, or, at the Contractor's option, a domestic end product.

* * * * *

7. Section 252.225–7045 is amended by revising the clause date, the definition of "*Designated country*" in paragraph (a), and Alternate I to read as follows:

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

Balance of Payments Program—Construction Material Under Trade Agreements (JUN 2006)

(a) * * *

Designated country means—

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Canada, Chile, El Salvador, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, Grenada, Guatemala, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

* * * * *

Alternate I (JUN 2006). As prescribed in 225.7503(b), add the following definition of "*Mexican construction material*" to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

Mexican construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Mexico; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Mexico into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material other than Mexican construction material.

(c) The Contractor shall use only domestic or designated country construction material other than Mexican construction material in performing this contract, except for—(1) Construction material valued at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"].

[FR Doc. E6–9500 Filed 6–15–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF STATE

48 CFR Parts 601, 611, 619, 622, 628, and 652

[Public Notice 5444]

RIN 1400–AB90

Rule Title: Department of State Acquisition Regulation

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule makes final a proposed rule issued on December 22, 2004, with several revisions. It revises the DOSAR to formalize Department policy regarding the application of the Small Business Act to contracts awarded by domestic contracting activities where contract performance takes place overseas; and, revises the coverage regarding Defense Base Act insurance. The final rule also contains several miscellaneous amendments and corrections not published on December 22, 2004, as outlined below. The Department received public comments from three sources on the proposed rule, which are discussed below.

DATES: *Effective Date:* This rule is effective June 16, 2006.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street, NW., Suite 603, State Annex Number 6, Washington, DC 20522–0602; e-mail address: *ginesgg@state.gov*.

SUPPLEMENTARY INFORMATION: The Department published a proposed rule, Public Notice 4938 at 69 FR 76660, December 22, 2004, with a request for comments, amending Parts 619, 625, 628, and 652 of Title 48 of the Code of Federal Regulations. The rule made three changes to the DOSAR: (1) Formalized policy regarding the application of the Small Business Act to contracts awarded by domestic contracting activities where contract performance takes place overseas; (2) added language to deal with U.S. Government support to contractors performing overseas; and (3) revised the coverage regarding Defense Base Act insurance. The proposed rule was discussed in detail in Public Notice 4938. The Department is now promulgating a final rule with changes from the proposed rule.

In particular, the Department is not finalizing that part of the proposed rule dealing with U.S. Government support to contractors performing overseas. The Department of Defense published a final rule on May 5, 2005 (70 FR 23790). That final rule contained a clause for use in

DOD contracts that require contractor personnel to deploy with, or otherwise provide support in the theater of operations, to U.S. military forces deployed outside the United States in contingency operations, humanitarian or peacekeeping operations, or other military operations or exercises designated by the combatant commander. The State Department's proposed rule language was, in part, based on this DOD rule. However, in the interim, the FAR Council has determined that coverage for DOD, State, and other agencies regarding contractor support outside the United States is necessary for those services that are not in direct support of a deployed military force, e.g., reconstruction efforts. A FAR case is being developed to deal with U.S. Government support to contractors operating overseas. The Department of State intends to follow the FAR language when promulgated; therefore, separate DOSAR language will not be required.

The final rule also contains several amendments and corrections that were not published as part of the proposed rule. They are as follows:

- DOSAR 601.106 is revised to add the information collection number and burden estimate for *Department of State Form DS–4053, Department of State Mentor-Protégé Program Application.*
- DOSAR 601.603–70(b) is revised to add an additional DOS office that has been delegated limited procurement authority.
- DOSAR 611.502 is corrected to read 611.501. The FAR citation of 11.502(d) is corrected to read FAR 11.501(d).
- DOSAR 619.803–71(b) is revised to change the reference to the Small Business Administration's PRO-Net database to the Central Contractor Registration (CCR) database. The CCR database is now the official source of vendor data for the Government.
- DOSAR 619.811–3 is revised to remove the reference to Alternate III of FAR clause 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns. There is no Alternate III to FAR 52.219–18.
- DOSAR 622.604–2 is revised to correct a citation.

These amendments and corrections do not affect the public, and therefore good cause exists to publish the amendments for effect without first soliciting public comment because prior public comment is unnecessary. The amendments are for the purpose of implementing internal changes and making minor corrections.

Analysis of Comments: The proposed rule was published for comment on December 22, 2004 (69 FR 76660). The comment period closed on February 22, 2005. The Department received comments from three sources. The following is a synopsis of the Department's response to the public comments and any changes made to the rule as a result. The comments are grouped by topic.

I. Comments Regarding the Application of the Small Business Act

1. *Comment:* One commentator disagreed that the language of FAR 19.000(b) is ambiguous, and questioned the Department's policy of applying the Small Business Act to contracts awarded domestically and performed overseas. The commentator pointed out that no other agency has made such an interpretation.

Response: Nonconcur. The Department does consider the language of FAR 19.000(b), which states that FAR Part 19, with the exception of Subpart 19.6, applies "only in the United States or its outlying areas", to be ambiguous. The application of the Small Business Act to contracts awarded domestically for performance overseas has been a longstanding practice at the Department of State; this rule merely formalizes that practice.

2. *Comment:* One commentator stated that if the Department implemented the proposed language, it should adopt a regime that reflects the realities of work in a contingency operation or high risk location and that is directly related to the instant procurement requirement.

Response: Partially Concur. The Department already does this. DOSAR 619.201(d)(5) requires that the Office of Small and Disadvantaged Utilization (A/SDBU) review requests for acquisitions exceeding the simplified acquisition threshold ($100,000), and task and delivery orders exceeding $2 million. The capabilities and capacities of small businesses to perform on any given acquisition, including those in contingency or high risk locations, are taken into consideration by A/SDBU when making set-aside recommendations. Since this requirement is already in the DOSAR, no change to the rule is necessary.

3. *Comment:* One commentator expressed confusion regarding what the Department meant by the term "legislatively specified categories".

Response: Concur. The term "legislatively specified categories" refers to the small business programs under the Small Business Act, namely, small business concerns, HUBZone small business concerns, service-disabled veteran-owned small business concerns, 8(a) concerns, women-owned small business concerns, small disadvantaged business concerns, and veteran-owned small business concerns. However, to avoid confusion, this term has been removed from the final rule.

4. *Comment:* One commentator recommended revising the last sentence of proposed 619.000(b) to state: "Contracts that are both awarded and performed outside the United States should comply on a voluntary basis."

Response: Concur. The sentence has been revised accordingly.

5. *Comment:* One commentator questioned the practicality of the proposed rule, citing the requirement for subcontracting plans and goals and questioning how goals will be negotiated. The commentator questioned how the Department would reconcile these small business subcontracting goals with U.S. treaty obligations and the frequent U.S. foreign policy goal of requiring U.S. contractors to use host country businesses and resources.

Response: Nonconcur. As indicated previously, this policy is not new. In point of fact, the Department has not experienced difficulties in implementing this policy. FAR 19.702(b) states that subcontracting plans are not required for contracts that will be performed entirely outside of the United States, so contracts that are performed overseas are already exempted from the subcontracting plan requirements. Additionally, the Omnibus Diplomatic Security and Antiterrorism Act (Public Law 99–399) stipulates that ten percent of the monies appropriated for diplomatic security should, to the extent practicable, be awarded to minority owned business concerns, and another 10 percent to small businesses. In making any set-aside recommendations, A/SDBU takes into account all of the issues raised by the commentator, including any limitations that foreign governments may impose. No change to the rule is therefore necessary.

6. *Comment:* One commentator suggested that, instead of applying the policy, the Department use small business performance as a competitive evaluation factor in appropriate solicitations.

Response: Partially Concur. The Department already does this. DOSAR 619.705–3 encourages contracting officers to consider the adequacy of subcontracting plans and/or past performance in achieving negotiated goals, as part of the overall evaluation of proposals. Since this requirement is already in the DOSAR, no change to the rule is necessary.

7. *Comment:* One commentator recommended that the Department conduct a public meeting to discuss the rule, as well as separate this revision from the other parts of the proposed rule.

Response: Nonconcur. The Department does not see the need for a public meeting, nor to separate this from the rest of the rule. As indicated previously, this has been a longstanding practice and the Department has not experienced any difficulties in its implementation.

II. Comments Regarding Defense Base Act (DBA) Insurance

1. *Comment:* One commentator expressed concern about how vendors would know, at the time of the solicitation, whether a country has a workers' compensation law.

Response: Concur. The Department agrees that this information should be provided by the Government in the solicitation. The solicitation provision at 652.228–70 has been revised so that the contracting officer will check a block to indicate if a country does or does not have such laws.

2. *Comment:* One commentator requested that the rule be revised so that contractors would be allowed to purchase their own Defense Base Act insurance rather than use the insurance broker that the Department has under contract.

Response: Nonconcur. The contract with the insurance broker is a requirements contract. This means that the Department has an obligation to require that its contractors purchase all of their DBA insurance from the insurance broker. In addition, the Department has negotiated more favorable rates since the contractor has been assured of the volume of work. Since the cost of the DBA insurance premiums is a direct reimbursable cost under the Department's contracts, contractors do not incur additional costs in procuring the DBA insurance from the Department's contractor.

3. *Comment:* All commentators, including the Department of Labor (DOL), expressed concern regarding the coverage on Section 16 of the State Department Basic Authorities Act. This statutory provision provides that the Defense Base Act shall not apply with respect to such contracts as the Secretary of State determines are contracts with persons employed to perform work for the Department on an intermittent basis for not more than 90 days in a calendar year. Specifically, commentators pointed out that the rule did not address how to request a waiver, under what circumstances a waiver would be approved, how the Department would notify exempted individuals, and what workers' compensation coverage these exempted employees would have.

Response: Concur. The Department agrees that more detail is required. The language in the State Department Basic Authorities Act was added in the early 1980s, before the Department had a contract with an insurance broker for DBA insurance. At that time, contractors that had short-term contracts with the Department for overseas performance were paying relatively high DBA insurance premiums. However, State worker's compensation programs protected workers based in that State when they performed short out-of-state assignments, even foreign assignments. Since the workers had the protection of the State's workers' compensation law, additional DBA insurance was not needed for these short-term assignments.

In response to these comments, the Department has revised the language of the proposed rule to: (1) List the information that a contractor must submit in order for a waiver to be considered; (2) conditioned the waiver on the contractor's presentation of evidence of alternative workers' compensation coverage (e.g., from the State); and (3) limited the waiver to U.S. citizens and residents, not local or third country nationals. We believe that these changes address the concerns raised regarding what coverage these exempted employees would have. We also have added language that the contracting officer will provide the contractor with the original of any approved waivers, thereby addressing the concern of how contractors will be notified. The Department believes that since we now have a contract with an insurance broker for DBA insurance at reasonable rates, requests for waivers should be rare.

To further clarify DBA coverage, we have added language, based on guidance from DOL, that individuals who are self-employed (i.e., are not incorporated) do not meet the definition of an employee; therefore, no DBA insurance is required when contracting with these individuals. The language was added because the Department does contract with individuals (e.g., eligible family members) to perform tasks (e.g., prepare a monthly embassy newsletter), and the question was raised as to whether these individuals needed to procure DBA insurance.

4. *Comment:* The paragraph numbering of proposed DOSAR 628.305 is incorrect. The paragraphs are numbered (b) through (f) instead of (a) through (e).

Response: Nonconcur. The DOSAR follows the FAR numbering convention. We are implementing paragraphs (b) through (e) of the FAR, but not implementing paragraph (a) of FAR 28.305, since that paragraph (a) is merely a definition of "public-work contract."

5. *Comment:* DOL supports the new definition of "covered contractor employees", as well as the acknowledgement that local and third country nationals are covered by DBA if there is no local workers' compensation law.

Response: Concur. No revision is necessary.

6. *Comment:* One commentator recommended that in the clause prescriptions at DOSAR 628.309–70(a) and (b), we retain the reference to 628.309(b) only in both instances, as opposed to (b)(1). By only referring to (b)(1), we have unintentionally excluded the recognized exceptions to coverage that are cross-referenced in 628.305(b)(2).

Response: Concur. We have revised the section accordingly.

7. *Comment:* One commentator recommended that we either delete the repetitious definition of "covered contractor employee" in the provision at 652.228–74 and simply provide a cross-reference to the language at 628.305(a), or add at the end of paragraph (a) of 652.228–74 a new sentence that recognizes the exception for intermittent employees where the Procurement Executive has granted a waiver.

Response: Nonconcur. We believe that it is important to have the definition of "covered contractor employee" in the solicitation provision so that vendors will not have to refer back to other parts of the regulation. At the time of the solicitation, vendors will not know whether they will have any exempted employees, since any waiver is approved after contract award. They will need to include the DBA insurance costs for those employees in terms of preparing their cost proposal. Should a waiver be approved after contract award, the contractor simply would not request reimbursement for any employees that are exempted under the waiver, since the DBA insurance costs are a direct reimbursable cost under the contract.

8. *Comment:* One commentator recommended that the Department conduct a public meeting to discuss the rule, as well as separate this revision from the other parts of the proposed rule.

Response: Nonconcur. The Department does not see the need for a public meeting, nor to separate this from the rest of the rule. As indicated, most of the comments regarding the DBA coverage center around the waiver for intermittent employees, and the Department believes that these waivers will be a rare occurrence.

III. Comments Regarding U.S. Government Support to Contractors Overseas

The Department received numerous comments regarding this section of the proposed rule. However, since the Department is rescinding this part of the proposed rule, and will adopt the FAR language, no discussion of the comments is required. The public will have an opportunity to comment on the FAR language.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule with changes after it was published as a proposed rule on December 22, 2004 (see **SUPPLEMENTARY INFORMATION**).

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $1 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 13132

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

Executive Order 12866: Regulatory Review

This regulation has been reviewed by the Office of Management and Budget.

Paperwork Reduction Act

Information collection requirements have been approved under the Paperwork Reduction Act of 1980 by OMB, and have been assigned OMB control number 1405–0050. The information and recordkeeping requirements for Form DS–4053, *Department of State Mentor-Protégé Program Application*, have been approved by OMB under OMB Control Number 1405–0161.

List of Subjects in 48 CFR Parts 601, 611, 619, 622, 628, 652

Government procurement.

■ Accordingly, for the reasons set forth in the preamble, title 48, chapter 6 of the Code of Federal Regulations is amended as follows:

■ 1. The authority citation for 48 CFR parts 601, 611, 619, 622, 628, and 652 continues to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subchapter A—General

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATION SYSTEM

■ 2. Section 601.106 is amended by adding the following sentence at the end:

601.106 OMB approval under the Paperwork Reduction Act.

* * * The information and recordkeeping requirements for Form DS–4053, *Department of State Mentor-Protégé Program Application*, have been approved by OMB under OMB Control Number 1405–0161; the burden estimate is 294 hours.

■ 3. Section 601.603–70 is amended by adding a new paragraph (b)(8) to read as follows:

601.603–70 Delegations of authority.

* * * * *

(b) * * *

(8) Bureau of Administration, Office of Operations. The authority to enter into and administer simplified acquisition transactions for emergency or contingency operations necessary to protect life or federal property. This authority is limited to cases when a contracting officer in the Office of Acquisitions Management is unavailable.

Subchapter B—Competition and Acquisition Planning

PART 611—DESCRIBING AGENCY NEEDS

611.502 [Redesignated as 611.501] and 611.501 [Amended]

■ 4. Section 611.502 is redesignated as section 611.501. New section 611.501 is amended by correcting the citation at the end of paragraph (d) to read "FAR 11.501(d)."

Subchapter D—Socioeconomic Programs

PART 619—SMALL BUSINESS PROGRAMS

■ 5. A new section 619.000 is added to read as follows:

619.000 Scope of part.

(b) It is the Department's policy to provide maximum opportunities for U.S. small businesses to participate in the acquisition process. DOS contracts that are awarded domestically for performance overseas shall be subject to the Small Business Act as a matter of policy. Contracts that are both awarded and performed overseas should comply on a voluntary basis.

619.803–71 [Amended]

■ 6. Section 619.803–71 is amended by removing the words "SBA's PRO-Net database on the Internet (*http://www.sba.gov*)" and inserting the words "Central Contractor Registration database (*http://www.ccr.gov*)" in their place in paragraph (b).

619.811–3 [Amended]

■ 7. Section 619.811–3 is amended by removing the words "with its Alternate III" in paragraph (d)(3).

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

622.604–2 [Amended]

■ 8. Section 622.604–2 is amended by revising the citation to read "FAR 22.604–2(b)(1)" at the end.

Subchapter E—General Contracting Requirements

PART 628—BONDS AND INSURANCE

■ 9. Subpart 628.3 is revised to read as follows:

Subpart 628.3—Insurance

Subpart 628.3—Insurance

628.305 Overseas workers' compensation and war-hazard insurance.

(b)(1) Acquisitions for services, including construction but excluding personal services contracts, requiring contractor personnel to perform work outside of the United States, shall include the contractual obligation for coverage under the Defense Base Act (42 U.S.C. Sections 1651–1654, as amended), for covered contractor employees. For the purposes of this section, "covered contractor employees" includes the following individuals:

(i) United States citizens or residents;

(ii) Individuals hired in the United States or its possessions, regardless of citizenship; and,

(iii) Local nationals and third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.

(2) Individuals who are self-employed (*i.e.*, they have not incorporated) do not meet the definition of an employee. No Defense Base Act insurance is required when contracting with these individuals.

(3) Exceptions are discussed in paragraphs (e)(1) and (f) of this section.

(c) The Department of State has entered into a contract with an insurance broker and carrier to provide Defense Base Act insurance (at a fixed rate for services and construction) to cover DOS contracts that require performance overseas by covered contractor employees. Upon award of a contract that requires Defense Base Act insurance, the contracting officer shall provide the contractor with the name of the insurance broker from which the contractor must acquire the Defense Base Act insurance.

(d) The authority to recommend a waiver from the Defense Base Act, as set forth in FAR 28.305(d), is reserved to the Secretary of State.

(e)(1) The Secretary of Labor has waived the applicability of the Defense Base Act to all DOS service contracts, including construction, for contractor employees who are local nationals or third country nationals. This waiver is conditioned on the requirement for the contractor to provide workers' compensation benefits against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention as prescribed by the local workers' compensation laws.

(2) In cases where a contract is performed in a country where there are no local workers' compensation laws, local and third country national contractor employees are considered to be "covered contractor employees", and the contractor shall acquire Defense Base Act insurance for those employees pursuant to the contract between the Department of State and the Defense Base Act insurance broker.

(f)(1) Section 16 of the State Department Basic Authorities Act (22 U.S.C. 2680a), as amended, provides that the Defense Base Act shall not apply with respect to such contracts as the Secretary of State determines are contracts with persons employed to perform work for the Department of State on an intermittent basis for not more than 90 days in a calendar year. The Department of State has established that "persons" includes employees hired by companies under contract with the Department. The Procurement Executive has the authority to issue the waivers for employees who work on an intermittent or short-term basis. Waivers may be issued only for employees who are U.S. citizens and residents, and only where the contractor provides evidence of alternative workers' compensation coverage for those employees. Waivers may not be issued for local or third country nationals.

(2) The contractor shall submit waiver requests to the contracting officer. The request shall contain the following information:

(i) Contract number;

(ii) Name of contractor;

(iii) Brief description of the services to be provided under the contract and country of performance;

(iv) Name and position title of individual(s);

(v) Nationality of individual(s) (must be U.S. citizen or resident);

(vi) Dates (or timeframe) of performance at the overseas location; and

(vii) Evidence of alternative workers' compensation coverage for these employees (*e.g.*, evidence that the State workers' compensation program covers workers on short-term foreign assignments).

(3) The contracting officer shall review the request for completeness and accuracy. If the request is complete and accurate, the contracting officer shall forward the request to the Procurement Executive. If the contractor does not provide complete and accurate information, the contracting officer shall return the request to the contractor with an explanation as to what additional information is required.

(4) The Procurement Executive shall review requests for waiver forwarded by the contracting officer and either approve or disapprove the request. The Procurement Executive shall return the request indicating his/her approval or disapproval to the contracting officer. Any request that is not approved shall describe the reason(s) why the request was not approved. The contracting officer shall provide the contractor with the original of the approved or disapproved document and maintain a copy in the contract file.

628.309 Contract clauses for workers' compensation insurance.

628.309–70 DOSAR provisions and clauses.

(a) The contracting officer shall insert the provision at 652.228–70, Defense Base Act—Covered Contractor Employees, in all solicitations for services and construction to be performed outside of the United States.

(b) The contracting officer shall insert the clause at 652.228–71, Workers' Compensation Insurance (Defense Base Act)—Services, in solicitations and contracts for services to be performed outside of the United States when there is a reasonable expectation that offers will include covered contractor employees, as defined in 628.305(b). If the contracting officer is unsure as to whether offers will include covered contractor employees, the contracting officer shall insert the clause. If the contract is for construction, the contracting officer shall insert the clause with its Alternate I.

(c) The contracting officer shall insert the provision at 652.228–74, Defense Base Act Insurance Rates—Limitation, in solicitations for services or construction to be performed outside of the United States when there is a reasonable expectation that offers will include covered contractor employees, as defined in 628.305(b). If the contracting officer is unsure as to whether offers will include covered contractor employees, the contracting officer shall insert the provision.

Subchapter H—Clauses and Provisions

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Section 652.228–70 is added to read as follows:

652.228–70 Defense Base Act—Covered Contractor Employees.

As prescribed in 628.309–70(a), insert the following provision:

Defense Base Act—Covered Contractor Employees (MO/YR)

(a) Bidders/offerors shall indicate below whether or not any of the following categories of employees will be employed on the resultant contract, and, if so, the number of such employees:

Category	Yes/No	Number
(1) United States citizens or residents		
(2) Individuals hired in the United States, regardless of citizenship		
(3) Local nationals or third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.	.....	Local nationals: Third country nationals:
(4) Local nationals or third country nationals where contract performance takes place in a country where there are local workers' compensation laws.	.....	Local nationals: Third country nationals:

(b) The contracting officer has determined that for performance in the country of [contracting officer insert country of performance and check the appropriate block below]

☐ Workers' compensation laws exist that will cover local nationals and third country nationals.

☐ Workers' compensation laws do not exist that will cover local nationals and third country nationals.

(c) If the bidder/offeror has indicated "yes" in block (a)(4) of this provision, the bidder/offeror shall not purchase Defense Base Act insurance for those employees. However, the bidder/offeror shall assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention, in accordance with the clause at FAR 52.228–4.

(d) If the bidder/offeror has indicated "yes" in blocks (a)(1), (2), or (3) of this provision, the bidder/offeror shall compute Defense Base Act insurance costs covering those employees pursuant to the terms of the contract between the Department of State and the Department's Defense Base Act insurance carrier at the rates specified in DOSAR 652.228–74, Defense Base Act Insurance Rates—Limitation. If DOSAR provision 652.228–74 is not included in this solicitation, the bidder/offeror shall notify the contracting officer before the closing date so that the solicitation can be amended accordingly.

(End of provision)

■ 11. Section 652.228–71 is revised to read as follows:

652.228–71 Workers' Compensation Insurance (Defense Base Act)—Services.

As prescribed in 628.309–70(b), insert the following clause:

Workers' Compensation Insurance (Defense Base Act)—Services (MO/YR)

(a) This clause supplements FAR 52.228–3. For the purposes of this clause, "covered contractor employees" includes the following individuals:

(1) United States citizens or residents;

(2) Individuals hired in the United States or its possessions, regardless of citizenship; and

(3) Local nationals and third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.

(b) The Contractor shall procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the Department of State and the Department's DBA insurance carrier for covered contractor employees, unless the Contractor has a DBA self-insurance program approved by the Department of Labor. The Contractor shall submit a copy of the Department of Labor's approval to the contracting officer upon contract award, if applicable.

(c) The current rate under the Department of State contract is [contracting officer insert rate] of compensation for services.

(d) The Contractor shall insert a clause substantially the same as this in all subcontracts. The Contractor shall require that subcontractors insert a similar clause in any of their subcontracts.

(e) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, the contracting officer shall modify this contract accordingly.

(f) The Contractor shall demonstrate to the satisfaction of the contracting officer that the equitable adjustment as a result of the insurance increase or decrease does not include any reserve for such insurance. Adjustment shall not include any overhead, profit, general and administrative expenses, etc.

(g)(1) Section 16 of the State Department Basic Authorities Act (22 U.S.C. 2680a), as amended, provides that the Defense Base Act shall not apply with respect to such contracts as the Secretary of State determines are contracts with persons employed to perform work for the Department of State on an intermittent basis for not more than 90 days in a calendar year. "Persons" includes individuals hired by companies under contract with the Department. The Procurement Executive has the authority to issue the waivers for Contractor employees who work on an intermittent or short-term basis.

(2) The Contractor shall submit waiver requests to the contracting officer. The request shall contain the following information:

(i) Contract number;

(ii) Name of Contractor;

(iii) Brief description of the services to be provided under the contract and country of performance;

(iv) Name and position title of individual(s);

(v) Nationality of individual(s) (must be U.S. citizen or U.S. resident);

(vi) Dates (or timeframe) of performance at the overseas location; and,

(vii) Evidence of alternative workers' compensation coverage for these employees (e.g., evidence that the State workers' compensation program covers workers on short-term foreign assignments).

(3) The contracting officer shall provide to the Contractor the original of the approved or disapproved document and maintain a copy in the contract file.

(End of clause)

Alternate I. (MO/YR) If the contract is for construction, as prescribed in 628.309–70(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The current rate under the Department of State contract is [contracting officer insert rate] of compensation for construction.

■ 12. Section 652.228–74 is revised to read as follows:

652.228–74 Defense Base Act Insurance Rates—Limitation.

As prescribed in 628.309–70(c), insert the following provision:

Defense Base Act Insurance Rates—Limitation (MO/YR)

(a) The Department of State has entered into a contract with an insurance carrier to provide Defense Base Act (DBA) insurance to Department of State covered contractor employees at a contracted rate. For the purposes of this provision, "covered

contractor employees" includes the following individuals:

(1) United States citizens or residents:

(2) Individuals hired in the United States or its possessions, regardless of citizenship; and

(3) Local nationals and third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.

(b) In preparing the cost proposal, the bidder/offeror shall use the following rates in computing the cost for DBA insurance:

Services @[contracting officer insert current rate] of compensation; or

Construction @[contracting officer insert current rate] of compensation.

(c) Bidders/offerors shall compute the total compensation (direct salary plus differential, but excluding per diem, housing allowance and other miscellaneous allowances) to be paid to covered contractor employees and the cost of the DBA insurance in their bid/offer using the foregoing rate. Bidders/offerors shall include the estimated DBA insurance costs in their proposed total fixed price or estimated cost. However, the DBA insurance costs shall be identified in a separate line item in the bid/proposal.

(End of provision)

652.228–75 and 652.228–76 [Removed]

■ 13. Sections 652.228–75 and 652.228–76 are removed.

Dated: June 6, 2006.

Corey M. Rindner,

Procurement Executive, Bureau of Administration, Department of State.

[FR Doc. E6–9502 Filed 6–15–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060608158–6158–01; I.D. 051806E]

RIN 0648–AU47

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Emergency Rule

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

ACTION: Temporary rule; emergency interim rule and request for comments.

SUMMARY: NMFS is implementing an observer service provider program for the Atlantic sea scallop (scallop) fishery including criteria for becoming an approved observer service provider, observer certification criteria, decertification criteria, and observer deployment logistics. Through this emergency rule, NMFS is re-activating the industry-funded observer program implemented under the Atlantic Sea Scallop Fishery Management Plan (FMP) through a scallop total allowable catch (TAC) and days-at-sea (DAS) set-aside program that helps vessel owners defray the cost of carrying observers. Under this emergency action, scallop vessel owners, operators, or vessel managers are required to procure certified fishery observers for specified scallop fishing trips from an approved observer service provider. This emergency rule maintains the existing requirements for scallop vessel owners to pay for observers whether or not scallop TAC or DAS set-aside is available.

DATES: Effective from June 16, 2006 through December 13, 2006. Comments must be received at the appropriate address or fax number (see **ADDRESSES**) by 5 p.m., local time, on July 17, 2006.

ADDRESSES: Written comments should be submitted by any of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Scallop Emergency Action."
- Email: *ScallopAU47@noaa.gov*
- Fax: (978) 281–9135
- Electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this proposed rule should be submitted to the Regional Administrator at the address above and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288; fax 978–281–9135.

SUPPLEMENTARY INFORMATION: Since 1999, NMFS has required scallop vessels operating in Sea Scallop Access Areas (Access Areas) to pay for observer coverage. The Scallop FMP requires vessel owners to provide advance notification to NMFS of upcoming scallop trips. This information is used to select trips on which an at-sea observer will be deployed. Observers were deployed through a contractual arrangement between NMFS and an observer provider until June 2004. The contractual arrangement was not renewed at that time because of unresolved concerns regarding use of a sole contractor to administer the industry-funded observer program. The prior contract arrangement had enabled vessel owners to pay the observer contractor directly for observer deployments, with details of the observer deployment requirements specified through the contract. The expiration of the contract arrangement eliminated the mechanism that allowed vessel owners to make these payments and, in the absence of this contractual program, NMFS did not require vessel owners to pay for the cost of observers. Thus, NMFS has not utilized the observer set-aside program since 2004.

Observer coverage in the scallop fishery is necessary to monitor the bycatch of finfish, including yellowtail flounder, skates, monkfish, cod, and other species. Monitoring of yellowtail flounder bycatch in the Scallop Access Areas within the year-round closed areas under the Northeast (NE) Multispecies FMP is of particular concern because the scallop fishery is constrained by a fishery-specific TAC of yellowtail flounder, which is part of the stock-wide yellowtail flounder TACs set by the NE Multispecies FMP to achieve specified mortality targets for the species. Observer coverage is also needed to monitor interactions of the scallop fishery with endangered and threatened sea turtles.

Through fiscal year (FY) 2005, the Northeast Fisheries Science Center (NEFSC) funded the necessary levels of observer coverage in the sea scallop fishery to evaluate bycatch of groundfish and sea turtles by utilizing observer funding that was carried over from FY 2004. However, in FY 2006 the NEFSC's level of funding for the observer program is sufficient to provide only minimal observer coverage in the scallop fishery. The NEFSC did not receive its observer program budget until February 2006 and has been working to reconcile the shortfall ever since. In April 2006 NMFS determined that it could not reconcile the reduced level of observer coverage in the scallop fishery with available budget. Consequently, without the program established through this emergency rule, observer coverage would be constrained to levels below those recommended in the Scallop FMP for precise estimates of yellowtail flounder bycatch TAC in Access Areas. In addition, the lower level of coverage could make it more difficult to monitor and estimate interactions between the scallop fishery and sea turtles in the Mid-Atlantic, particularly during the June through October period, when such interactions are most likely.

Despite the fact that the mechanism that allowed vessel owners to make payments for observer coverage became inoperable in 2004, the New England Fishery Management Council (Council) has continued to establish specifications for the fishery that include TAC and DAS set-asides that could be harvested on observed trips to offset the costs to the industry of observer payments. The existing scallop measures also specify that the industry must pay for observers, even if the set-asides have been exhausted. Set-asides are specified in the current scallop regulations, and in proposed Framework 18 to the Scallop FMP (71 FR 16091, March 30, 2006), which is intended by the Council to adjust the specifications for the 2006 and 2007 scallop fishing year. For vessels fishing in the Area Access Program, the Council has allocated a portion of the total projected scallop catch to defray the observer costs for vessel owners. Scallop vessels that are selected to carry observers will be authorized to land additional scallops on such trips to help offset the cost of carrying the observer. Additional scallops landed in excess of the amount necessary to compensate for costs of carrying an observer will be deducted from the access area set-aside for observers. A set-aside of DAS is also allocated for scallop vessel owners who pay for the cost of observers for observed trips in open areas. The open area DAS set-aside program is the same as the TAC set-aside program, with the exception that it allows DAS to accrue at a reduced rate when a vessel carries an observer, rather than providing additional pounds of scallops to the vessel to help defray the cost of carrying the observer.

NMFS is implementing this emergency final rule, pursuant to its emergency action authority specified in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at 16 U.S.C. 1855(c), because it is critical to enact a program that will enable the industry to utilize the observer set-aside specified in the Scallop FMP no later than June 2006. The Area Access Program in the NE Multispecies closed areas begins on June 15th, with a requirement for monitoring of yellowtail bycatch by scallop vessels. Sea turtle interactions with the scallop fishery are most prevalent in the Mid-Atlantic between June and October. The benefits of taking emergency action through this final rule without the opportunity for prior public comment outweigh the adverse impacts that could be expected if NMFS proceeded under notice and comment rulemaking. The justification for this emergency action is consistent with the Policy Guidelines for the Use of Emergency Rules (62 FR 44422, August 21, 1997) because the limited amount of observer coverage for the scallop fishery that is possible under the current NEFSC funding situation is an unforeseen circumstance that also presents potentially serious management problems to the fishery that must be addressed as soon as possible. The NEFSC did not receive its observer program budget until February 2006 and NMFS determined in April 2006 that it could not reconcile the reduced level of observer coverage in the scallop fishery with available budget and therefore initiated this emergency rule. Much of the harvestable sea scallop biomass is currently located within areas closed to allow rebuilding of groundfish stocks. In order to access that scallop resource, the Area Access Program established bycatch TACs for the scallop fishery that maintain the yellowtail flounder conservation objectives of the NE Multispecies FMP. Low levels of observer coverage for scallop vessels fishing under the Area Access Program would make it difficult to monitor these yellowtail bycatch TACs and to obtain data concerning the scallop fishery's interactions with sea turtles.

This emergency action does not impact other FMPs or fisheries in the Northeast because other FMPs neither require industry to fund observers nor include provisions to defray the costs of observers. Such programs would be difficult, if not impossible, to administer within the short timeframe statutorily restricting emergency action under the Magnuson-Stevens Act.

This emergency action re-activates the industry-funded scallop observer program. Scallop vessels are required to procure observer coverage from a NMFS-approved observer service provider and to pay for the observer coverage. This emergency rule establishes criteria for being approved by NMFS as an observer service provider for the scallop fishery. Entities interested in being included on the list of NMFS-approved observer service providers are required to submit an application with the information specified in the regulatory text of this rule. Upon receipt of an application, NMFS shall provide all potential observer service providers with an estimated number of observer sea days for this fishing year under this program. Additionally, a planned schedule of observer deployments shall be posted on this NOAA website *http://www.nefsc.noaa.gov/femad/fsb/*. NMFS will notify candidate observer service providers of their approval or disapproval within 15 days of NMFS's receipt of the application. This emergency rule specifies observer service provider requirements, as well as observer requirements and responsibilities to become certified as an observer for the scallop fishery.

The scallop observer set-aside will provide scallop vessel owners with compensation for observer coverage up to a specified limit, as specified in the regulations for the scallop fishery. Once the set-aside is exhausted, vessel owners will no longer be compensated for coverage but will still have to pay for the cost of observers, as specified at §§ 648.53(h)(1) and 648.60(d)(2).

Classification

The need to implement these measures such that adequate observer coverage is available to the scallop fishery starting in June 2006, and to avoid potential management problems, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30–day delayed effective date, and implement the emergency action upon publication.

The emergency rule requires immediate implementation because without the measures in the emergency rule, NMFS's ability to monitor bycatch of NE multispecies and endangered and threatened sea turtles could be compromised. The Access Areas open on June 15 with yellowtail flounder bycatch TACs that require close monitoring. Reduced observer coverage for scallop vessels fishing under the Area Access Program particularly hampers NMFS's ability to monitor the yellowtail flounder bycatch TACs, which are a critical component of the yellowtail flounder rebuilding program under the NE Multispecies FMP. In particular, the yellowtail flounder TAC for the scallop fishery in the Access Area within the Nantucket Lightship Closed Area is only 31,544 lb (all catch, including discards), which, given the level of expected fishing effort in the area, could be harvested quickly. Without adequate observer coverage, excessive yellowtail flounder catch could result. Unless there is observer coverage, NMFS may need to rely on catch data from prior years to determine when bycatch TACs are attained. Such data may not be completely applicable to the 2006 fishing year. This would have immediate and/or long-term negative impacts on the fishery resources and the fishing industry due to the implications of excessive harvest levels of yellowtail flounder or closure based on incomplete information. In

addition, adequate observer coverage to monitor interactions between the scallop fishery and sea turtles is particularly important during June through October because this is when the turtles are in the same areas that the scallop fishery takes place.

NMFS did not initiate the emergency action earlier because it was pursuing other solutions to the observer coverage problems, including possible changes to budget allocations. NMFS determined that the emergency rule was necessary only after making the determination that it could not provide sufficient observer coverage in the scallop fishery through any other mechanism. The NEFSC did not receive its observer program budget until February 2006, and NMFS determined in April 2006 that it could not reconcile the reduced level of observer coverage in the scallop fishery with available budget. Subsequently, the Northeast Regional Administrator informed the Council's Executive Director during a coordinating meeting that because of the budgetary constraints, NMFS would be looking for an administrative solution to activate the observer set-aside program. Since there was no formal Council response, NMFS proceeded with the emergency rule. NMFS proceeded with this emergency rule with the intention of implementing the action in June 2006 to ensure that adequate observer coverage could be placed in the scallop fishery in order to monitor yellowtail flounder and sea turtle bycatch.

For these reasons described above, the Assistant Administrator for Fisheries, NOAA also finds it is impracticable and contrary to the public interest to provide for prior notice and an opportunity for public comment under 5 U.S.C. 553(b)(B) prior to publishing the emergency rule.

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

This rule contains new collection-of-information requirements approved under emergency Paperwork Reduction Act by the Office of management and Budget (OMB) under the paperwork Reduction Act (PRA). These new requirements apply to entities interested in becoming NMFS-approved observer service providers and to those observer service providers approved by NMFS and providing observer services to the scallop fishery. Public reporting burden for these collections of information are estimated to average as follows:

1. Application for approval of observer service provider, OMB control number 0648- 0546 (10 hr per response);
2. Applicant response to denial of application for approval of observer service provider, OMB control number 0648–0546 (10 hr per response);
3. Observer service provider request for observer training OMB 10648–0546 (30 min per response);
4. Observer deployment report, OMB control number 0648–0546 (10 min per response);
5. Observer availability report, OMB control number 0648–0546 (10 min per response);
6. Safety refusal report, OMB control number 0648–0546 (30 min per response);
7. Submission of raw observer data, OMB control number 0648–0546 (5 min per response);
8. Observer debriefing, OMB control number 0648–0546 (2 hr per response);
9. Biological samples, OMB control number 0648–0546 (5 min per response);
10. Rebuttal of pending removal from list of approved observer service providers, OMB control number 0648–0546 (8 hr per response);
11. Vessel request to observer service provider for procurement of a certified observer, OMB control number 0648–0546 (25 min per response); and
12. Vessel request for waiver of observer coverage requirement, OMB control number 0648–0546 (5 min per response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 14, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

§ 648.10 [Amended]

■ 2. In § 648.10, paragraphs (b)(4)(ii) through (iv) are suspended.

■ 3. In § 648.11, paragraphs (a)(1) and (a)(2) are suspended, and paragraphs (a)(3), (g), (h), and (i) are added to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

(a) * * *

(3) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specified in paragraph (g) of this section.

* * * * *

(g) *Atlantic sea scallop observer program*—(1) *General.* Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (b) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits fishing in open areas or Sea Scallop Access Areas, and general category vessels fishing under the Sea Scallop Access Area program specified in § 648.60, are required to comply with the additional notification requirements specified in paragraphs (g)(2) of this section, except that scallop vessels issued Occasional scallop permits not participating in the Area Access Program specified in § 648.60 may provide the specified information to NMFS by calling NMFS.

All sea scallop vessels issued a VMS general category or Non-VMS general scallop permit that are participating in the Area Access Program specified in § 648.60 are required to comply with the additional VMS notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, or the vessel manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(2) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the owner, operator, or vessel manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (5) of this section.

(2) *Vessel notification procedures.* For the purpose of determining if an observer will be deployed on a vessel for a specific trip, a vessel issued a limited access permit fishing in open areas or in the Sea Scallop Area Access program specified in § 648.60, or a vessel issued a general category scallop permit and fishing in the Sea Scallop Area Access program specified in § 648.60, is required to comply with the following notification requirements:

(i) Prior to the 25th day of the month preceding the month in which fishing for scallops is to take place, the vessel owner or operator must submit, through the VMS e-mail messaging system, notice of its intention to fish for scallops, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for open areas and each Sea Scallop Access Area or open area in which it intends to fish. General category vessels are required to submit this information only for Sea Scallop Access Area trips. The e-mail address shall be provided to vessels in a Small Entity Compliance Guide issued by the Regional Administrator. The Regional Administrator may waive this notification period if it is determined that there is insufficient time to provide such notification prior to a Sea Scallop Access Area opening or beginning of the fishing year. Notification of this waiver of a portion of the notification period shall be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(ii) For each scallop trip, the vessel owner, operator, or vessel manager shall notify NMFS by telephone, using the phone number provided by the Regional Administrator in the Small Entity Compliance Guide, and provide the following information: Vessel Name; contact name and number; date and time of departure; port of departure; area to be fished (either open areas or the specific Sea Scallop Access Area), and fishing as a scallop dredge, scallop trawl or general category vessel.

(3) *Selection of scallop fishing trips for observer coverage.* Based on predetermined coverage levels for various sectors of the scallop fishery that are provided by NMFS in writing to all observer service provider approved pursuant to paragraph (h) of this section, NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel must carry an observer, or if a waiver has been granted, on the specified trip within 24 hours of the vessel owner's, operator's, or vessel manager's notification of the prospective trip as specified in paragraph (g)(2)(ii) of this section. Any request to carry an observer may be waived by NMFS. With the exception of vessels issued a non-VMS general category scallop permit that are fishing in an access area, all waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver. Waivers for vessels issued a non-VMS general category scallop permit will be issued by fax, if possible, or by phone if no fax number is available.

(4) *Procurement of observer services by scallop vessels.* (i) An owner of a scallop vessel required to carry an observer under paragraph (g)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the Northeast Fisheries Observer Program (herein after NMFS/NEFOP certified) from an observer service provider approved by NMFS under paragraph (h) of this section. A list of approved observer service providers shall be posted on the NOAA/NEFOP website at *http://www.nefsc.noaa.gov/femad/fsb/.* The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 72 hours notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 72 hours of the advance notification to the provider due to the unavailability of an observer, may request a waiver from NMFS from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS shall issue such a waiver within 24 hours, if the conditions of this paragraph (g)(4)(ii) are met.

(5) Unless otherwise notified by the Regional Administrator, owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop fishing trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. Vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area trips or additional scallop catch per day in Access Areas in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60. Observer service providers are responsible for setting the daily rate for observer coverage on a vessel. NMFS shall determine the reduced DAS accrual rate and the amount of additional pounds of scallops per day fished in an access area for the applicable fishing year based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified by Small Entity Compliance Guide of the DAS accrual rate and additional pounds of scallops determined by the Regional Administrator. The Regional Administrator may adjust the DAS accrual rate and additional pounds of scallops if necessary based on economic conditions of the scallop fishery. Vessel owners and observer providers shall by notified of any such adjustments through a letter.

(6) When the available DAS or TAC set-aside for observer coverage is exhausted, vessels shall still be required to carry an observer as specified in this section and shall be responsible for paying for the cost of the observer, unless otherwise waived by NMFS, but shall not be authorized to harvest additional pounds or fish at a reduced DAS accrual rate.

(h) *Observer service provider approval and responsibilities*—(1) *General.* An entity seeking to provide observer services to the Atlantic sea scallop fishery must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to scallop vessel owners and shall be

posted on NMFS's web page as specified in paragraph (g)(4) of this section.

(2) *Existing observer service providers.* Observer service providers that currently deploy certified observers in the Northeast must submit an application containing the information specified in paragraph (h)(3) of this section, excluding any information specified in paragraph (h)(3) of this section that has already been submitted to NMFS.

(3) *Contents of application.* An application to become an approved observer service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop fishery observer services provider as set out under paragraph (h)(2) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is $5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers, either contracted or employed by the service provider, are compensated with salaries that meet or exceed the Department of Labor (DOL) guidelines for observers. Observers shall be compensated as a Fair Labor Standards Act (FLSA) non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) The names of its fully equipped, NMFS/NEFOP certified observers on staff or a list of its training candidates (with resumes) and a request for a NMFS/NEFOP Sea Scallop Observer Training class (minimum class size of eight).

(x) Am Emergency Action Plan (EAP) describing its response to an 'at sea' emergency with an observer, including, but not limited to, personal injury, death, harassment, or intimidation.

(4) *Application evaluation.* (i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination of the applicant's ability to perform the duties and responsibilities of a sea scallop fishery observer service provider as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on NMFS website specified in paragraph (g)(4) of this section and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the sea scallop fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or the evaluation criteria are not met. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved observer service providers.

(5) *Responsibilities of observer service providers.* (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery unless the observer service provider rufuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (viii) of this section.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop vessel or to attend a NMFS/NEFOP Sea Scallop Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS website specified in paragraph (g)(4) of this section under the Sea Scallop Program, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a cell phone or pager, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(iii) *Observer deployment logistics.* Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by

industry 24 hours per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop fishery.

(iv) *Observer deployment limitations.* Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for two or more consecutive deployments, and not more than twice in any given month. A certified observer's first deployment shall be on a scallop closed area trip and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(v) *Communications with observers.* An observer service provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) *Observer training requirements.* The following information must be submitted to NMFS to request a certified observer training class at least 30 days prior to the beginning of the proposed training class: Date of requested training;a list of observer candidates, with a minimum of eight individuals; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the beginning of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS National Minimum Eligibility Standards for observers as described in paragraph (i)(1) of this section.

(vii) *Reports*—(A) *Observer deployment reports.* The observer service provider must report to NMFS when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hours of their departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 12 hours of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 72 hours of the trip landing.

(B) *Safety refusals.* The observer service provider must report to NMFS any trip that has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hours of the refusal.

(C) *Biological samples.* The observer service provider must ensure that biological samples, including whole marine mammals, turtles and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) *Observer debriefing.* The observer service provider must ensure that the observer remains available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least two weeks following any observed trip. An observer that is at sea during the 2–week period must contact NMFS upon his or her return, if requested by NMFS.

(E) *Observer availability report.* The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers on staff by 5 pm, Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) *Other reports.* The observer provider must report possible observer harassment, discrimination, concerns about vessel safety or marine casualty, observer illness or injury, and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior must be submitted to NMFS within 24 hours of the event or within 24 of learning of the event.

(viii) *Refusal to deploy an observer.*—(A) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider does not have an available observer within 72 hours of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at § 600.746.

(C) The observer service provider may refuse to deploy an observer on a scallop vessel that is otherwise eligible to carry an observer for any other reason including failure to pay for pervious observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) *Limitations on conflict of interest.* An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence that clearly disproves the reasons for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or if no rebuttal is submitted, shall be the final

decision of NMFS and the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

(i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(3) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer or observer provider.

(i) *Observer certification.* (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program website: *http://www.st.nmfs.gov/st4/nop/.*

(2) *Observer training.* In order to be deployed on any scallop vessel, a candidate observer must have passed a NMFS/NEFOP Sea Scallop Fisheries Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. Observer training shall include an observer training trip, paid for as part of the observer's training, aboard a scallop vessel with a trainer. A certified observer's first deployment shall be on a scallop closed area trip and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) *Observer requirements.* All observers must:

(i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop vessels, pursuant to standards established by NMFS. Such standards are available from NMFS website specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider; and

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section.

(4) *Probation and decertification.* NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the website at: *http://www.nefsc.noaa.gov/femad/fsb/.*

(5) *Issuance of decertification.* Upon determination that decertification is warranted under paragraph (i)(3) of this section, NMFS shall issue a written decision to decertify the observer to the observer and approved observer service providers via certified mail at the observer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.

■ 4. In § 648.51, paragraphs (c)(4) and (e)(3)(iii) are added to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(c) * * *

(4) A certified at-sea observer is on board, as required by § 648.11(g).

* * * * *

(e) * * *

(3) * * *

(iii) A certified at-sea observer is on board, as required by § 648.11(g).

* * * * *

■ 5. In § 648.60, paragraphs (a)(2)(i) and (ii) are suspended and paragraph (a)(2)(iii) is added to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(2) * * *

(iii) Vessels participating in the Sea Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.11(g), and each participating vessel owner or operator shall declare a Sea Scallop Access Area trip via VMS less than one hour prior to the vessel leaving port, in accordance with instructions provided by the Regional Administrator.

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[FR Doc. 06–5504 Filed 6–14–06; 1:03 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 116
Friday, June 16, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AG66

Federal Employees Health Benefits: Payment of Premiums for Periods of Leave Without Pay or Insufficient Pay

AGENCY: Office of Personnel Management

ACTION: Proposed rule with request for comment.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to rewrite certain sections of the Federal regulations in plain language. These regulations require Federal agencies to provide employees entering leave without pay (LWOP) status, or whose pay is insufficient to cover their Federal Employees Health Benefits (FEHB) premium payments, written notice of their opportunity to continue their FEHB coverage. Employees who want to continue their enrollment must sign a form agreeing to pay their premiums directly to their agency on a current basis, or to incur a debt to be withheld from their future salary. The purpose of this proposed regulation is to rewrite the existing regulations to ensure that employees who are entering LWOP status, or whose pay is insufficient to pay their FEHB premiums, are fully informed when they decide whether or not to continue their FEHB coverage.

DATES: Comments must be received on or before August 15, 2006.

ADDRESSES: This document is available for viewing at *www.regulations.gov* and at the U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Send all comments to Anne Easton, Manager, Insurance Policy, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3400, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Michael Kaszynski, Policy Analyst, at 202.606.0004.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing proposed regulations to rewrite 5 CFR 890.502 in plain language. OPM issued an interim regulation containing most of these substantive changes on July 22, 1996, at 61 FR 37807. This regulation is an up-dated plain language version of 61 FR 37807. The following is a chronological history for the legislation and regulations that have contributed to the development of this proposed regulation.

On May 10, 1994, OPM issued a proposed regulation in the **Federal Register** (59 FR 24062) that proposed a number of changes to the Federal Employees Health Benefits (FEHB) Program that would result in better service to enrollees. One of the proposed changes established a requirement that agencies inform employees entering leave without pay (LWOP) status (or any other type of nonpay status, except periods of nonpay resulting from a lapse of appropriations), or receiving pay insufficient to cover their FEHB premium payments, of the options of continuing or terminating their FEHB coverage, and if continuing, of paying premiums directly on a current basis or incurring a debt to be withheld from future salary. The proposed regulation intended to ensure employees were fully aware of these alternatives. Furthermore, because the proposed regulation established a procedure under which the employee voluntarily arranged to have the debt recovered from salary in a specified amount after returning to duty or after salary increases to cover the amount of the health benefits contributions, the involuntary offset provisions of 5 U.S.C. 5514 and subpart K of 5 CFR part 550 did not apply. On November 23, 1994, OPM issued a regulation in the **Federal Register** (59 FR 60294) that put into effect all of the changes proposed in the May 10, 1994, regulation except the requirement that agencies inform employees entering LWOP status, or receiving pay insufficient to cover their FEHB premium payments, of the options of continuing or terminating their FEHB coverage. The interim regulation published on July 22, 1996, at 61 FR 37807 put into effect these changes. On December 30, 1994, and June 1, 1995, OPM issued interim and final regulations in the **Federal Register** (59 FR 67605 and 60 FR 28511), respectively, that eliminated the requirement for the use of certified mail, return receipt requested, when notifying certain enrollees that their enrollment in the FEHB Program will be terminated due to nonpayment of premiums unless the payment is received within 15 days. On June 17, 1994, and December 27, 1994, OPM issued proposed and final regulations in the **Federal Register** (59 FR 31171 and 59 FR 66434). In those regulations, OPM delegated to Federal agencies the authority to reconsider disputes over coverage and enrollment issues in the Federal Employees' Group Life Insurance and the FEHB Programs and to make retroactive as well as prospective corrections of errors. On October 1, 2003 and September 23, 2004, OPM issued proposed and final regulations in the **Federal Register** (68 FR 56523 and 69 FR 56927 respectively) mandating compliance with court orders requiring Federal employees to provide health benefits for their children as required by the Federal Employees Health Benefits Children's Equity Act of 2000 (Pub. L. 106–394).

Collection of Information Requirement

The proposed rule does not impose information collection and recordkeeping requirements that meet the definition of the Paperwork Reduction Act of 1995's term "collection of information" which means obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States; or answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies with revenues of $11.5 million or less in any one year. This rulemaking affects FEHB Program enrollment practices which do not impact the dollar threshold. Therefore, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Regulatory Impact Analysis

We have examined the impact of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the RFA (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This rule is not considered a major rule, as defined in section 804(2) of title 5, United States Code, because we estimate it will only affect Federal Government employment offices. Any resulting economic impact would not be expected to exceed the dollar threshold.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Iraq, Kuwait, Lebanon, Military Personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Linda M. Springer,

Director.

For the reasons set forth in the preamble, OPM is proposing to amend 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061, unless otherwise noted.

2. In § 890.502 paragraphs (a), (b), (c), (d) and (e) are revised to read as follows:

§ 890.502 Withholdings, Contributions, LWOP, Premiums, and Direct Premium Payment.

(a) *Employee and annuitant withholdings and contributions.* (1) Employees and annuitants are responsible for paying the enrollee share of the cost of enrollment for every pay period during which they are enrolled. An employee or annuitant incurs a debt to the United States in the amount of the proper employee or annuitant withholding required for each pay period during which they are enrolled if the appropriate health benefits withholdings or direct premium payments are not made.

(2) An individual is not required to pay withholdings for the period between the end of the pay period in which he or she separates from service and the commencing date of an immediate annuity, if later.

(3) Temporary employees who are eligible to enroll under 5 U.S.C. 8906a must pay the full subscription charges including both the employee share and the Government contribution. Employees with provisional appointments under § 316.403 of this chapter are not considered eligible for coverage under 5 U.S.C. 8906a for the purpose of this paragraph.

(4) The employing office must calculate the withholding for employees whose annual pay is paid during a period shorter than 52 workweeks on an annual basis and prorate the withholding over the number of installments of pay regularly paid during the year.

(5) The employing office must make the withholding required from enrolled survivor annuitants in the following order. First, withhold from the annuity of a surviving spouse, if there is one. If that annuity is less than the amount required, withhold to the extent necessary from the annuity of the youngest child, and if necessary, from the annuity of the next older child, in succession, until the withholding is met.

(6) Surviving spouses who have a basic employee death benefit under 5 U.S.C. 8442(b)(1)(A) and annuitants whose health benefits premiums are more than the amount of their annuities may pay their portion of the health benefits premium directly to the retirement system acting as their employing office, as described in paragraph (d) of this section.

(b) *Procedures when an employee enters a leave without pay (LWOP) status or pay is insufficient to cover premium.* The employing office must tell the employee about available health benefits choices as soon as it becomes aware that an employee's premium payments cannot be made because he or she will be or is already in a leave without pay (LWOP) status or any other type of nonpay status. (This does not apply when nonpay is as a result of a lapse of appropriations.) The employing office must also tell the employee about available choices when an employee's pay is not enough to cover the premiums.

(1) The employing office must give the employee written notice of the choices and consequences as described in paragraphs (b)(2)(i) and (ii) of this section and will send a letter by first-class mail if it cannot give it to the employee directly. If it mails the notice, it is deemed to be received within 5 days.

(2) The employee must elect in writing to either continue health benefits coverage or terminate it. (Exception: An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) cannot elect to terminate his or her enrollment as long as the court/administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation that he or she has other coverage for the child(ren).) The employee may continue coverage by choosing one of the following ways to pay and returning the signed form to the employing office within 31 days after he or she receives the notice (45 days for an employee residing overseas). When an employee mails the signed form, its postmark will be used as the date the form is returned to the employing office. If an employee elects to continue coverage, he or she must elect in writing one of the following:

(i) Pay the premium directly to the agency and keep the payments current. The employee must also agree that if he or she does not pay the premiums currently, the employing office will recover the amount of accrued unpaid premiums as a debt under paragraph (b)(2)(ii) of this section.

(ii) If the employee does not wish to pay the premium directly to the agency and keep payments current, he or she may agree that upon returning to employment or upon pay becoming sufficient to cover the premiums, the employing office will deduct, in addition to the current pay period's premiums, an amount equal to the premiums for a pay period during which the employee was in a leave without pay (LWOP) status or pay was not enough to cover premiums. The employing office will continue using this method to deduct the accrued unpaid premiums from salary until the debt is recovered in full. The employee must also agree that if he or she does not return to work or the employing office cannot recover the debt in full from salary, the employing office may recover the debt from whatever other sources it normally has available for recovery of a debt to the Federal Government.

(3) If the employee does not return the signed form within the time period described in paragraph (b)(2) of this section, the employing office will terminate the enrollment and notify the employee in writing of the termination.

(4)(i) If the employee is prevented by circumstances beyond his or her control from returning a signed form to the employing office within the time period described in paragraph (b)(2) of this section, he or she may write to the employing office and request reinstatement of the enrollment. The employee must describe the circumstances that prevented him or her from returning the form. The request for reinstatement must be made within 30 calendar days from the date the employing office gives the employee notice of the termination. The employing office will determine if the employee is eligible for reinstatement of coverage. When the determination is affirmative, the employing office will reinstate the coverage of the employee retroactive to the date of termination. If the determination is negative, the employee may request a review of the decision from the employing agency (see § 890.104).

(ii) If the employee is subject to a court or administrative order as discussed in § 890.301(g)(3), the coverage cannot terminate. If the employee does not return the signed form, the coverage will continue and the employee will incur a debt to the Federal Government as discussed in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(5) Terminations of enrollment under paragraphs (b)(2) and (3) of this section are retroactive to the end of the last pay period in which the premium was withheld from pay. The employee and covered family members, if any, are entitled to the temporary extension of coverage for conversion and may convert to an individual contract for health benefits. An employee whose coverage is terminated may enroll upon his or her return to duty in pay status in a position in which the employee is eligible for coverage under this part.

(c) *Procedures when agency under-withholds premiums.* (1) An agency that withholds less than the amount due for health benefits contributions from an individual's pay, annuity, or compensation must submit an amount equal to the uncollected employee contributions and any applicable agency contributions to OPM for deposit in the Employees Health Benefits Fund.

(2) The agency must make the deposit to OPM as soon as possible, but no later than 60 calendar days after it determines the amount of an under-deduction that has occurred, regardless of whether or when the agency recovers the under-deduction. A subsequent agency decision on whether to waive collection of the overpayment of pay caused by failure to properly withhold employee health benefits contributions will be made under 5 U.S.C. 5584 as implemented by 4 CFR chapter I, subchapter G, unless the agency involved is excluded from 5 U.S.C. 5584, in which case any applicable authority to waive the collection may be used.

(d) *Direct premium payments for annuitants.* (1) If an annuity, excluding an annuity under subchapter III of chapter 84 (Thrift Savings Plan), is too low to cover the health benefits premium, or if a surviving spouse receives a basic employee death benefit, the retirement system must provide written information to the annuitant or surviving spouse. The information must describe the health benefits plans available, and include the opportunity to either (i) enroll in a health benefits plan in which the enrollee's share of the premium is less than the annuity amount or (ii) pay the premium directly to the retirement system.

(2) The retirement system must accept direct payment for health benefits premiums in these circumstances. The annuitant or surviving spouse must continue direct payment of the premium even if the annuity increases to the extent that it covers the premium.

(3) The annuitant or surviving spouse must pay the retirement system his or her share of the premium for the enrollment for every pay period during which the enrollment continues, except for the 31-day temporary extension of coverage. The individual must make the payment after each pay period in which he or she is covered using a schedule set up by the retirement system. If the retirement system does not receive payment by the due date, it must notify the individual in writing that continued coverage depends upon payment being made within 15 days (45 days for annuitants or surviving spouses residing overseas) after the notice is received. If no subsequent payments are made, the retirement system terminates the enrollment 60 days after the date of the notice (90 days for annuitants or surviving spouses residing overseas). An annuitant or surviving spouse whose enrollment terminated due to nonpayment of premium may not reenroll or reinstate coverage unless there are circumstances beyond his or her control as provided in paragraph (d)(4) of this section.

(4) If the annuitant or surviving spouse is prevented by circumstances beyond his or her control from paying the premium within 15 days after receiving the notice, he or she may ask the retirement system to reinstate the enrollment by writing the retirement system. The individual must describe the circumstances and send the request within 30 calendar days from the termination date. The retirement system will determine if the annuitant or surviving spouse is eligible for reinstatement of coverage. When the determination is affirmative, the retirement system will reinstate the coverage retroactive to the date of termination. If the determination is negative, then the individual may request a review of the decision from the retirement system, as described in § 890.104.

(5) Termination of enrollment for failure to pay premiums within the time frame described in paragraph (d)(3) of this section is retroactive to the end of the last pay period for which payment was timely received.

(6) The retirement system will submit all direct premium payments along with its regular health benefits premiums to OPM according to procedures established by OPM.

(e) *Procedures for direct payment of premiums during LWOP after 365 days.* (1) An employee who is granted leave without pay (LWOP) under subpart L of part 630 of this chapter (Family and

Medical Leave) after 365 days of continued coverage under § 890.303(e) must pay the employee contributions directly to the employing office and keep payments current.

(2) The employee must make payments after the pay period in which the employee is covered according to a schedule set up by the employing office. If the employing office does not receive the payment by the date due, it must notify the employee in writing that continued coverage depends upon payment being made within 15 days (45 days for employees residing overseas) after the notice is received. If no subsequent payments are made, the employing office terminates the enrollment 60 days after the date of the notice (90 days for enrollees residing overseas).

(3) If the enrollee was prevented by circumstances beyond his or her control from making payment within the timeframe in paragraph (e)(2) of this section, he or she may ask the employing office to reinstate the enrollment by writing to the employing office. The employee must file the request within 30 calendar days from the date of termination and must include supporting documentation.

(4) The employing office determines whether the employee is eligible for reinstatement of coverage. When the determination is affirmative, the employing office will reinstate the coverage of the employee retroactive to the date of termination. If the determination is negative, the employee may request the employing agency to review the decision as provided under § 890.104.

(5) An employee whose coverage is terminated under paragraph (e)(2) of this section may enroll if he or she returns to duty in a pay status in a position in which the employee is eligible for coverage under this part.

* * * * *

[FR Doc. E6–9418 Filed 6–15–06; 8:45 am]

BILLING CODE 6329–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–49–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–5 and –5B Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for CFM International CFM56–5 and –5B series turbofan engines. That AD currently requires exhaust gas temperature (EGT) harness replacement or the establishment of an EGT baseline and trend monitoring. That AD also requires replacement, if necessary, of certain EGT harnesses and EGT couplings as soon as a slow and continuous EGT drift downward is noticed after the effective date of that AD. This proposed AD would require the same actions but for an increased population of affected EGT harnesses. This proposed AD results from CFM International adding subsequently certified engine models to the list of engines that could have affected harnesses installed. We are proposing this AD to prevent unexpected deterioration of critical rotating engine parts due to higher than desired engine operating EGTs.

DATES: We must receive any comments on this proposed AD by August 15, 2006.

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

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–49–AD, 12 New England Executive Park, Burlington, MA 01803.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

Contact CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816 for the service information identified in this proposed AD.

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

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7152; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2001–NE–49–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

Examining the AD Docket

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

Discussion

On January 13, 2003, we issued AD 2003–02–04, Amendment 39–13020 (68 FR 3171, January 23, 2003). That AD requires the establishment of an EGT baseline and trend monitoring using the System for Analysis of Gas Turbine Engines (SAGE), or equivalent. The baseline and trend monitoring is used as an option to EGT harness replacement. That AD also requires replacement, if necessary, of certain EGT harnesses and EGT couplings as soon as a slow and continuous EGT drift downward is noticed after the effective date of that AD. That condition, if not corrected, could result in unexpected deterioration of critical rotating engine parts due to higher than desired engine operating EGTs.

Actions Since AD 2003–02–04 Was Issued

Since AD 2003–02–04 was issued, CFM International added subsequently certified engine models, CFM56–5B3/P1, CFM56–5B3/2P1, CFM56–5B4/P1, and CFM56–5B4/2P1, to the list of engines that could have affected harnesses installed, and increased the population of affected EGT harnesses.

Special Flight Permits Paragraph Removed

Paragraph (e) of the current AD, AD 2003–02–04, contains a paragraph pertaining to special flight permits. Even though this proposed rule does not contain a similar paragraph, we have made no changes with regard to the use of special flight permits to operate the airplane to a repair facility to do the work required by this AD. In July 2002, we published a new Part 39 that contains a general authority regarding special flight permits and airworthiness directives. See Docket No. FAA–2004–8460, Amendment 39–9474 (69 FR 47998, July 22, 2002). Thus, when we now supersede ADs we will not include a specific paragraph on special flight permits unless we want to limit the use of that general authority granted in section 39.23.

Relevant Service Information

We reviewed and approved the technical contents of CFM International Service Bulletin (SB) No. CFM56–5B S/B 77–0008, Revision 3, dated April 4, 2005, and SB No. CFM56–5 S/B 77–0020, Revision 3, dated April 4, 2005. Those SBs list affected EGT harnesses and EGT couplings by serial number (SN). The lists cover an expanded population from the lists in the original SBs. Those SBs also specify applicable engine manual sections for referencing replacement procedures.

FAA's Determination and Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other CFM International CFM56–5 and –5B series turbofan engines of the same type design, this proposed AD would require:

- EGT harness replacement or the establishment of an EGT baseline and trend monitoring.
- Replacement if necessary, of certain EGT harnesses and EGT couplings as soon as a slow and continuous EGT drift downward is noticed after the effective date of the proposed AD.

Costs of Compliance

About 730 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We estimate it would take about one workhour per engine to perform the proposed actions, and that the average labor rate is $80 per work hour. Required parts would cost about $15,958 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $11,707,740. CFM International has indicated that this figure might be reduced depending upon warranty agreements.

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2001–NE–49–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–13020 (68 FR 3171, January 23, 2003), and by adding a new airworthiness directive to read as follows:

CFM International: Docket No. 2001–NE–49–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 15, 2006.

Affected ADs

(b) This AD supersedes AD 2003–02–04, Amendment 39–13020.

Applicability

(c) This AD applies to CFM International CFM56–5 and -5B series turbofan engines:

(1) With an exhaust gas temperature (EGT) upper harness part number (P/N) CA170–00, with a serial number (SN):

(i) Listed in Table 1, Table 4, or Table 5 of CFM56 Service Bulletin (SB) No. CFM56–5B S/B 77–0008, Revision 3, dated April 4, 2005, or

(ii) Listed in Table 1 or Table 4 of CFM56 SB No. CFM56–5 S/B 77–0020, Revision 3, dated April 4, 2005.

(2) With an EGT lower harness P/N CA171–00, with a SN:

(i) Listed in Table 2, Table 4, or Table 5 of CFM56 SB No. CFM56–5B S/B 77–0008, Revision 3, dated April 4, 2005; or

(ii) Listed in Table 2 or Table 4 of CFM56 SB No. CFM56–5 S/B 77–0020, Revision 3, dated April 4, 2005.

(3) With an EGT coupling P/N CA172–02 with a SN:

(i) Listed in Table 3, Table 4, or Table 5 of CFM56 Service Bulletin (SB) No. CFM56–5B S/B 77–0008, Revision 3, dated April 4, 2005, or

(ii) Listed in Table 3 or Table 4 of CFM56 SB No. CFM56–5 S/B 77–0020, Revision 3, dated April 4, 2005.

(4) These engines are installed on, but not limited to Airbus Industrie A318, A319, A320, and A321 airplanes.

Unsafe Condition

(d) This AD results from CFM International adding subsequently certified engine models, CFM56–5B3/P1, CFM56–5B3/2P1, CFM56–5B4/P1, and CFM56–5B4/2P1, to the list of engines that could have affected harnesses installed, and increasing the population of affected EGT harnesses. We are issuing this AD to prevent unexpected deterioration of critical rotating engine parts due to higher than desired engine operating EGTs.

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.

(f) If an EGT harness or EGT coupling has a serial number that is followed by the letter "W", no further action is required for that part.

(g) For affected EGT harnesses and EGT couplings identified using paragraph (c) of this AD, with fewer than 3,000 engine flight hours-since-installation, do the following:

(1) Replace affected EGT harnesses and EGT couplings, not being trend monitored, with serviceable parts within 500 flight hours after the effective date of this AD; or

(2) After the effective date of this AD:

(i) Review the smooth data EGT trend via the System for Analysis of Gas Turbine Engines (SAGE), or equivalent, since the affected components were first installed on the current engine.

(ii) Continue this trend monitoring for the affected EGT harnesses and EGT couplings to ensure that the system does not show a minimum of 30 °C downward (i.e. cooler) indication, or more, without a corresponding change in other associated engine parameters such as N1 (LPT rotor speed), N2 (HPT rotor speed), and fuel flow.

(iii) Provided that there is sufficient, actual EGT margin to do so, replace the EGT harnesses and EGT couplings within 100 flight hours after they have been determined to be defective.

(iv) Continue to monitor the EGT indications for 3,000 engine flight hours since the first installation on the current engine.

Terminating Action

(h) Any of the following three conditions is terminating action for the trend monitoring requirements specified in paragraphs (g)(2)(i) through (g)(2)(iv) of this AD:

(1) Replacing an EGT harness and EGT coupling with a serviceable part, or

(2) Replacing an EGT harness and EGT coupling with an EGT harness and EGT coupling that has a letter "W" following the SN, or

(3) Accumulating 3,000 engine flight hours on an EGT harness and EGT coupling.

Alternative Methods of Compliance

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

Related Information

(j) Airworthiness directive No. F–2003–001 R2, dated June 8, 2005, which is from the Direction Generale de L'Aviation Civile airworthiness authority for France, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on June 12, 2006.

Thomas A. Boudreau,

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

[FR Doc. E6–9446 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24926; Airspace Docket No. 06–ASW–1]

RIN 2120–AA66

Proposed Establishment, Modification and Revocation of VOR Federal Airways; East Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish 16 VOR Federal Airways (V–65, V–176, V–383, V–396, V–406, V–410, V–414, V–416, V–418, V–426, V–467, V–486, V–542, V–584, V–586, and V–609); modify 13 VOR Federal Airways (V–14, V–26, V–40, V–72, V–75, V–90, V–96, V–103, V–116, V–133, V–297, V–435, and V–526); and revoke one VOR Federal Airway (V–42) over the East Central United States in support of the Midwest Airspace Enhancement Plan (MASE). The FAA is proposing this action to enhance safety and to improve the efficient use of the navigable airspace assigned to the Chicago, Cleveland, and Indianapolis Air Route Traffic Control Centers (ARTCC).

DATES: Comments must be received on or before July 31, 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 FAA Docket No. FAA–2006–24926 and Airspace Docket No. 06–ASW–1, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

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–2006–24926 and Airspace Docket No. 06–ASW–1) 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 acknowledge 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–2006–24926 and Airspace Docket No. 06–ASW–1." 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 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 NPRM's

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 Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

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

In April of 1996, the FAA Administrator announced that the FAA would begin a comprehensive review and redesign of the United States airspace. This endeavor became known as the National Airspace Redesign (NAR) project. The goal of NAR is to increase system flexibility, predictability, and access; maintain and improve safety; improve efficiency; reduce delays; and support the evolution of emerging technologies.

The MASE project is the culmination of the NAR process with regard to aircraft operations in the Cleveland and Detroit terminal areas as well as in the high altitude, en route airspace environment. The purpose of MASE is to develop and implement new en route and terminal airspace procedures that would increase efficiency and enhance safety of aircraft movements in the airspace overlying and beyond the Cleveland and Detroit terminal areas. Specifically, the MASE project consists of changes to routes, fixes, altitudes, and holding patterns, as well as the development of new procedures and routes. Overall, MASE focuses on developing and implementing improvements in the air navigation structure and operating methods to allow more flexible and efficient management of aircraft operations over the East Central United States.

The Proposal

The FAA is proposing to amend Title 14 Code of Federal Regulations (14 CFR) part 71 to establish 16 VOR Federal Airways (V–65, V–176, V–383, V–396, V–406, V–410, V–414, V–416, V–418, V–426, V–467, V–486, V–542, V–584, V–586, and V–609); modify 13 VOR Federal Airways (V–14, V–26, V–40, V–72, V–75, V–90, V–96, V–103, V–116, V–133, V–297, V–435, and V–526); and revoke one VOR Federal Airway (V–42) over the East Central United States within the airspace assigned to the Chicago, Cleveland, and Indianapolis ARTCCs. These actions are proposed as part of MASE to enhance safety and to facilitate the more flexible and efficient use of the navigable airspace. Further, this action would enhance the management of aircraft operations within the Chicago, Cleveland, and Indianapolis ARTCCs' areas of responsibility.

VOR Federal Airways are published in paragraph 6010 of FAA Order 7400.9N, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The VOR Federal Airways 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. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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 proposed 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, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE 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 FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6010 VOR Federal Airways.

* * * * *

V–14 [Revised]

From Chisum, NM, via Lubbock, TX; Childress, TX; Hobart, OK; Will Rogers, OK; INT Will Rogers 052° and Tulsa, OK 246° radials; Tulsa; Neosho, MO; Springfield, MO; Vichy, MO; INT Vichy 067° and St. Louis, MO, 225° radials; Vandalia, IL; Terre Haute, IN; Brickyard, IN; Muncie, IN; Findlay, OH; INT Findlay 079°T (081°M) and DRYER, OH, 240°T (245°M) radials; DRYER; Jefferson, OH; Erie, PA; Dunkirk, NY; Buffalo, NY; Geneseo, NY; Georgetown, NY; INT Georgetown 093° and Albany, NY, 270° radials; Albany, NY; INT Albany 084° and Gardner, MA, 284° radials; Gardner; to Norwich, CT.

V–26 [Revised]

From Blue Mesa, CO, via Montrose, CO; 13 miles, 112 MSL, 131 MSL; Grand Junction, CO; Meeker, CO; Cherokee, WY; Muddy Mountain, WY; 14 miles 12 AGL, 37 miles 75 MSL, 84 miles 90 MSL, 17 miles 12 AGL; Rapid City, SD; Philip, SD; Pierre, SD; Huron, SD; Redwood Falls, MN; Farmington, MN; Eau Claire, WI; Waussau, WI; Green Bay, WI; INT Green Bay 116° and White Cloud, MI 302° radials; White Cloud; Lansing, MI; Salem, MI; Detroit, MI; INT Detroit 138°T (144°M) and DRYER, OH, 309°T (314°M) radials; DRYER. The airspace within Canada is excluded.

V–40 [Revised]

From DRYER, OH; Briggs, OH; INT Briggs 077°T (081°M) and Youngstown, OH, 177°T (182°M) radials.

V–72 [Revised]

From Razorback, AR, Dogwood, MO; INT Dogwood 058° and Maples, MO 236° radials; Maples; Farmington, MO; Centralia, IL; Bible Grove, IL; Mattoon, IL; to Bloomington, IL.

V–75 [Revised]

From Morgantown, WV; Bellaire, OH; Briggs, OH; DRYER, OH; INT DRYER 325°T (330°M) and Waterville, OH, 062°T (064°M) radials.

V–90 [Revised]

From Salem, MI; INT Salem 092°T (095°M) and Dunkirk, NY 260°T (267°M) radials; Dunkirk. The airspace within Canada is excluded.

V–96 [Revised]

From Brickyard, IN; Kokomo, IN; Fort Wayne, IN; INT Fort Wayne 071°T (071°M) and Detroit, MI. 211°T (217°M) radials; to Detroit.

V–103 [Revised]

From Chesterfield, SC; Greensboro, NC; Roanoke, VA; Elkins, WV; Clarksburg, WV; Bellaire, OH; INT Bellaire 327° and Akron, OH, 181° radials; Akron; INT Akron 325°T (329°M) and Detroit, MI, 100°T (106°M) radials; Detroit; Pontiac, MI, to Lansing, MI. The airspace within Canada is excluded.

V–116 [Revised]

From INT Chicago O'Hare, IL, 092° and Chicago Heights, IL, 013° radials; INT Chicago O'Hare 092° and Keeler, MI, 256° radials; Keeler; Kalamazoo, MI; INT Kalamazoo 089° and Jackson, MI, 265° radials; Jackson; INT Jackson 089° and Salem, MI, 252° radials; Salem; Windsor, ON, Canada; INT Windsor 095°T (101°M) and Erie, PA, 281°T (287°M) radials; Erie; Bradford, PA; Stonyfork, PA; INT Stonyfork 098° and Wilkes-Barre, PA, 310° radials; Wilkes-Barre; INT Wilkes-Barre 084° and Sparta, NJ, 300° radials; to Sparta. The airspace within Canada is excluded.

V–133 [Revised]

From INT Charlotte, NC, 305° and Barretts Mountain, NC, 197° radials; Barrets Mountain; Charleston, WV; Zanesville, OH; Tiverton, OH; Mansfield, OH; INT Mansfield 351°T (354°M) and Detroit, MI 138°T (144°M) radials; Detroit; Salem, MI; INT Salem 346° and Saginaw, MI 160° radials; Saginaw; Traverse City, MI; Escanaba, MI; Sawyer, MI; Houghton, MI; Thunder Bay, ON, Canada; International Falls, MN; to Red Lake, ON, Canada. The airspace within Canada is excluded.

V–297 [Revised]

From Johnstown, PA; INT Johnstown 320° and Clarion, PA, 176° radials; INT Johnstown 315° and Clarion, PA, 222° radials; INT Clarion 269° and Youngstown, OH 116° radials; Akron, OH; INT Akron 305°T (309°M) and Waterville, OH 062°T (064°M) radials. The airspace within Canada is excluded.

V–435 [Revised]

From Rosewood, OH; INT Rosewood 050°T (055°M) and DRYER, OH, 240°T (245°M) radials; to DRYER.

V–526 [Revised]

From Northbrook, IL; INT Northbrook 095° and Gipper, MI, 310° radials; to Gipper.

V–42 [Revoked]

V–65 [New]

From DRYER, OH; INT Sandusky, OH 288°T (292°M) and Carleton, MI 157°T (160°M) radials; to Carleton.

V–176 [New]

From Detroit, MI; INT Detroit 178°T (184°M) and Rosewood, OH, 023°T (028°M) radials; Rosewood.

V–383 [New]

From Carleton, MI; INT Carleton 097°T (100°M) and Chardon, OH, 294°T (299°M) radials; INT Chardon 294°T (299°M) and DRYER, OH 357°T (002°M) radials. The airspace within Canada is excluded.

V–396 [New]

From Windsor, ON, Canada; INT Windsor 095°T (101°M) and Chardon, OH, 320°T (325°M) radials; to Chardon. The airspace within Canada is excluded.

V–406 [New]

From Salem, MI; INT Salem 092°T (095°M) and London, ON, Canada, 205°T (213°M) radials; London. The airspace within Canada is excluded.

V–410 [New]

From London, ON, Canada; INT London 252°T (260°M) and Pontiac, MI, 085°T (088°M) radials; to Pontiac. The airspace within Canada is excluded.

V–414 [New]

From London, ON, Canada; INT London 252°T (260°M) and Windsor, ON, Canada, 034°T (040°M) radials; to Windsor. The airspace within Canada is excluded.

V–416 [New]

From Rosewood, OH, INT Rosewood 041°T (046°M) and Mansfield, OH, 262°T (265°M) radials; Mansfield; INT Mansfield 045°T (048°M) and Sandusky, OH, 107°T (111°M) radials.

V–418 [New]

From Salem, MI; INT Salem 092°T (095°M) and Jamestown, NY, 275°T (282°M) radials; to Jamestown. The airspace within Canada is excluded.

V–426 [New]

From DRYER, OH; INT DRYER 260°T (265°M) and Carleton, MI, 156°T (159°M) radials; to Carleton.

V–467 [New]

From Detroit, MI; Waterville, OH; Richmond, IN.

V–486 [New]

From Jamestown, NY; INT Jamestown 238°T (245°M) and Chardon, OH, 074°T (079°M) radials; Chardon; INT Chardon 260°T (265°M) and Akron, OH, 316°T (320°M) radials.

V–542 [New]

From Rosewood, OH, INT Rosewood 041°T (046°M) and Mansfield, OH, 262°T (265°M) radials; Mansfield; INT Mansfield 098° and Akron, OH, 233° radials; Akron; Youngstown, OH; Tidioute, PA; Bradford, PA; INT Bradford 078° and Elmira, NY, 252° radials; Elmira; Binghampton, NY; Rockdale, NY; Albany, NY; Cambridge, NY; INT Cambridge 063° and Lebanon, NH, 214° radials; to Lebanon.

V–584 [New]

From Waterville, OH; INT Waterville 113°T (115°M) and DRYER, OH 260°T (265°M) radials; to DRYER.

V–586 [New]

From INT Kansas City, MO 077° and Napoleon, MO, 005° radials, via Macon, MO; Quincy, IL; Peoria, IL; Pontiac, IL; Joliet, IL.

V–609 [New]

From Saginaw, MI; INT Saginaw 353° and Pellston, MI, 164° radials; to Pellston.

* * * * *

Issued in Washington, DC, on June 8, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E6–9371 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135

Announcement of Policy for Landing Performance Assessments After Departure for All Turbojet Operators

AGENCY: Federal Aviation Administration, DOT.

ACTION: Correction of Policy for Landing Performance Assessments After Departure for all Turbojet Operators.

SUMMARY: The Federal Aviation Administration is making minor changes to the Announcement of Policy for Landing Performance Assessments After Departure for All Turbojet Operators published in the **Federal Register** on June 7, 2006 (71 FR 32877).

DATES: Interested persons are invited to submit comments regarding this announcement. Comments must be received on or before July 3, 2006.

ADDRESSES: Comments should be e-mail to *Jerry.Ostronic@faa.gov.* or by facsimile to (202) 267–5229. Comments may also be submitted by mail or delivered to The Federal Aviation Administration, Air Transportation Division, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Air Transportation Division, AFS–200, 800 Independence Avenue, SW., Washington, DC 20591, and Telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: In the announcement published in the **Federal Register** on June 7, 2006 (71 FR 32877), the Federal Aviation Administration did not request comments. The administration would now invite comments regarding the announcement.

Corrections

In the announcement published in the **Federal Register** on June 7, 2006 (71 FR 32877), make the following corrections:

1. On page 32877, column 3, correct the text of the **SUMMARY** paragraph to read as follows:

SUMMARY: The following policy and information provides clarification and guidance for all operator of turbojet airplanes who hold Operations Specifications (OpSpecs) (excluding foreign operators), Management Specifications (MSpecs), or a part 125 Letter of Deviation Authority, for establishing operators' method of ensuring that sufficient landing distance exists for safely making a full stop landing with an acceptable safety margin, on the runway to be used, in the conditions existing at the time of arrival, and with the deceleration means and airplane configuration to be used.

2. On page 32880, column 2, correct the text of the first full paragraph under the New Requirements heading to read as the following:

New Requirements

The FAA will soon be issuing mandatory OpSpec/MSpec C082, "Landing Performance Assessments After Departure" for all turbojet operators under parts 121, 125, (including holders of a part 125 Letter of Deviation Authority), 135, and 91 subpart K. This OpSpec/MSpec will allow operations based on provisions as set forth in this notice. If not currently in compliance, all turbojet operators shall be brought into compliance with this notice and the requirements of OpSpec/MSpec C082 no later than October 1, 2006. The FAA anticipates that operators will be required to submit their proposed procedures for compliance with this notice and OpSpec/MSpec to their POI no later than September 1, 2006. When the operator demonstrates the ability to comply with the C082 authorization for landing distance assessments, and has complied with the training, and training program requirements below, OpSpec/MSpec C082 should be issued. OpSpec/MSpec C082 will be available from the FAA by July 20, 2006.

3. Page 32881, column 1, correct the date in the first line of the Requirements paragraph from September 1, 2006 to October 1, 2006.

Issued in Washington, DC, on June 12, 2006.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. 06–5449 Filed 6–13–06; 10:48 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Part 97

[Public Notice 5443]

RIN 1400–AC19

Intercountry Adoption—Issuance of Hague Convention Certificates and Declarations in Convention Adoption Cases

AGENCY: Department of State.

ACTION: Proposed Rule.

SUMMARY: The Department of State (the Department) is proposing new regulations to implement the certification and declaration provisions of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA) with respect to adoption and custody proceedings taking place in the United States. This proposed regulation would govern the application process for Hague Convention Certificates and Hague Convention Declarations in cases involving emigration of a child from the United States. It would also establish a process for seeking certification, for purposes of Article 23 of the Convention, that an adoption done in the United States following a grant of custody in a Convention country of origin was done in accordance with the Convention.

DATES: Comments must be received on or before August 15, 2006.

ADDRESSES: You may submit comments, identified by docket number State/AR–01/97, by one of the following methods (no duplicates, please):

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Electronically: You may submit electronic comments to *adoptionregs@state.gov*. Attachments must be in Microsoft Word.
- Mail: U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, (SA–29), 2201 C Street, NW,, Washington, DC 20520.
- Courier: U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, (SA–29), 2201 C Street, NW., Washington, DC, 20520. (Because access to the Department of State is not readily available to private individuals without Federal Government identification, do not personally deliver comments to the Department.)
- Docket: Comments received before the close of the comment period will be available to the public, including information identifying the commenter. The Department will post comments on its public Web site at: *http://travel.state.gov*. They are also available for public inspection by calling Delilia Gibson-Martin at 202–736–9105 for an appointment.

FOR FURTHER INFORMATION CONTACT: For further information, contact Anna Mary Coburn at 202–736–9081, or send an e-mail to *adoptionregs@state.gov*. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Convention is a multilateral treaty that provides a framework for the adoption of children habitually resident in one country party to the Convention by persons habitually resident in another country party to the Convention. It establishes procedures to be followed in such adoption cases and imposes safeguards to protect the best interests of the children concerned. It provides for each country that is a party to the Convention to establish a Central Authority and permits the delegation of certain Central Authority functions to other entities, to the extent permitted by the law of the relevant country. With certain limited exceptions, Article 23 of the Convention requires all Convention parties to recognize adoptions that occur pursuant to the Convention, if the adoption is certified by the country of adoption as having been made in accordance with the Convention.

The U.S. implementing legislation for the Convention is the IAA, which establishes the U.S. Department of State as the Central Authority for the United States. For Convention adoptions involving the emigration of a child from the United States (outgoing cases), section 303(c) of the IAA gives the Department responsibility for issuing an official certification that the child has been adopted, or a declaration that custody for the purpose of adoption has been granted, in accordance with the Convention and the IAA. The IAA assigns to State courts with jurisdiction over matters of adoption, or custody for purposes of adoption, the responsibility for receiving and verifying documents required under the Convention, making certain determinations required of the country of origin by the Convention, and determining that the placement is in the best interests of the child. The IAA also addresses the delegation of Central Authority functions to entities other than the Department of State, providing for accreditation, temporary accreditation, approval, and operating under supervision as the principal ways in which a private entity can be authorized to perform tasks assigned to the Central Authority.

Separate regulations implement other aspects of the Convention and the IAA, such as the accreditation and approval of adoption service providers to perform adoption services in cases covered by the Convention (22 CFR 96), preservation of Convention records (22 CFR 98), and immigration procedures

for Convention adoption cases (*e.g.*, visa regulations to appear at 22 CFR 42). Further background on the Convention and the IAA is provided in the in the Preamble to the Final Rule on the Accreditation and Approval of Agencies and Persons under the IAA, Section I and II, 71 FR 8064–8066 (February 15, 2006) and the Preamble to the Proposed Rule on the Accreditation of Agencies and Approval of Persons under the Intercountry Adoption Act of 2000, Sections III and IV, 68 FR 54065–54073 (September 15, 2003).

II. The Proposed Rule

This proposed rule would establish the Department's procedures for application, adjudication, and issuance of Hague Convention Certificates and Hague Convention Declarations in outgoing cases. It also would establish a separate, discretionary, procedure pursuant to which the Department may certify that an incoming case finalized in the United States (*i.e.*, a case in which custody was granted abroad but the adoption was done by a U.S. court) was done in accordance with the Convention. The Department anticipates that this latter authority will be used rarely, and only if an issue arises concerning recognition of the adoption by a foreign authority pursuant to Article 23 of the Convention.

Definitions

Section 97.1 sets forth definitions used in this section that are specific to this regulation, and incorporates the definitions set forth in 22 CFR 96.2, the definitional section of the accreditation and approval regulation, for terms defined there.

The term *Adoption Court* is defined to mean the State court with jurisdiction over matters of adoption and of custody for purposes of adoption.

U.S. authorized entity and *foreign authorized entity* are shorthand forms to encompass the entities that may perform the case-specific Central Authority functions that may be delegated to authorized entities. In the United States, public domestic authorities may perform these Central Authority functions. In addition, private entities that have become accredited agencies, temporarily accredited agencies, or approved persons, as well as agencies operating under their supervision and responsibility as supervised providers, in accordance with the accreditation and approval standards at 22 CFR 96, are generally authorized to perform such Central Authority functions. However, the authority of private entities that are not accredited or temporarily accredited is limited when completing a home study or a child background study. The Convention requires that home studies and child background studies be prepared under the responsibility of an accredited body or public domestic authority; correspondingly, the accreditation and approval standards at 22 CFR 96.53 provide for background studies in outgoing cases that are not prepared in the first instance by an accredited agency or temporarily accredited agency to be reviewed and approved by such an agency.

Convention countries may choose not to allow private entities to perform Central Authority functions; the definition of *foreign authorized entity* therefore includes the foreign Central Authority itself as well as any foreign accredited bodies or other public or private entities authorized under foreign law to perform the relevant Central Authority function in a Convention adoption case. The Web site of the Hague Conference on Private International Law, *www.hcch.net*, lists the names of entities that each Convention country has so authorized. (Click on "Welcome," then, in the left hand column, "Conventions," then the 1993 Convention (No. 33), and then, in the right hand column, "Authorities.")

The terms *Hague Convention Certificate and Hague Convention Declaration* are defined as the documents the Secretary of State (the Secretary) will issue to attest that a child has been adopted or that custody of a child has been granted, respectively, in the United States in accordance with the Convention and the IAA. Consistent with the waiver authority provided in section 502 of the IAA, § 97.4(b) of the proposed regulation authorizes the Secretary to issue either document, appropriately modified, in the absence of compliance with the IAA, in the interests of justice or to prevent grave physical harm to a child. Section 97.4(b), unlike the other provisions of the rule, refers to the "Secretary of State" acting "personally." Accordingly, the authority to issue an appropriately modified Hague Adoption Certificate or Hague Custody Declaration may not be delegated.

Application for a Hague Adoption Certificate or a Hague Custody Declaration in an Outgoing Convention Case

Section 97.2(a) of the regulation sets forth the procedural requirements for obtaining a Hague Adoption Certificate or Hague Custody Declaration in an outgoing case. Applicants must either be a party to the adoption or custody proceedings (*i.e.*, adoptive or prospective adoptive parent(s) or the child) or other applicants will have to demonstrate that the documents will be used to obtain a legal benefit or for purposes of a legal proceeding. The Department has discretion under the rule to determine whether to issue the documents to persons in the latter category, which is intended to encompass persons such as executors and heirs of the parties, who may need documentation for estate purposes. (Legal representatives acting directly on behalf of a parent or the child will be covered by the first category.) The Department believes this approach strikes an appropriate balance between protecting the privacy of participants in the adoption process while permitting discretionary and limited access to others who have a compelling need for the record.

Section 97.2(b) sets forth the documentary requirements for submitting an application for a Hague Adoption Certificate or Hague Custody Declaration in an outgoing case. The requirements include a completed application form and any required fee.

Section 97.2(b) also instructs applicants to submit an official copy of the adoption court's order finding that the child is adoptable and that the adoption or proposed adoption is in the child's best interests and granting the adoption or custody for purposes of adoption. These findings, which will be made by State courts in accordance with State law, are fundamental to any adoption.

In addition, the proposed regulation instructs applicants to provide an official copy of the adoption court's findings verifying, in substance, that the Convention and IAA requirements set forth in § 97.3 have been met. This can be done either in the final adoption or custody order or in a separate document. The qualifier "in substance" is intended to make clear that the regulation does not govern the precise words the court must use, but rather the substantive finding required. If the adoption court fails to verify compliance with one or more requirements set forth in § 97.3, the applicant may provide authenticated documentation showing compliance with the requirement(s) at issue and explaining why verification by the adoption court cannot be submitted. The Department expects that cases in which alternative proof of Convention compliance is necessary will be few; applicants will be expected to take all reasonable steps to obtain a court order addressing these requirements, which, in some cases, may require seeking a supplemental or amended order from the adoption court. The adoption court

is best placed to make these findings, and is specifically charged by the IAA to make nearly all of the findings required.

The Department has broad authority under section 303(a)(3) of the IAA to require the submission of any information concerning the case necessary to issue the Hague Adoption Certificate or Hague Custody Declaration or otherwise to carry out the duties of the United States Central Authority. Consistent with this, § 97.2(b)(4) indicates that the Department may, in its discretion, request additional documentation and information from the applicant. The Department anticipates using this authority principally when evidence provided pursuant to § 97.2(b)(1)–(3) is inadequate or otherwise raises a suspicion of noncompliance or if information becomes available to the Department independently that raises a question of compliance. Section 97.2(c) establishes the Department's authority to consider applications abandoned when such requested documentation or information is not provided within 120 days. This provision will facilitate the Department's recordkeeping and case-tracking efforts.

Requirements Subject to Verification in an Outgoing Convention Case

Section 97.3 sets forth the additional requirements that must be satisfied in order for the Department to conclude that an adoption or grant of custody for purposes of adoption has been made in compliance with the Convention and the IAA. These requirements do not replace State laws on adoption or custody. Rather, State law, unless directly inconsistent with the Convention and the IAA, still applies to Convention adoptions and is not preempted. This proposed rule also does not affect the application of other federal laws. Specifically, the Convention, the IAA, and this proposed rule do not affect the application of the Indian Child Welfare Act (ICWA), which applies to cases involving Native American children, or any other applicable federal laws covering adoptions.

The proposed rule does, however, add new Federal requirements derived directly from the Convention and the IAA, which must be met before the Department will issue a Hague Convention Certificate or a Hague Convention Declaration. Because State courts are best placed to determine compliance with these requirements in the context of adoption proceedings they adjudicate, and to enhance governmental efficiency, this proposed rule effectively directs the prospective adoptive parent(s) to seek certain findings from the State court in the course of their adoption proceedings. Nearly all the findings involve subjects that the IAA explicitly assigns to the adoption court. The Department has limited the elements set forth in § 97.3 to those required in order to determine Convention and IAA compliance.

Paragraph (a) provides that an accredited agency, temporarily accredited agency, or a public domestic authority must complete or approve a child background study that meets the specific requirements of the Convention. This provision implements section 303(a)(1)(A) of the IAA and Convention Article 16(1). The term U.S. authorized entity is not used in this provision because child background studies prepared by an approved person or a non-accredited supervised provider—each of which is encompassed by "U.S. authorized entity"—or by an exempted provider, must subsequently be approved by an accredited agency, temporarily accredited agency, or public domestic authority in order to accommodate the Convention Article 22(5) requirement that such studies be prepared under the responsibility of the Central Authority, a public authority, or an accredited body and the accreditation standards in 22 CFR 96, which provide for child background studies in outgoing cases that are not prepared by an accredited or temporarily accredited agency to be approved by such an agency. Thus, in summary, to accommodate both the Convention and 22 CFR 96 and for the Department to attest to Hague and IAA compliance in an outgoing case, this regulation requires the child background study to be completed by an accredited agency, temporarily accredited agency, or public domestic authority or else subsequently be approved by such an entity. (Similarly, home studies in such cases must be prepared under the responsibility of a foreign Central Authority, foreign accredited body, or public foreign authority.)

Paragraph (b) provides that a U.S. authorized entity must conclude that the child is adoptable and, without revealing birthparent identities where prohibited by applicable State law, transmit to a foreign authorized entity the documentation on the child set forth in Convention Article 16(2), including a determination that the envisaged placement is in the best interests of the child. This provision also makes clear that the U.S. authorized entity's best interests determination must be made in reference to the home and child background studies and must give due consideration to the child's upbringing and ethnic, religious and cultural background, as required by Convention Article 16. This paragraph also implements subparagraphs (A) and (C) of section 303(a)(1) of the IAA.

Paragraph (c) requires, consistent with section 303(a)(1)(B) of the IAA and the Convention's requirement that due consideration be given to domestic placement, that reasonable efforts be made to actively recruit and make a diligent search for a U.S. adoptive family for the child and that a timely U.S. adoptive placement could not be found. This paragraph cross-references § 96.54 of the accreditation and approval regulation, which specifies particular methods of making such a search, including disseminating information about the child in various ways, listing the child on an adoption exchange for 60 days, responding to inquiries, and providing the child's background study to potential U.S. adoptive parents. Section 96.54 also recognizes that there are some circumstances when the procedures it specifies are not appropriate; specifically, § 96.54 excludes from its scope cases in which the prospective adoption is by relatives, or the birth parent(s) have identified specific prospective adoptive parent(s), or in other special circumstances accepted by the adoption court. (For example, an adoption court might determine that such "special circumstances" existed if a public domestic authority followed alternative recruiting and search procedures provided for by State law or if the particular child required a speedier placement than could be found domestically.)

Paragraph (d) provides that a U.S. authorized entity must receive from a foreign authorized entity a home study prepared in accordance with applicable foreign law under the responsibility of a foreign Central Authority, foreign accredited body, or foreign public authority that includes the information required by Convention Articles 5(a) and (b) and 15 and by section 303(a)(2)(B) of the IAA. As with the child background study, Convention Article 22(5) restricts who may perform this function, and this restriction is reflected in the rule.

Paragraph (e) provides that the Central Authority or other competent authority of the receiving country must declare that the child will be authorized to enter and reside in the receiving country permanently or on the same basis as the adopting parent. This reflects the requirements set forth in Convention Article 5(c) and section

303(a)(2)(C)(i) of the IAA. Under the Convention, this determination must be made by a competent authority; this language, drawn from the IAA, recognizes that in some cases the foreign Central Authority itself may be the authority competent to make this determination.

Paragraph (f) addresses situations in which foreign law requires a foreign Central Authority or other foreign entity to consent to or approve an adoption before it goes forward. Convention Article 17(b) provides that, where required by the law of the receiving country, the country's Central Authority (or a foreign authorized entity other than the Central Authority to whom the relevant Central Authority function has been delegated) must consent to the adoption. Section 303(a)(2)(C)(ii) of the IAA requires submission to the U.S. adoption court of a declaration by the foreign "Central Authority (or other competent authority)" that it consents to the adoption, if such consent is necessary under the laws of the receiving country for the adoption to become final. To harmonize these provisions, paragraph (f) follows the IAA's approach of reading the Convention term "required" to mean "necessary for the adoption to become final" and recognizing that the consent of a competent authority other than a Central Authority might be required under foreign law for the adoption to become final. Paragraph (f) thus provides that a foreign authorized entity or competent authority must declare that it consents to the adoption if its consent is necessary under the law of the relevant foreign country for the adoption to become final.

Paragraphs (g) and (h), respectively, set forth the requirements of Convention Article 4(c), relating to the counseling and consent of guardians of a child, and Article 4(d), relating to the counseling and consent, where required, of the child. State law will continue to govern related issues, such as who must consent to the adoption and the particular requirements of proper legal form for consent, unless State law is in conflict with the Convention or the IAA, in which case the Convention or IAA provision would govern. Notably, consent of the birth mother, where required, may be given only after the birth of the child. State law allowing birth mother consent to be given before the birth of the child would be in direct conflict with the Convention and thus preempted. The Department welcomes comments from State, local, and tribal authorities on this point.

Paragraph (i) sets forth several duties of a U.S. authorized entity. A U.S. authorized entity must ensure that prospective adoptive parents agree to the adoption, as required by Convention Article 17(a). A U.S. authorized entity and a foreign authorized entity must both agree that the adoption may proceed, as required by Convention Article 17(c). (Applicants for a Hague Adoption Certificate or Hague Custody Declaration will be asked to provide this information for use on the certificate/declaration, as required by Article 23.) A U.S. authorized entity also must take all appropriate measures to ensure that transfer of the child takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parent(s), and arrange to obtain permission for the child to leave the United States, as required by Convention Articles 19(2) and 18, respectively. Finally, a U.S. authorized entity must arrange to keep a foreign authorized entity informed about the adoption process and the measures taken to complete it, as well as about the progress of a placement if a probationary period is required; to return the home study and child background study to the authorities that forwarded them if the transfer of the child does not take place, and to be consulted in the event that a new placement or alternative long-term care for the child is needed, as required by Convention Articles 19(3), 20, and 21. These requirements are phrased in terms of the U.S. authorized entity "arranging" or "taking all appropriate measures" for them to occur because at the time of the adoption, the duties inherently will not yet have been performed. While section 303(b)(1)(B) of the IAA contemplates judicial review of compliance with Convention Articles 18 through 21, realistically the court will only be able to ensure that appropriate arrangements for future compliance are in place.

Paragraph (j) implements the "no contact" rule of Article 29 of the Convention, which is designed to reduce the opportunities for coercion, bribery, and child buying in the consent process. The Convention provides there can be no contact between the prospective adoptive parent(s) and the birthparent(s), or other persons caring for the child, until the appropriate authorities of the *receiving country* have determined the prospective adoptive parents are eligible and suitable to adopt and the appropriate authorities of the *country of origin* have determined that the child is adoptable and that, after due consideration to domestic placement, intercountry adoption is in the child's best interests, and have ensured that all necessary guardian counseling and consent has occurred. This prohibition on prior contact applies unless the adoption takes place within a family or the contact is in compliance with conditions established by the appropriate authority of the country of origin. Such conditions may be established either by State law or by a public domestic authority acting within its jurisdiction. When conditions have not been established, such contacts may not occur because the Convention intends that such contacts be either barred or subject to regulation. (Note that this prohibition does not apply to contact by prospective adoptive parent(s) directly with the child.) The Department is particularly interested in receiving comments from State, local, and tribal authorities as to whether appropriate and sufficient conditions on contact between prospective adoptive parent(s) and birthparent(s) or other persons caring for the child are currently in place.

Paragraph (k) implements paragraphs (a) and (b) of Convention Article 32, which prohibit improper financial or other gain in relation to adoption activities and permit only costs and expenses (including reasonable professional fees) to be charged or paid.

Other requirements of the Convention need not be specifically verified by the court, either because they are not part of the process for an individual adoption case, or because existing law will address them adequately. For example, Convention Article 32(c) provides that directors, administrators and employees of adoption-related entities may not receive unreasonably high remuneration. The accreditation and approval regulations address unreasonable remuneration of private bodies (22 CFR 96.34(d)) and we have no reason to believe that the remuneration of public employees would be considered "unreasonably high."

Issuance of a Hague Adoption Certificate or a Hague Custody Declaration in an Outgoing Convention Case

Section 97.4(a) provides that the Department shall issue a Hague Adoption Certificate or a Hague Custody Declaration if the Department, in its discretion, is satisfied that the adoption or grant of custody was made in compliance with the Convention and IAA. Thus, even if an applicant provides all information required by § 97.2, it is within the Department's discretion to deny the application if the Department is not satisfied that the

Convention and IAA were complied with. This provision is consistent with section 303(c) of the IAA, which provides that the Secretary shall issue such a document upon "verification as necessary" of the information required to establish Convention and IAA compliance.

Section 97.4(b) implements the Secretary's authority pursuant to section 502(b) of the IAA, which permits the Secretary, personally, to the extent consistent with the Convention, to waive requirements of the IAA otherwise applicable or any regulations promulgated thereunder in the interests of justice or to prevent grave physical harm to a child. This regulation therefore permits the Secretary personally to authorize issuance of an appropriately modified Hague Adoption Certificate or Hague Custody Declaration attesting to Convention compliance in appropriate circumstances even if applicable IAA requirements have not been met. The Department anticipates that this exceptional, and discretionary, authority will only be exercised in extremely rare circumstances and only where foreign recognition of a Convention-compliant adoption is appropriate. As noted previously, this authority may not be delegated.

Certification of Hague Convention Compliance in an Incoming Convention Case Where Adoption Occurs in the United States

Section 97.5 is meant to address those cases in which custody for the purposes of adoption was granted to U.S. prospective adoptive parents by a competent authority in the child's country of origin, but the adoption occurs in the United States. In such cases, at the time a child receives an IR–4 visa, prospective adoptive parents will receive, pursuant to section 301(a) of the IAA and visa regulations that will be published in 22 CFR 42, a certificate indicating that legal custody has been granted for purposes of emigration and adoption, pursuant to the Convention and the IAA. Section 301(c) of the IAA requires such a certificate in order for a State court to finalize the adoption in the United States. The certification envisioned by Convention Article 23, however, is a certification by the country of *adoption* that the *adoption* was made in accordance with the Convention. It is therefore conceivable that the custody certificate issued by the consular officer, coupled with the State court order, would be inadequate to obtain recognition of the adoption outside the United States pursuant to Convention Article 23. In such a case, U.S. certification of Convention compliance following the U.S. adoption may be required. This second certification is not required, however, for the adoption to be recognized in the United States or for the child to be documented as a U.S. citizen. (Section 97.5(a) is not intended to address cases in which adoption is granted in the foreign country, an IR–3 visa is issued, and parent(s) later choose to re-adopt in the United States even though such a re-adoption is not required for recognition or citizenship purposes.)

Section 97.5(b) sets forth the documentation that must be submitted to the Department in order to seek such a certification. It includes a copy of the certificate issued by a consular officer pursuant to applicable visa regulations certifying that legal custody for the purposes of emigration and adoption was granted in the Convention country pursuant to the Convention and the IAA, an official copy of the adoption court order granting the adoption, a signed statement explaining the need for such a certification, and any additional information or documentation the Department may request in its discretion.

The proposed regulation requires a statement of need because the Department anticipates that this certification will only be required in very few cases. A State court's adoption order should be recognized within the United States; thus, it is only if the adoptive family leaves the United States that recognition could potentially be an issue, and even then we have no specific information to indicate that U.S. adoption orders are not normally recognized abroad.

Section 97.5(c) mirrors § 97.2(c), authorizing the Department to consider such a request abandoned if documentation and information is not provided within 120 days of a request. Section 97.5(d) gives the Department authority to issue the requested certification if satisfied that the adoption was made in compliance with the Convention. The Secretary also has authority to decline issuance for any reason, including that the requestor did not establish a valid need for the certification. Although any person may request such a certification, requestors who are not parties to the adoption must, in addition to the requirements of § 97.5(b), demonstrate that issuance of such a certification would be to obtain a legal benefit or for purposes of a legal proceeding.

Regulatory Review

A. Administrative Procedures Act

This rule, through which the Department provides for implementation of the Convention, which focuses on issuance of documents to facilitate cross-border recognition of adoptions done under the Convention, involves a foreign affairs function of the United States and therefore pursuant to 5 U.S.C. 553(a)(1) is not subject to the procedures required by 5 U.S.C. 553 and 554. Nonetheless, the Department is publishing this proposed rule and inviting public comment. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable.

B. Regulatory Flexibility Act/Executive Order 13272: Small Business

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, and Executive Order 13272, Section 3(b), the Department of State has evaluated the effects of this proposed action on small entities and has determined and hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804 for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. The rule would not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Pub. L. 104–4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement, including cost-benefit and other analyses, before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. Section 4 of UFMA, 2 U.S.C. 1503,

excludes regulations necessary for implementation of treaty obligations. This proposed regulation falls within this exclusion because it would implement the Convention. In any event, this rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Moreover, because this rule would not significantly or uniquely affect small governments, section 203 of the UFMA, 2 U.S.C. 1533, does not require preparation of a small government agency plan in connection with it.

E. Executive Order 13132: Federalism

A rule has federalism implications under Executive Order 13132 if it has 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 regulation will not have such effects, and therefore does not have sufficient federalism implications to require consultations or to warrant the preparation of a federalism summary impact statement under section 6 of Executive Order 13132.

The Convention and the IAA do, however, address issues that previously had been regulated primarily at the State level, as discussed in the preamble to the proposed rule on accreditation and approval of agencies and persons, appearing at 68 Fed. Reg. 54064, 54069–54070. In recognition of this fact, section 503(a) of the IAA contains a specific provision limiting preemption of State law to those State law provisions inconsistent with the Convention or the IAA, and only to the extent of the inconsistency. These regulations do not create new federalism implications beyond those created by the IAA and the Convention, and the Department has been careful in these regulations to defer to State authorities whenever possible consistent with Convention and IAA mandates. As with the regulations on accreditation and approval, the Department welcomes comments from State and local agencies and tribal governments on the proposed regulations. We also envision significant outreach and consultation with appropriate State authorities in the ultimate implementation of any regulation on this topic.

F. Executive Order 12866: Regulatory Review

This rule, through which the Department provides for implementation of the Convention, which focuses on issuance of documents to facilitate cross-border recognition of adoptions done under the Convention, pertains to a foreign affairs function of the United States; therefore, pursuant to section 3(d)(2) of the Executive Order 12866, this proposed rule is not subject to the review procedures set forth in Executive Order 12866. In addition, the Department is exempt from Executive Order 12866 except to the extent it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. Nonetheless, the Department of State has reviewed this proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has provided it to OMB for comment.

G. Executive Order 12988: Civil Justice Reform

The Department has reviewed this proposed regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden. The Department has made every reasonable effort to ensure compliance with the requirements in Executive Order 12988.

H. The Paperwork Reduction Act (PRA) of 1995

Under the Paperwork Reduction Act (PRA), 42 U.S.C. 3501 *et seq.*, agencies are generally required to submit to OMB for review and approval information collection requirements imposed on "persons" as defined in the PRA. Section 503(c) of the IAA, however, exempts from the PRA any information collection "for purposes of sections 104, 202(b)(4), and 303(d)" of the IAA "or for use as a Convention record as defined" in the IAA. Convention record is defined in section 3(11) of the IAA to mean "any item, collection, or grouping of information contained in an electronic or physical document, an electronic collection of data, a photograph, an audio or video tape, or any other information storage medium of any type whatever that contains information about a specific past, current, or prospective Convention adoption (regardless of whether the adoption was made final) that has been preserved in accordance with section 401(a) by the Secretary of State or the Attorney General." Information collections imposed on persons pursuant to this rule would relate directly to specific Convention adoptions (whether final or not), insofar as collections would be used by the Department in its determination of whether a Convention adoption, or a grant of custody for purposes of a Convention adoption, has been conducted in accordance with the Convention and the IAA. Upon receipt, these information collections would be subject to the preservation requirements set forth in 22 CFR 98 to implement section 401(a) of the IAA.

Accordingly, the Department has concluded that the PRA would not apply to information collected from the public under this rule, for the purpose of determining entitlement to a Hague Adoption Certificate or Hague Custody Declaration, or a certification of Convention compliance pursuant to § 97.5, because such documents would be collected for use as Convention records.

The Department intends, nonetheless, to consider carefully how to minimize the burden on the public of information collections contained in this rule as such collections, in particular the required application form, are developed.

List of Subjects in 22 CFR Part 97

Adoption and foster care, International agreements, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to add new part 97 to title 22 of the CFR, chapter I, subchapter J, to read as follows:

PART 97—ISSUANCE OF HAGUE CONVENTION CERTIFICATES AND DECLARATIONS IN CONVENTION ADOPTION CASES

Sec.

Authority: Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at The Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998); 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954.

§ 97.1 Definitions.

As used in this part:

(a) *Adoption Court* means the State court with jurisdiction over the

adoption or the grant of custody for purpose of adoption.

(b) *U.S. Authorized Entity* means a public domestic authority or an agency or person that is accredited or temporarily accredited or approved by an accrediting entity pursuant to 22 CFR 96, or a supervised provider acting under the supervision and responsibility of an accredited agency or temporarily accredited agency or approved person.

(c) *Foreign Authorized Entity* means a foreign Central Authority or an accredited body or entity other than the Central Authority authorized by the relevant foreign country to perform Central Authority functions in a Convention adoption case.

(d) *Hague Adoption Certificate* means a certificate issued by the Secretary certifying that a child has been adopted in the United States in accordance with the Convention and, except as provided in § 97.4(b), the IAA.

(e) *Hague Custody Declaration* means a declaration issued by the Secretary declaring that custody of a child for purposes of adoption has been granted in the United States in accordance with the Convention and, except as provided in § 97.4(b), the IAA.

(f) Terms defined in 22 CFR 96.2 have the meaning given to them therein.

§ 97.2 Application for a Hague Adoption Certificate or a Hague Custody Declaration in an Outgoing Convention Case.

(a) Any party to an outgoing Convention adoption or custody proceeding may apply to the Secretary for a Hague Adoption Certificate or a Hague Custody Declaration. Any other interested person may also make such application, but such application will not be processed unless such applicant demonstrates that a Hague Adoption Certificate or Hague Custody Declaration is needed to obtain a legal benefit or for purposes of a legal proceeding, as determined by the Secretary in the Secretary's discretion.

(b) Applicants for a Hague Adoption Certificate or Hague Custody Declaration shall submit to the Secretary:

(1) A completed application form in such form as the Secretary may prescribe, with any required fee;

(2) An official copy of the order of the adoption court finding that the child is adoptable and that the adoption or proposed adoption is in the child's best interests and granting the adoption or custody for purposes of adoption;

(3) An official copy of the adoption court's findings (either in the order granting the adoption or custody for purposes of adoption or separately) verifying, in substance, that each of the requirements of § 97.3 has been complied with or, if the adoption court has not verified compliance with a particular requirement in § 97.3, authenticated documentation showing that such requirement nevertheless has been met and a written explanation of why the adoption court's verification of compliance with the requirement cannot be submitted; and

(4) Such additional documentation and information as the Secretary may request at the Secretary's discretion.

(c) If the applicant fails to submit all of the documentation and information required pursuant to paragraph (b)(4) of this section within 120 days of the Secretary's request, the Secretary may consider the application abandoned.

§ 97.3 Requirements Subject to Verification in an Outgoing Convention Case.

(a) *Preparation of Child Background Study.* An accredited agency, temporarily accredited agency, or public domestic authority must complete or approve a child background study that includes information about the child's identity, adoptability, background, social environment, family history, medical history (including that of the child's family), and any special needs of the child.

(b) *Transmission of Child Data.* A U.S. authorized entity must conclude that the child is adoptable and, without revealing the identity of the birth mother or the birth father if these identities may not be disclosed under applicable State law, transmit to a foreign authorized entity the background study, proof that the necessary consents have been obtained, and the reason for its determination that the proposed placement is in the child's best interests, based on the home study and child background study and giving due consideration to the child's upbringing and his or her ethnic, religious, and cultural background.

(c) *Reasonable Efforts to Find Domestic Placement.* Reasonable efforts consistent with 22 CFR 96.54 must be made to actively recruit and make a diligent search for prospective adoptive parent(s) to adopt the child in the United States and a timely adoptive placement in the United States not found.

(d) *Preparation and Transmission of Home Study.* A U.S. authorized entity must receive from a foreign authorized entity a home study on the prospective adoptive parent(s) prepared in accordance with the laws of the receiving country, under the responsibility of a foreign Central Authority, foreign accredited body, or public foreign authority, that includes:

(1) Information on the prospective adoptive parent(s)' identity, eligibility, and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the children for whom they would be qualified to care;

(2) Confirmation that a competent authority has determined that the prospective adoptive parent(s) are eligible and suited to adopt and has ensured that the prospective adoptive parent(s) have been counseled as necessary; and

(3) The results of a criminal background check.

(e) *Authorization to Enter.* The Central Authority or other competent authority of the receiving country must declare that the child will be authorized to enter and reside in the receiving country permanently or on the same basis as the adopting parent(s).

(f) *Consent by Foreign Authorized Entity.* A foreign authorized entity or competent authority must declare that it consents to the adoption, if its consent is necessary under the law of the relevant foreign country for the adoption to become final.

(g) *Guardian Counseling and Consent.* Each person, institution, and authority other than the child whose consent is necessary for the adoption must be counseled as necessary and duly informed of the effects of the consent (including whether or not an adoption will terminate the legal relationship between the child and his or her family of origin); must freely give consent expressed or evidenced in writing in the required legal form without any inducement by compensation of any kind; and consent must not have been subsequently withdrawn. If the consent of the mother is required, it may be given only after the birth of the child.

(h) *Child Counseling and Consent.* As appropriate in light of the child's age and maturity, the child must be counseled and informed of the effects of the adoption and the child's views must be considered. If the child's consent is required, the child must also be counseled and informed of the effects of granting consent, and must freely give consent expressed or evidenced in writing in the required legal form without any inducement by compensation of any kind.

(i) *Authorized Entity Duties.* A U.S. authorized entity must:

(1) Ensure that the prospective adoptive parent(s) agree to the adoption;

(2) Agree, together with a foreign authorized entity, that the adoption may proceed;

(3) Take all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive parent(s) or the prospective adoptive parent(s), and arrange to obtain permission for the child to leave the United States; and

(4) Arrange to keep a foreign authorized entity informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required; to return the home study and the child background study to the authorities that forwarded them if the transfer of the child does not take place; and to be consulted in the event a new placement or alternative long-term care for the child is required.

(j) *Contacts.* Unless the child is being adopted by a relative, there may be no contact between the prospective adoptive parent(s) and the child's birthparent(s) or any other person who has care of the child prior to the competent authority's determination that the prospective adoptive parent(s) are eligible and suited to adopt and the adoption court's determinations that the child is adoptable, that the requirements in paragraphs (c) and (g) of this section have been met, and that an intercountry adoption is in the child's best interests, *provided that* this prohibition on contacts shall not apply if the relevant State or public domestic authority has established conditions under which such contact may occur and any such contact occurred in accordance with such conditions.

(k) *Improper financial gain.* No one may derive improper financial or other gain from an activity related to the adoption, and only costs and expenses (including reasonable professional fees of persons involved in the adoption) may be charged or paid.

§ 97.4 Issuance of a Hague Adoption Certificate or a Hague Custody Declaration in an Outgoing Convention Case.

(a) The Secretary shall issue a Hague Adoption Certificate or a Hague Custody Declaration if the Secretary, in the Secretary's discretion, is satisfied that the adoption or grant of custody was made in compliance with the Convention and the IAA.

(b) If compliance with the Convention can be certified but it is not possible to certify compliance with the IAA, the Secretary personally may authorize issuance of an appropriately modified Hague Adoption Certificate or Hague Custody Declaration, in the interests of justice or to prevent grave physical harm to the child.

§ 97.5 Certification of Hague Convention Compliance in an Incoming Convention Case where Adoption Occurs in the United States.

(a) Any person may request the Secretary to certify that an incoming Convention adoption finalized in the United States was done in accordance with the Convention.

(b) Persons seeking such a certification must submit the following documentation:

(1) A copy of a Hague Convention Certificate issued by a consular officer pursuant to applicable visa regulations certifying that legal custody of the child has been granted to the U.S. citizen parent for purposes of adoption:

(2) An official copy of the adoption court's order granting the final adoption;

(3) A signed statement explaining the need for such a certification; and

(4) Such additional documentation and information as the Secretary may request at the Secretary's discretion.

(c) If a person seeking the certification described in paragraph (a) of this section fails to submit all the documentation and information required pursuant to paragraph (b)(4) of this section within 120 days of the Secretary's request, the Department may consider the request abandoned.

(d) The Secretary may issue the certification if the Secretary, in the Secretary's discretion, is satisfied that the adoption was made in compliance with the Convention. The Secretary may decline to issue a certification, including to a party to the adoption, in the Secretary's discretion. A certification will not be issued to a non-party requestor unless the requestor demonstrates that the certification is needed to obtain a legal benefit or for purposes of a legal proceeding, as determined by the Secretary in the Secretary's discretion.

§§ 97.6–97.7 [Reserved].

Dated: June 9, 2006.

Maura A. Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E6–9507 Filed 6–15–06; 8:45 am]

BILLING CODE 4710–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0379; FRL–8184–4]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Reasonably Available Control Technology Requirements for Volatile Organic Compounds and Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to remove the limited status of its approval of the Commonwealth of Pennsylvania's State Implementation Plan (SIP) revision that requires all major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) to implement reasonably available control technology (RACT). EPA is proposing to convert its limited approval of Pennsylvania's VOC and NO_X RACT regulations to full approval because EPA has approved or is currently conducting rulemaking to approve all of the case-by-case RACT determinations submitted by Pennsylvania for the affected sources. In prior final rules, EPA has previously fully approved Pennsylvania's VOC and NO_X RACT regulations for the Philadelphia-Wilmington-Trenton, and Pittsburgh-Beaver Valley areas. EPA is now proposing to convert its limited approval of Pennsylvania's VOC and NO_X RACT regulations as they apply in the remainder of the Commonwealth to full approval because EPA has approved or is currently conducting rulemaking to approve all of the case-by-case RACT determinations submitted by Pennsylvania for the affected sources in the remainder of the Commonwealth. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the remainder of the State, outside of the Pittsburgh and Philadelphia areas; or (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before July 17, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA--

R03–OAR–2006–0379 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov*.

C. Mail: EPA–R03–OAR–2006–0379, Makeba Morris, Chief, Air Quality Planning and Analysis Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2006–0379. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, providing any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov*.

I. Background

Pursuant to sections 182(b) and 182(f) of the Clean Air Act (CAA), the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. SIP revisions imposing RACT for three classes of VOC sources are required under section 182(b)(2). The categories are all sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of 1-hour ozone attainment; all sources covered by a CTG issued prior to November 15, 1990; and all other major non-CTG sources. Section 182(f) provides that the planning requirements applicable to major stationary sources of VOCs in other provisions in part D, subpart 2 (including section 182) apply to major stationary sources of NO_X.

The Pennsylvania SIP already includes approved RACT regulations for sources and source categories of VOCs covered by the CTGs as required by section 182(b)(2)(A) and (B). Regulations requiring RACT for all major sources of VOC and NO_X were to be submitted to EPA as SIP revisions by November 1992 and compliance required by May of 1995. On February 4, 1994, PADEP submitted a revision to its SIP, consisting of 25 PA Code Chapters 129.91 through 129.95, to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT (non-CTG RACT rules). The February 4, 1994 submittal was amended on May 3, 1994 to correct and clarify certain presumptive NO_X RACT requirements under Chapter 129.93. As described in more detail, below, EPA granted conditional limited approval of the Commonwealth's VOC and NO_X RACT regulations on March 23, 1998 (63 FR 13789), and removed the conditional aspect of the approval on May 3, 2001 (66 FR 22123).

Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the ozone transport region (OTR). The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The major source size generally is determined by the classification of the area in which the source is located. However, for areas located in the OTR, the major source size for stationary sources of VOCs is 50 tons per year (tpy) unless the area's 1-hour ozone classification prescribes a lower major source threshold. The RACT regulations contain technology-based or operational "presumptive RACT emission limitations" for certain major NO_X sources. For other major NO_X sources, and all major non-CTG VOC sources (not otherwise already subject to RACT pursuant to a source category regulation under the Pennsylvania SIP), the regulations contain a "generic" RACT provision. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories, but instead allows for case-by-case RACT determinations. The generic provisions of Pennsylvania's regulations allow for PADEP to make case-by-case RACT determinations that are then to be submitted to EPA as revisions to the Pennsylvania SIP.

On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of a Pennsylvania SIP revision that established and required all major sources of VOCs and NO_X to implement RACT. This approval was granted on the condition that Pennsylvania must, by no later than April 22, 1999 certify that (1) it had submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently know to PADEP, or (2) demonstrate that the emissions from any remaining subject sources represented a *de minimis* level of emissions as defined in the rulemaking document.

On April 22, 1999, the PADEP submitted a letter certifying that it had met the terms and conditions imposed by EPA in its March 23, 1998 (63 FR 13789) conditional limited approval of its VOC and NO_X RACT regulation by submitting case-by-case VOC/NO_X RACT determinations as SIP revisions. EPA concurred that Pennsylvania's April 22, 1999 certification satisfied the condition imposed in its conditional limited approval published on March 23, 1998 (63 FR 13789), and published a direct final rulemaking (May 3, 2001, 66 FR 22123) removing the conditional status of its approval of the

Commonwealth's SIP revision that required all major sources of VOCs and NO_X to implement RACT. That final rule became effective on June 18, 2001. The regulation retained a limited approval status on the basis that it strengthened the Pennsylvania SIP. Conversion from limited to full approval would occur when EPA had approved all of the case-by-case RACT determinations as SIP revisions.

On October 16, 2001 (66 FR 52533), EPA published a final rulemaking for the Commonwealth removing the limited status of its approval of Pennsylvania's SIP revision that required all major sources of VOCs and NO_X to implement RACT as it applied in the Pittsburgh-Beaver Valley ozone nonattainment area (Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties), because EPA had approved all of the case-by-case RACT determinations submitted by PADEP for affected major sources of NO_X and/or VOC sources located in the area. EPA converted its limited approval of Pennsylvania's RACT regulation to full approval as it applied to that area. That rulemaking became effective on November 15, 2001.

On October 30, 2001 (66 FR 54698), EPA published a final rulemaking for the Commonwealth removing the limited status of its approval of Pennsylvania's SIP revision that required all major sources of VOCs and NO_X to implement RACT as it applied in the Philadelphia-Wilmington-Trenton ozone nonattainment area (Bucks, Chester, Delaware, Montgomery, and Philadelphia counties) because EPA had approved all of the case-by-case RACT determinations submitted by PADEP for affected major sources of NO_X and/or VOC sources located in the area. EPA converted its limited approval of Pennsylvania's RACT regulation to full approval as it applied to that area. That rulemaking became effective on November 29, 2001.

II. EPA's Proposed Action

As EPA stated in its May 3, 2001 final rule (66 FR 22123), conversion of Pennsylvania's VOC and NO_X regulation from limited to full approval would occur when EPA had approved all of the case-by-case RACT determinations submitted by Pennsylvania into the Pennsylvania SIP. EPA has previously removed the limited status of its approval of Pennsylvania's SIP revisions that requires all major sources of VOC and NO_X to implement RACT as it applies in the Pittsburgh and Philadelphia areas because EPA has approved all of the case-by-case RACT determinations for these areas. In this action EPA is proposing to convert its limited approval of Pennsylvania's RACT regulation to full approval as it applies in the remainder of the Commonwealth because EPA has approved or is currently conducting rulemaking to approve all remaining case-by-case RACT determinations submitted by PADEP. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the remainder of the State, outside of the Pittsburgh and Philadelphia areas; or (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a *de minimis* level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789). EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act.

Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This proposed rule, regarding Pennsylvania's VOC and NO_X RACT regulations as they apply in the remainder of the Commonwealth, does not impose an information collection under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 7, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–9461 Filed 6–15–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 213

RIN 0750–AF42

Defense Federal Acquisition Regulation Supplement; Aviation Into-Plane Reimbursement Card (DFARS Case 2006–D017)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to DoD fuel card programs. The proposed rule addresses use of the Aviation Into-plane Reimbursement card for purchases of aviation fuel and oil.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 15, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D017, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2006–D017 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Robin Schulze, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

DoD uses the Aviation Into-plane Reimbursement (AIR) card for purchases of aviation fuel and oil at commercial airport facilities. The AIR card is a centrally-billed, Government commercial purchase card that is an alternative to use of the Standard Form 44, Purchase Order-Invoice-Voucher. This proposed rule amends DFARS 213.306 to address use of the AIR card. In addition, the proposed rule amends DFARS 213.301 to clarify that DoD has multiple fuel card programs.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the AIR card is an alternative to use of the Standard Form 44, Purchase Order-Invoice-Voucher, designed primarily for on-the-spot, over-the-counter purchases while away from the purchasing office or at isolated activities. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D017.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 213

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 213 as follows:

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

1. The authority citation for 48 CFR part 213 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

213.301 [Amended]

2. Section 213.301 is amended in paragraph (4), in the second sentence, by removing "program" and adding in its place "programs".

3. Section 213.306 is amended by revising paragraph (a)(1)(A) to read as follows:

213.306 SF 44, Purchase Order-Invoice-Voucher.

(a)(1) * * *

(A) Aviation fuel and oil. The Aviation Into-plane Reimbursement (AIR) card may be used instead of an SF 44 for aviation fuel and oil (*see http://www.desc.dla.mil*);

* * * * *

[FR Doc. E6–9488 Filed 6–15–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 233

RIN 0750–AE01

Defense Federal Acquisition Regulation Supplement; Protests, Disputes, and Appeals (DFARS Case 2003–D010)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing procedures for processing of contractor claims submitted under DoD contracts. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 15, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D010, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2003–D010 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Debra Overstreet, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal

Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Overstreet, (703) 602–0310.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm*.

This proposed rule is a result of the DFARS Transformation initiative. The proposed rule—

- Deletes unnecessary text at DFARS 233.204 regarding research of a contractor's history of filing claims during a contracting officer's review of a current claim; and
- Deletes an obsolete cross-reference at DFARS 233.210.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule deletes unnecessary DFARS text, but makes no significant change to DoD policy regarding consideration of claims submitted by contractors. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D010.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 233

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 233 as follows:

PART 233—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR part 233 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

233.204 and 233.210 [Removed]

2. Sections 233.204 and 233.210 are removed.

[FR Doc. E6–9491 Filed 6–15–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket Number NHTSA–2006–23796]

Denial of Petition Regarding the Hybrid III 50th Percentile Adult Male Test Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of Petition for Rulemaking.

SUMMARY: This document denies a petition submitted by Denton ATD, Inc. (Denton) on October 8, 2004. The petition requested NHTSA to provide additional specifications for the head assembly. NHTSA has fully reviewed Denton's petition and has concluded that the recommended changes are neither needed nor would serve to improve occupant protection. This document discusses the issues raised by Denton in its petition; provides analysis of the petition, and presents the conclusion reached by the agency.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Sean Doyle, NHTSA Office of Crashworthiness Standards. Telephone: (202) 366–1740. Facsimile: (202) 493–2739.

For legal issues: Mr. Edward Glancy, NHTSA Office of the Chief Counsel. Telephone: (202) 366–2992. Facsimile: (202) 366–3820.

Both officials can be reached by mail at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Issues Raised in the Petition

Denton, a manufacturer of crash test dummies, petitioned NHTSA to amend the specifications of CFR Section 49, Part 572, Subpart E Hybrid III 50th Percentile Midsize Adult Male (HIII–50th) Crash Test Dummy and "provide additional specifications for the head and cap skin 78051–228 and –229, the skull and skull cap 18051–77X and –220 and additional drawing information for head assembly drawing 78051–61X." Specifically, Denton petitioned for (1) The inclusion of component weight specifications for the individual flesh components of the head assembly (head skin and cap skin), (2) providing head skin thickness dimensions and tolerances, and (3) availability of patterns for the head skin, cap skin and skull cap. Denton also requested that sheet 2 of drawing number 78051–61X be provided in the HIII–50th drawing package.

Denton argued that the current HIII–50th drawing package is incomplete and the "lack of clear specifications is causing sales restrictions for Denton ATD." Denton believes that the inclusion of these additional specifications to the current drawing package would "maintain the definition of reproducibility." Denton considers these additional specifications helpful in preventing other dummy manufacturers from producing head skins with different dimensions. Denton states that "for the car manufacturers, these differences could possibly produce different crash test results and for the dummy manufacturer, this limits possible sales competition due to the interchangeability issue."

Analysis of Petition

Denton recommended including component weight specifications for the head skin and cap skin in the HIII–50th drawing package. The weight of the head skin is already contained within the head assembly weight specification in the head assembly drawing 78051–338. The agency believes it is unnecessary to further specify the head assembly weight by requiring inclusion of individual head skin and cap skin weights. NHTSA believes that the currently specified weight tolerance and Center of Gravity (CG) location for the head assembly provide sufficient

manufacturing flexibility to produce the HIII–50th head assembly to specified requirements.

Denton also recommended providing head skin thickness dimensions and tolerances. It stated that these were specified in drawing 78051–61 before it was replaced with 78051–61X. Denton claims that drawing 78051–61X consists of 3 sheets, however, sheet 2 is not currently available in the drawing package, and that this sheet includes head skin thickness dimensions. The agency concurs that drawing 78051–61X consists of 3 sheets and that sheet 2 includes the head skin thickness dimensions and tolerances that Denton is referring to in their petition. However, Denton is incorrect in their claim that sheet 2 of drawing 78051–61X is not currently available in NHTSA's drawing package. The National Archive and Record Administration's Office of the **Federal Register** [1] archives agency drawing packages for public reference, and drawing 78051–61X in its entirety (sheets 1, 2, and 3) is located there. Denton did not specify the source of the drawing package that they claim was missing sheet 2 of drawing 78051–61X, although it appears it did not come from the agency's official drawing package. Nevertheless, to ensure that Denton has the proper drawing, the agency has included a copy of sheet 2 of drawing 78051–61x from the agency's official drawing package in the docket with this response.

Denton's last recommendation was to provide complete patterns for the head and cap skin (drawings 78051–228 and –229), and the skull and skull cap (drawings 78051–77X and –220). The incorporation of the head assembly into the agency regulation at 49 CFR Part 572 affirms that the head assembly drawings and other requirements provide sufficient detail to give reliable results under similar test conditions and reflect adequately the protective performance of a vehicle or item of motor vehicle equipment with respect to human occupants. Consequently, the agency believes that providing additional information on patterns or molds for these components, or providing additional instructions on how to manufacture and prepare the parts would not serve to improve the HIII–50th dummy's performance or improve occupant safety. Furthermore, every head assembly should undergo certification tests before being used in a test. These certification tests are established to indicate that the head assembly conforms to impact performance specifications prior to a test. The agency considers meeting the response specifications in certification tests, in conjunction with compliance to the drawing specifications, sufficient to ensure reliable responses in test results. Accordingly, the agency views slight dimensional or weight differences in head skins, which conform to the NHTSA's head assembly drawing and performance specifications, acceptable for agency testing. Moreover, the agency has been using heads and head skins from different dummy manufacturers for many years and has had no problems with dummy heads being unable to meet the performance specifications.

The agency reviewed Denton's petition and found no data establishing how the additional requested specifications would result in improvements in dummy response in tests leading to better assessment of occupant safety. Furthermore, the agency has found no evidence that a lack of alleged detail in the head and cap skin, and the skull and skull cap specifications, results in dummies not meeting the agency's performance specifications. The agency concludes that the recommended changes are neither needed nor would serve to improve occupant protection.

Conclusion

For the reasons discussed above, NHTSA is denying Denton's petition for Rulemaking on 49 CFR Part 572 Subpart E, Hybrid III 50th Percentile Midsize Adult Male Crash Test Dummy.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8

Issued on: June 12, 2006.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E6–9453 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–59–P

[1] Federal Register, 800 North Capitol Street, Suite 700; Washington, DC, 20408.

Notices

Federal Register
Vol. 71, No. 116
Friday, June 16, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development; One Hundred and Forty-Eighth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and forty-eighth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8:30 a.m. to 3:30 p.m. on July 6, 2006 in the ground floor meeting room of the National Association of State Universities & Land Grant Colleges (NASULGC), at 1307 New York Avenue, NW., Washington, DC.

The BIFAD will hear briefings on USAID agricultural programming from its regional bureaus, a sampling of U.S. University led agricultural and natural resources management development programs, the status of the Collaborative Research Support Program (CRSP) portfolio, guidelines and procurement, and other items of current interest.

The meeting is free and open to the public. Those wishing to attend the meeting or obtain additional information about BIFAD should contact John Rifenbark, the Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture, Bureau for Economic Growth, Agriculture and Trade, 1300 Pennsylvania Avenue, NW., Room 2.11–004, Washington DC 20523–2110 or telephone him at (202) 712–0163 or fax (202) 216–3010.

John T. Rifenbark,

USAID Designated Federal Officer for BIFAD, Office of Agriculture, Bureau for Economic Growth, Agriculture & Trade, U.S. Agency for International Development.

[FR Doc. E6–9425 Filed 6–15–06; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0060]

Notice of Request for Extension of Approval of an Information Collection; Certification Program for Imported Articles of Pelargonium spp. and Solanum spp. To Prevent Introduction of Potato Brown Rot

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for a certification program for imported articles of *Pelargonium* spp. and *Solanum* spp. to prevent the introduction of potato brown rot.

DATES: We will consider all comments that we receive on or before August 15, 2006.

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

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower "Search Regulations and Federal Actions" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS–2006–0060 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0060, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0060.

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

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

FOR FURTHER INFORMATION CONTACT: For information on an information collection associated with importation regulations to prevent the introduction of potato brown rot, contact Mr. William Thomas, Executive Director, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20732–1231; (301) 734–8295. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Certification Program for Imported Articles of *Pelargonium* spp. and *Solanum* spp. to Prevent Introduction of Potato Brown Rot.

OMB Number: 0579–0221.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Animal and Plant Health Inspection Service is authorized to prohibit or restrict the importation of plants, plant products, plant pests, and other articles to prevent the introduction of plant pests into the United States.

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. The regulations contained in "Subpart-Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant products," §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, seeds, and plant cuttings for propagation.

The regulations include a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium *Ralstonia solanacearum* race 3 biovar 2 is known

to occur. The requirements of the certification program were designed to ensure that *Ralstonia solanacearum* race 3 biovar 2 will not be introduced into the United States through the importation of articles of *Pelargonium* spp. and *Solanum* spp. This bacterial strain causes potato brown rot, which causes potatoes to rot through, making them unusable and seriously affecting potato yields.

The certification program requires the collection of information through phytosanitary certificates (foreign), trust funds, and compliance agreements.

We are asking the Office of Management and Budget (OMB) to approve these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Growers, State plant regulatory officials.

Estimated annual number of respondents: 27.

Estimated annual number of responses per respondent: 37.851851.

Estimated annual number of responses: 1,022.

Estimated total annual burden on respondents: 1,022 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of June 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–9468 Filed 6–15–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0088]

Notice of Request for Approval of an Information Collection; Veterinary Services; Customer Service Survey

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection activity that will be used to evaluate service delivery at Veterinary Services area offices and import/export facilities.

DATES: We will consider all comments that we receive on or before August 15, 2006.

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

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower "Search Regulations and Federal Actions" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS–2006–0088 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0088, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0088.

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

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

FOR FURTHER INFORMATION CONTACT: For information on an information collection to evaluate service delivery at Veterinary Services (VS) area offices and import/export facilities, contact Dr. Robert E. Harris, Jr., Assistant Area Veterinarian in Charge, VS, APHIS, 7022 NW 10th Place, Gainesville, FL 32605; (352) 333–3120. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Veterinary Services; Customer Service Survey.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture regulates, and provides services related to, the importation, interstate movement, and exportation of animals, animal products, and other articles to prevent the spread of pests and diseases of livestock. Veterinary Services (VS) is the program unit that carries out these activities to protect animal health.

In an effort to evaluate service delivery in its area offices and import/export facilities, VS plans to conduct a customer service survey. The survey would be in the form of a short questionnaire that VS would present to individuals who use its services. Completion of the questionnaire would be voluntary, and responses would not identify the individual respondent. Respondents would be asked to identify the type of customer they are (*e.g.*, pet importer/exporter, farm animal importer/exporter, accredited veterinarian, etc.), and then to rate the services received in terms of courtesy, timeliness, helpfulness, etc., as well as rate the overall experience. The questionnaire would also allow respondents to provide comments.

The information collected would be used to identify areas in which VS can improve service delivery and more efficiently meet the needs and expectations of customers.

We are asking the Office of Management and Budget (OMB) to approve this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.083 hours per response.

Respondents: Members of the public who receive services from VS area offices and import/export facilities.

Estimated annual number of respondents: 5,000.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 5,000

Estimated total annual burden on respondents: 415 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of June 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–9469 Filed 6–15–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Funding Opportunity; Commodity Partnerships for Risk Management Education (Commodity Partnership Program)

Announcement Type: Availability of Funds and Request for Application for Competitive Cooperative Partnership Agreements—Initial.

CFDA Number: 10.457.

Dates: Application are due 5 p.m. EDT, July 17, 2006.

Executive Summary

The Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of approximately $500,000 for Commodity Partnerships for Risk Management Education (the Commodity Partnerships program). Since the Agricultural Risk Protection Act of 2000 authorized the use of partnerships to provide risk management education, RMA has annually offered partnerships to provide education to producers of crops currently no insured under Federal crop insurance, specialty crops, and underserved commodities, including livestock and forage (priority commodities). Even though these partnerships have been very successful, there is a segment of producers that have not been reached with these education programs—refugees and low income individuals who produce, or who are undertaking to establish a business producing, priority commodities (target producers). The purpose of this cooperative partnership agreement program is to deliver risk management training and information to these producers. A maximum of ten partnership agreements will be funded. The maximum award for any of the ten cooperative partnership agreements will be $50,000. Recipients of awards must demonstrate non-financial benefits from a cooperative partnership agreement and must agree to the substantial involvement of RMA in the project.

This Announcement Consists of Eight Parts:

I. Funding Opportunity Description

A. Legislative Authority

The Commodity Partnerships program is authorized under section 552(d)(3)(F) of the Federal Crop Insurance Act (Act) (7 U.S.C. 1522(d)(3)(F).

B. Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in

existing products, ensuring the integrity of crop insurance programs, offering outreach programs aimed at equal access and participation of underserved communities, and providing risk management education and information.

Since the inception of the partnership program in 2000, RMA has offered millions of dollars in partnerships and has provided risk management tools and education to a large variety of producers of priority commodities. However, through all the partnerships that have been awarded over the years few if any have been directed at the target producers. The need for outreach to this segment of the population has been recognized by both the U.S. Department of Agriculture (USDA) and the Department of Health and Human Services (DHHS), who executed a Memorandum of Understanding (MOU) on December 16, 2004, for the purpose of coordinating policies and activities designed to improve the economic conditions of target producers engaged in farming and rural entrepreneurship.

Assessments of the needs of target producers have identified these issues and needs; (1) Improving access to and utilization of conventional marketing and distribution channels by increasing understanding of packer contracts, quality standards, price fluctuations, and crop financing; (2) Establishing niche markets, including specialty branding, organic certification, and increased access to Farmers Markets; (3) Improving access to land, equipment and financing and educating producers about lease agreements and financing options; (4) Need for technical assistance and training, particularly in chemical use, recordkeeping, and season extension; (5) Uneven support and involvement of government and community based agencies such as county agricultural commissioners, and extension services, faith based groups, and civic organizations; (6) Language and culture: both the need for service providers to understand the language and culture of the refugees, and the need for the refugees to learn the language and culture of America, and particularly the methods of accessing government and community based services. Therefore, RMA is looking for proposals to address these issues and needs for target producers.

C. Definition of Priority Commodities

For purposes of this program, priority commodities are defined as:

- *Agricultural commodities covered by (7 U.S.C. 7333).* Commodities in this group are commerical crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.
- *Specialty crops.* Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.
- *Underserved commodities.* This group includes: (a) Commodities, including livestock and forage, that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock and forage, with inadequate crop insurance coverage.

A project is considered as giving priority to priority commodities if the majority of the educational activities of the project are directed to producers of any of the three classes of commodities listed above or any combination of the three classes.

D. Definition of Target Audience

This program is directed at those refugees and other low income individuals who produce, or who are undertaking to establish a business producing, priority commodities (target producers). For purposes of this program, target producers are defined as:

- *Refugee.* As established by DHHS, includes refugees, asylees, Cuban and Haitian entrants, certain Americans from Vietnam (including some citizens), and victims of a severe form of trafficking. An individual that has fled another country and has come to the United States for refuge, especially from invasion, oppression, or persecution. Although some of these individuals become eligible for legal permanent residence one year after their arrival in the U.S., they continue to meet the definition of "refugee" for purpose of social service benefits until they become U.S. citizens.
- *Low Income Individuals.* Persons whose family incomes are at or below 200 percent of the poverty guidelines established by DHHS.

E. Project Goal

The goal of this program is to ensure that target producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools.

F. Purpose

The purpose of the Commodity Partnership program is to provide U.S. farmers and ranchers with training and informational opportunities to be able to understand:

- The kinds of risks addressed by existing and emerging risk management tools;
- The features and appropriate use of existing and emerging risk management tools; and
- How to make sound risk management decisions.

II. Award information

A. Type of Award: Cooperative Partnership Agreements, which require the substantial involvement of RMA.

B. Funding Availability: Approximately $500,000 is available in fiscal year 2006 to fund up to ten cooperative partnership agreements. The maximum award will be $50,000. Applicants should apply for funding under that RMA Region where the educational activities will be directed.

In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding might otherwise allow. It is expected that the awards will be made approximately 30 days after the application deadline. All awards will be made and agreements finalized no later than September 30, 2006.

C. Location and Target Audience: RMA Regional Office and the States serviced within each Region are listed below. Staff from the respective RMA Regional Offices will provide substantial involvement for projects conducted within their Region.

Billings, MT Regional Office: (MT, WY, ND, and SD).
Davis. CA Regional Office: (CA, NV, UT, AZ, and HI).
Jackson, MS Regional Office: (KY, TN, AR, LA, and MS).
Oklahoma City, OK Regional Office: (OK, TX, and NM).
Raleigh, NC Regional Office: (ME, NH, VT, MA, RI, CT, NY, NJ, PA, MD, DE, WV, VA, and NC).
Spokane, WA Regional Office: (WA, ID, OR, and AK).
Springfield, IL Regional Office: (IL, IN, OH, and MI).
St. Paul, MN Regional Office: (MN, WI, and IA).
Topeka, KS Regional Office: (KS, MO, NE, and CO).
Valdosta, GA Regional Office: (AL, GA, SC, FL, and Puerto Rico).

Applicants must designate in their application narratives the RMA Region where educational activities will be conducted and the specific groups of target producers within the region that the applicant intends to reach through the project. Priority will be given to producers of priority commodities. Applicants proposing to conduct educational activities in more than one RMA Regional must submit a separate application for each RMA Region.

This requirements is not intended to preclude target producers from areas that border a designated RMA Region from participating in that region's educational activities. It is also not a intended to prevent applicants from proposing the use of certain informational methods, such as print or broadcast news outlets, that may reach and target producers engaged in farming and ranching in other RMA Regions.

D. Maximum Award: Any application that requests Federal funding of more than $50,000 for a project in any of the individual RMA Regions will be rejected.

E. Project Period: Projects will be funded for a period of up to one year from the project starting date.

F. Description of Agreement Award: Recipients Tasks

In conducting activities to achieve the purpose and goal of this program in a designated RMA Region, the award recipient will be responsible for performing the following tasks:

- Develop and conduct a promotional program. This program will include activities using appropriate informational dissemination techniques that are designed to: (a) Raise awareness for the availability of the risk management education program; (b) inform target producers of the availability of risk management tools; and (c) inform target producers and agribusiness leaders in the designated RMA Region of information and training opportunities provided by the USDA and DHHS.
- Deliver, using culturally appropriate methods, risk management training and informational opportunities to target producers in the designated RMA Region. This will include organizing and delivering educational activities using instructional materials developed for target producers. Activities should be directed primarily to target producers, but may include those agribusiness professionals that have frequent opportunities to advise target producers on risk management tools and decisions.
- Document all educational activities conducted under the partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The recipient may also be required to provide information to an RMA-selected contractor to evaluate all educational activities and advise RMA as to the effectiveness of activities.

G. *RMA Activities:* FCIS, working through RMA, will be substantially involved during the performance of the funded project through RMA's ten Regional Offices. Potential types of substantial involvement may include, but are not limited to the following activities.

- Assist in the selection of subcontractors and project staff.
- Collaborate with the recipient in assembling, reviewing, and approving risk management materials for target producers in the designated RMA Region.
- Collaborate with the recipient in reviewing and approving a promotional program for raising awareness for risk management and for informing target producers of training and informational opportunities in the RMA Region.
- Collaborate with the recipient on the delivery of education to target producers and agribusiness leaders in the RMA Region. This will include: (a) Reviewing and approving in advance all producer and agribusiness leader educational activities; (b) advising the project leader on technical issues related to crop insurance education and information; (c) assisting the project leader in informing crop insurance professionals about educational activity plans and scheduled meetings and; (d) networking with other agencies/services within USDA and the DHHS.
- Conduct an evaluation of the performance of the recipient in meeting the deliverables of the project.

Applications that do not contain substantial involvement by RMA will be rejected.

H. *Other Tasks:* In addition to the specific, required tasks listed above, the applicant may propose additional tasks that would contribute directly to the purpose of this program. For any proposed additional task, the applicant must identify the objective of the task, the specific subtasks required to meet the objective, specific time lines for performing the subtasks, and the specific responsibilities of partners. The applicant must also identify specific ways in which RMA would have substantial involvement in the proposed project task.

III. Eligibility Information

a. Eligible Applicants

Eligible applicants include State departments of agriculture, universities, non-profit agricultural organizations, and other public or private organizations with the capacity to lead a local program of risk management education for target producers in an RMA Region. Individuals are not eligible applicants. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program governed by Federal law and regulations (e.g. debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards; a determination of being considered "high risk"). Applications from ineligible or excluded persons will be rejected in their entirety.

B. Cost Sharing or Matching

Although RMA prefers cost sharing by the applicant, this program has neither a cost sharing nor a matching requirement.

C. Other—Non-Financial Benefits

To be eligible, applicants must also be able to demonstrate that they will receive a non-financial benefit as a result of a partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational program). Applicants that do not demonstrate a non-financial benefit will be rejected.

IV. Application and Submission Information

A. Contact to Request Application Package

Program application materials for the Commodity Partnerships program under this announcement may be downloaded from *http://www.rma.usda.gov/aboutrma/agreements.* Applicants may also request application materials from: Eric Edgington, USDA–RMA–IS, phone (202) 690–2539, fax (202) 690–2095, e-mail: *Eric.Edgington@rma.usda.gov.*

B. Content and Form of Application Submission

A complete and valid application package must include an electronic copy (Microsoft Word format preferred) of the narrative portion (Forms RME–1

and RME–2) of the application package on compact disc and an original and two copies of the completed and signed application must be submitted in one package at the time of initial submission, which must include the following:

1. A completed and signed OMB Standard Form 424, "Application for Federal Assistance".

2. A completed and signed OMB Standard Form 424–A, "Budget Information—Non-construction Programs". Federal funding requested (the total of direct and indirect costs) must not exceed $50,000.

3. A completed and signed OMB Standard Form 424–B, "Assurances, Non-constructive Programs".

4. Risk Management Education Project Narrative (Form RME–1). Complete all required parts of Form RME–1:

Part I—Title Page.

Part II—A written narrative of no more than 10 single-sided pages, which will provide reviewers with sufficient information to effectively evaluate the merits of the application according to the evaluation criteria, listed in this notice. Although a Statement of Work, which is the third evaluation criterion, is to be completed in detail in RME Form–2, applicants may wish to highlight certain unique features of the Statement of Work in Part II for the benefit of the evaluation panel. If your narrative exceeds the page limit, only the first 10 pages will be reviewed.

- No smaller than 12-point font size.
- Use an easily readable font face (*e.g.,* Arial, Geneva, Helvetica, Times Roman).
- 8.5 by 11 inch paper
- One-inch margins on each page.
- Printed on only one side of paper.
- Held together only by rubber bands or metal clips; not bound or stapled in any other way

Part III—A Budget Narrative, describing how the categorical costs listed on SF 424–A are derived.

Part IV—Provide a "Statement of Non-financial Benefits". (Refer to Section III, Eligibility Information, C. Other—Non-financial Benefits, above).

5. "Statement of Work", Form RME–2, which identifies tasks and subtasks in detail, expected completion dates and deliverables, and RMA's substantial involvement role for the proposed project.

C. Submission Dates and Times

Applications Deadline: July 17, 2006. Applicants are responsible for ensuring that RMA receives a complete application package by the closing date and time. Incomplete or late application packages will not receive further consideration.

D. Funding Restrictions

Cooperative partnership agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. Purchase, rent, or install fixed equipment;

c. Repair or maintain privately owned vehicles;

d. Pay for the preparation of the cooperative partnership agreement application;

e. Fund political activities;

f. Purchase alcohol, food, beverage, or entertainment;

g. Pay costs incurred prior to receiving a partnership agreement;

h. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

E. Limitation on Use of Project Funds for Salaries and Benefits

Total costs for salary and benefits allowed for projects under this announcement will be limited to not more than 60 percent reimbursement of the funds awarded under the cooperative partnership agreement as indicated in Section III. Eligibility Information, C. Other—Non-financial Benefits. All remaining funds must be used for the educational materials, promotion, rental of a meeting place, etc. One goal of the Commodity Partnerships program is to maximize the use of the limited funding available for risk management education for producers of Priority Commodities. In order to accomplish this goal, RMA needs to ensure that the maximum amount of funds practicable is used for directly providing the educational opportunities. Limiting the amount of funding for salaries and benefits will allow the limited amount of funding to reach the maximum number of farmers and ranchers.

F. Indirect Cost Rates

a. Indirect costs allowed for projects submitted under this announcement will be limited to ten (10) percent of the total direct cost of the cooperative partnership agreement.

b. RMA will withhold all indirect cost rate funds for an award to an applicant requesting indirect costs if the applicant has not negotiated an indirect cost rate with its cognizant Federal agency.

c. If an applicant is in the process of negotiation an indirect cost rate with its cognizant Federal agency, RMA will withhold all indirect cost rate funds from that applicant until the indirect cost rate has been established.

d. If an applicant's indirect cost rate has expired or will expire prior to award announcements, a clear statement on renegotiation efforts must be included in the application.

e. It is incumbent on all applicants to have a current indirect cost rate or begin negotiations to establish an indirect cost rate prior to the submission deadline. Because it may take several months to obtain an indirect cost rate, applicants needing an indirect cost rate are encouraged to start work on establishing these rates well in advance of submitting an application. The U.S. Office of Management and Budget (OMB) is responsible for assigning cognizant Federal agencies.

f. Applicants may be asked to provide a copy of their indirect cost rate negotiated with their cognizant agency.

G. Other Submission Requirements

Mailed submissions: Applications submitted through express, overnight mail or another delivery service will be considered as meeting the announced deadline if they are received in the mailroom at the address stated below for express, overnight mail or another delivery service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants should consider this because failure of such delivery services will not extend the deadline. Mailed applications will be considered as meeting the announced deadline if they are received on or before the deadline in the mailroom at the address stated below for mailed applications. Applicants are responsible for mailing applications well in advance, to ensure that applications are received on or before the deadline time and date. Applicants using the U.S. Postal Services should allow for the extra security handling time for delivery due to the additional security measures that mail delivered to government offices in the Washington, DC area requires.

Address when using private delivery services or when hand delivering: Attention: Risk Management Refugee Program, USDA/RMA/IS, Room 6715, South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

Address when using U.S. Postal Services: Attention: Risk Management Refugee Program, USDA/RMA/IS/Stop 0805, Room 6715, South Building, 1400 Independence Ave., SW., Washington, DC 20250–0805.

H. Electronic Submissions

Applications transmitted electronically via Grants.gov will be accepted prior to the application date or time deadline. The application package can be accessed via Grants.gov, go to

http://www.grants.gov, click on "Find Grant Opportunities", click on "Search Grant Opportunities," and enter the CFDA number (located at the beginning of this RFA) to search by CFDA number. From the search results, select the item that correlates to the title of this RFA. If you do not have electronic access to the RFA or have trouble downloading material and you would like a hardcopy, you may contact Eric Edgington, USDA–RMA–IS, phone (202) 690–2539, fax (202) 690–2095, e-mail: *Eric.Edgington@rma.usda.gov.*

I. Acknowledgement of Applications

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide e-mail addresses in their applications. If an e-mail address is not indicated on an application, receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified, or unfunded applications until the awards have been made. When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should notify RMA's point of contact indicated in Section VII, Agency Contact.

V. Application Review Information

A. Criteria

Applications submitted under the Commodity Partnerships program will be evaluated within each RMA Region according to the following criteria:

Priority—Maximum 10 Points

The applicant can submit projects that are not related to Priority Commodities. However, priority is given to projects relating to Priority Commodities and the degree in which such projects relate to the Priority Commodities. Projects that relate solely to Priority Commodities will be eligible for the most points.

Project Benefits—Maximum 35 Points

The applicant must demonstrate that the project benefits to target producers warrant the funding requested. Projects that relate solely to target producers will be eligible for the most points. Projects for which target producers are estimated to receive less than 75 percent will be rejected. Applicants will be scored according to the extent they can: (a) Reasonably estimate and describe the total number of target producers reached through the various educational activities described in the Statement of Work; (b) justify such estimates with clear specifics; (c) identify the actions target producers will likely be able to take as a result of the activities described in the Statement of Work; and (d) identify the specific measures for evaluating results that will be employed in the project. Reviewers' scoring will be based on the scope and reasonableness of the applicant's estimates of target producers reached through the project, clear descriptions of specific expected project benefits, and well-designed methods for measuring the project's results and effectiveness.

Statement of Work—Maximum 15 Points

The applicant must produce a clear and specific Statement of Work for the project. For each of the tasks contained in the Description of Agreement Award (refer to Section II Award Information), the applicant must identify and describe specific subtasks, responsible entities, expected completion dates, RMA substantial involvement, and deliverables that will further the purpose of this program. Applicants will obtain a higher score to the extent that the Statement of Work is specific, measurable, reasonable, has specific deadlines for the completion of subtasks, relates directly to the required activities and the program purpose described in this announcement, which is to provide producers with training and informational opportunities so that the producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools. Applicants are required to submit this Statement of Work on Form RME–2.

Partnering—Maximum 20 Points

The applicant must demonstrate experience and capacity to partner with other USDA and DHHS agencies and services, grower organizations, agribusiness professionals, and agricultural leaders to carry out a local program of education and information in a designated RMA Region. Applicants will receive higher scores to the extent that they can document and demonstrate: (a) That partnership commitments are in place for the express purpose of delivering the program in this announcement; (b) that multiple groups of target producers will be reached within the RMA Region; and (c) that a substantial effort has been made to partner with organizations that can meet the needs of target producers.

Project Management—Maximum 10 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs that assist target producers in the respective RMA Region. Applicants that will employ, or have access to, personnel who have experience in directing local educational programs that benefit target producers in the respective RMA Region will receive higher rankings.

Past Performance—Maximum 10 Points

If the applicant has been a recipient of other Federal or other government grants, cooperative agreements, or contracts, the applicant must provide information relating to their past performance in reporting on outputs and outcomes under past or current Federal assistance agreements. The applicant must also detail that they have consistently complied with financial and program reporting and auditing requirements. RMA reserves the right to add up to 10 points and subtract 5 points to applications due to past performance. Applicants with very good past performance will receive a score from 6–10 points. Applicants with acceptable past performance will receive a score from 1–5 points. Applicants with unacceptable past performance will receive a score of minus 5 points for this evaluation factor. Applicants without relevant past performance information will receive a neutral score of the mean number of points of all applicants with past performance. Under this cooperative partnership agreement, RMA will subjectively rate the recipient on project performance as indicated in Section II, G.

The applicant must list all current public or private support to which personnel identified in the application have committed portions of their time, whether or not salary support for persons involved is included in the budget. An application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. The projects proposed for funding should be included in the pending section.

Budget Appropriateness and Efficiency—Maximum 15 Points

Applicants must provide a detailed budget summary that clearly explains

and justifies costs associated with the project. Applicants will receive higher scores to the extent that they can demonstrate a fair and reasonable use of funds appropriate for the project and a budget that contains the estimated cost of reaching each individual target producers. The applicant must provide information factors such as:

- The allowability and necessity for individual cost categories;
- The reasonableness of amounts estimated for necessary costs;
- The basis used for allocating indirect or overhead costs;
- The appropriateness of allocating particular overhead costs to the proposed project as direct costs; and
- The percent of time devoted to the project for all key project personnel identified in the application. Salaries of project personnel should be requested in proportion to the percent of time that they would devote to the project—Note: cannot exceed 60% of the total project budget. Applicants must list all current public or private support to which personnel identified in the application have committed portions of their time, whether or not salary support for persons involved is included in the budget. Only items or services that are necessary for the successful completion of the project will be funded as permitted under the Act.

B. Review and Selection Process

Applications will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that it meets the requirements in this announcement. Applications that do not meet the requirements of this announcement or are incomplete will not receive further consideration. Applications that meet announcement requirements will be sorted into the RMA Region in which the applicant proposes to conduct the project and will be presented to a review panel for consideration.

Second, the review panel will meet to consider and discuss the merits of each application. The panel will consist of not less than three independent reviewers. Reviewers will be drawn from USDA, other Federal agencies, and others representing public and private organizations, as needed. After considering the merits of all applications within an RMA Region, panel members will score each application according to the criteria and point values listed above. The panel will then rank each application against others within he RMA Region according to the scores received. A random drawing will be held to resolve any instances of a tie score that might have a hearing on funding recommendations. If such a drawing is required, the names of all tied applicants will be entered into a drawing. The first tied applicant drawn will have priority over other tied applicants for funding consideration.

The review panel will report the results of the evaluation to the Manager of FCIC. The panel's report will include the recommended applicants to receive partnership agreements for each RMA Region. Funding will not be provided for an application receiving a score less than 60. Funding will not be provided for an application that is highly similar to a higher-scoring application in the same RMA Region. Highly similar is one that proposes to reach the same target producers likely to be reached by another applicant that scored higher by the panel and the same general educational material is proposed to be delivered.

An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the program described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding is sufficiently similar to a project that has been funded or has been recommended to be funded under another RMA or RCIC program, then the Manager may elect to not fund that application in whole or in part. The Manager of FCIC will make the final determination on those applications that will be awarded funding.

VI. Award Administration Information

A. Award Notices

Following approval by the awarding official of RMA of the applications to be selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into partnership agreements with those selected applicants. The agreements provide the amount of Federal funds for use in the project period, the terms, and conditions of the award, and the time period for the project. The effective date of the agreement shall be on the date the agreement is executed by both parties and it shall remain in effect for up to one year or through September 30, 2007, whichever is later.

After a cooperative partnership agreement has been signed, RMA will extend to award recipients, in writing, the authority to draw down funds for conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and budget, the regulations, the terms and conditions of the award and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Notification of denial of funding will be sent to applicants after final funding decisions have been made. Reasons for denial of funding can include, but are not limited to, incomplete applications, applications with evaluation scores that are lower than other applications in an RMA Region, or applications that propose to deliver education to target producers in an RMA Region that are largely similar to groups reached in a higher ranked application.

B. Administrative and National Policy Requirements

1. Requirement To Use Program Logo

Applicants awarded partnership agreements will be required to us a program logo and design provided by RMA for all instructional and promotional materials.

2. Requirement to Provide Project Information to an RMA-selected Representative

Applicants awarded partnership agreements will be required to assist RMA in evaluating the effectiveness of its educational programs by providing documentation of educational activities and related information to any representative selected by RMA for program evaluation purposes.

3. Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this announcement. However, such entries will not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Also, such entities will not be allowed to receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

4. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

5. Confidential Aspects of Applications and Awards

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application.

When an application results in a partnership agreement, that agreement becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of an application that does not result in an award will retained by RMA for a period of one year. Other copies will be destroyed. Copies of applications not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to award.

6. Audit Requirements

Applicants awarded partnership agreements are subject to audit.

7. Prohibitions and Requirements With Regard to Lobbying

Since all awards under the request for application shall not exceed $50,000, the reporting requirements in section 319(b) of Public Law 101–121, enacted on October 23, 1989, are not applicable.

8. Applicable OMB Circulars

All cooperative partnership agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

9. Requirement To Assure Compliance with Federal Civil Rights Laws

Project leaders of all cooperative partnership agreements funded as a result of this notice are required to know and abide by Federal civil rights laws and to assure USDA and RMA that the recipient is in compliance with and will continue to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.), 7 CFR part 15, and USDA regulations promulgated there under, 7 C.F.R. 1901.202. RMA requires that recipients submit Form RD 400–4, Assurance Agreement (Civil Rights), assuring RMA of this compliance prior to the beginning of the project period.

10. Requirement To Participate in a Post Award Teleconference

RMA requires that project leaders participate in a post award teleconference to become fully aware of agreement requirements and for delineating the roles of RMA personnel and the procedures that will be followed in administering the agreement and will afford an opportunity for the orderly transition of agreement duties and obligations if different personnel are to assume post-award responsibility.

C. Reporting Requirements

Award recipients will be required to submit quarterly progress reports, quarterly financial reports (OMB Standard Form 269), and quarterly Activity Logs (Form RME–3) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

Recipients will be required to submit prior to the award:

- A completed and signed Form RD 400–4, Assurance Agreement (Civil Rights).
- A completed and signed OMB Standard Form LLL, "Disclosure of Lobbying Activities".
- A completed and signed AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions".
- A completed and signed AD–1049, "Certification Regarding Drug-Free Workplace".
- A completed and signed Faith-Based Survey on EEO.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact: Eric Edgington, USDA–RMA–IS, 1400 Independence Ave. SW., Stop 0805, Room 6715, Washington, DC 20250–0805, phone (202) 690–2539, fax (202) 690–2095, e-mail: *Eric.Edgington@rma.usda.gov*. You may also obtain information regarding this announcement from the RMA Web site at: *http://www.ma.usda.gov/aboutrma/agreements*.

VIII. Other Information

A. Dun and Bradstreet Data Universal Numbering System (DUNS)

A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of over 70 million businesses worldwide. The Office of Management and Budget published a notice of final policy issuance in the **Federal Register** June 27, 2003 (68 FR 38402) that requires a DUNS number in every application (i.e., hard copy and electronic) for a grant or cooperative agreement on or after October 1, 2003. Therefore, potential applicants should verify that they have a DUNS number or take the steps needed to obtain one. For information about how to obtain a DUNS number, go to *http://www.grants.gov*. Please note that the registration may take up to 14 business days to complete.

B. Required Registration With the Central Contract Registry for Submission of Proposals

The Central Contract Registry (CCR) is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications. A DUNS number is needed for CCR registration. For information about how to register in the CCR, visit "Get Started" at the Web site, *http://www.grants.gov*. Allow a minimum of 5 business days to complete the CCR registration.

C. Related Programs

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), CFDA No. 10.456 (Risk Management Research Partnerships), CFDA No. 10.458 (Crop Insurance Education in Targeted States), and CFDA No. 10.459 (Commodity Partnerships Small Sessions program).

These programs have some similarities, but also key differences. The differences stem from important features of each program's authorizing legislation and different RMA objectives. Prospective applicants should carefully examine and compare the notices for each program.

Signed in Washington, DC on June 12, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 06–5442 Filed 6–15–06; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of the currently approved information collection 0596–0105—Land Exchanges.

DATES: Comments must be received in writing on or before August 15, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Cynthia R. Swanson, Assistant Director, Lands, 1400 Independence Avenue, SW., Mail Stop 1124, Washington, DC 20250–1124.

Comments also may be submitted via facsimile to (202) 205–1604 or by e-mail to: *lands/wo@fs.fed.us.*

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Office of the Assistant Director—Lands Staff, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead at (202) 205–1248 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Cynthia R. Swanson, Assistant Director—Lands Staff, at (202) 205–1248 or Kathleen L. Dolge, Realty Specialist, at (202) 205–1248. Individuals who use telecommunications devices for the deaf may call the Federal Relay Service at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Land Exchanges.

OMB Number: 0596–0105.

Expiration Date of Approval: December 31, 2006.

Type of Request: Extension of a currently approved information collection.

Abstract: Land exchanges are discretionary, voluntary real estate transactions between the Secretary of Agriculture (acting by and through the Forest Service) and a non-Federal exchange party (or parties). Land exchanges can be initiated by a non-Federal party (or parties), an agent of a landowner, a broker, a third party, or a non-Federal public agency.

Each land exchange requires preparation of an *Agreement to Initiate*, as required by Title 36 Code of Federal Regulations (CFR), part 254, subpart C, section 254.4—Agreement to Initiate an Exchange. This document specifies the preliminary and non-binding intentions of the non-Federal land exchange party and the Forest Service in pursuing a land exchange. The *Agreement to Initiate* can contain such information as the description of properties being considered in the land exchange, an implementation schedule of action items, identification of the party responsible for each action item, as well as target dates for completion of each action item.

As the exchange proposal develops, the Forest Service and the non-Federal land exchange party may enter into a binding *Exchange Agreement*, pursuant to Title 36 CFR part 254, subpart A, section 254.14—Exchange Agreement. The *Exchange Agreement* documents the conditions that must be met to complete the exchange. The *Exchange Agreement* can contain information such as identification of parties, description of lands and interests to be exchanged, identification of all reserved and outstanding interests, and all other terms and conditions necessary to complete the exchange.

The Forest Service collects the information from the non-Federal party (or parties) necessary to complete the *Agreement to Initiate* and the *Exchange Agreement*. The information is collected by Forest Service personnel from parties involved in the exchange via telephone or in person. Data from this information collection is unique to each land exchange and is not available from other sources. No standardized forms are associated with this information collection.

Item	Agreement to initiate	Exchange agreement
Estimate of Annual Burden Hours	1	1
Type of Respondents	(*)	(*)
Estimated Annual Number of Respondents	60	60
Estimated Number of Responses per Respondent	1	1
Estimated Total Annual Burden Hours on Respondents	60	60

*Non-Federal Land Exchange Party.

Comment is invited on: (1) Whether the proposed collection of information is necessary for the stated purposes or the proper performance of the functions of the agency, including whether the information shall have practical or scientific 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 respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including name and address when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

June 7, 2006.

Frederick R. Norbury,

Associate Deputy Chief, National Forest System.

[FR Doc. E6–9422 Filed 6–15–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Escalante Ranger District, Dixie National Forest; Utah; Pockets Resource Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Dixie National Forest proposes specific commercial timber harvest, pre-commercial stand treatment, and fencing in the Pockets Project area. These actions will contribute to meeting the Dixie National Forest Land and Resource Management Plan (LRMP) goals and objectives and comply with the standards and guidelines set in the LRMP. Connected with the commercial timber harvest is road system modification, including changes in the forest road system, road construction, reconstruction, maintenance, and travel management. The proposed treatments are needed at this time due to a spruce bark beetle (*Dendroctonus refipennis*) epidemic. In some stands, beetle attacks have removal most of the live Engelman spruce trees greater than 12 inches diameter at breast height. Timely removal of insect infested spruce trees can reduce current tree mortality from spruce bark beetle. The development of diverse healthy stands can help reduce the risk and extent of future outbreaks. The Pockets Resource Management Project is located completely within public lands on the Dixie National Forest, Escalante Ranger District. It is approximately 22 miles northwest of Escalante, Utah. The 8,564 acre project area is located within the Antimony Creek, Coyote hollow-Antimony Creek, and pacer Lake watersheds. The project area is located between 8,712 and 10,243 feet above sea level within the Engelmann spruce/subalpine fir, Douglas-fir, and aspen forest cover types.

DATES: Comments concerning the scope of the analysis must be received by July 31, 2006 to be helpful. The draft environmental impact statement is expected November 2006 and the final environmental impact statement is expected March 2007

ADDRESSES: Send written comments to Gina Lampmann, District Ranger, Escalante Ranger District, 755 West Main, PO Box 246, Escalante, Utah 84726. Comments may also be e-mailed to: *comments-intermtn-dixie-escalante@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Pockets Project Manager, Escalante Ranger District, 755 West Main, PO Box 246, Escalante, Utah 84726.

Purpose and Need for Action

The purpose of this proposed action for the spruce/fir component of the forest is to salvage spruce beetle killed Engelmann spruce, reduce long term fuel loadings, improve the balance of age class distribution, decrease stand densities, and reduce tree mortality from spruce beetle on 3,715 acres. There is a need to reduce stand densities on up to 3,024 acres emphasizing harvesting stands that are highly or moderately susceptible to attack by forest pests. This will increase tree growth and vigor, and create stand conditions that are less conducive to increased bark beetle populations and disease. There is also a need to reduce beetle activity on an additional 691 acres, which are within desired stand density levels, and to salvage beetle killed Engelmann spruce trees to reduce long term fuel loading.

The purpose of this proposed action for the aspen component of the forest is to restore both the distribution and balance of the age-classes for serial aspen clones (seedling/saplings, young to mature, and older than 80 years) using timber cutting. There is a need to convert mature and over-mature aspen stands that are succeeding to conifer to the regeneration age class on approximately 350 acres. In addition, approximately 433 acres of aspen will have the understory conifer trees removed using non-commercial methods to delay succession.

The purpose of the proposed riparian treatment is to improve riparian health along the Antimony Creek stream bank. There is a need to increase the presence of healthy willow trees along the stream bank, and to reduce the encroachment of conifer along both the stream bank and meadow. Removal of spruce trees will allow for additional space for willow tree establishment and provide conditions suitable for a diverse age class of willow.

The purpose of the proposed road work is to provide a transportation system that safely facilities timber harvest and related activities and meets Best Management Practices (BMP). There is a need to modify the transportation system to allow for the safe removal of timber and the completion of post sale activities while meeting BMPs associated with timber harvest haul roads. A Travel Management Plan also needs to be developed to provide a long-term system of roads and motorized trails to meet the variety of uses occurring within the project area while protecting the natural resources. There is also a need to prevent future user developed roads by restricting off road use, particularly in riparian areas.

Proposed Action

About 3,024 acres of Engelmann spruce/sub-alpine fir forest would be harvested commercially using a combination of intermediate and sanitation/salvage treatments. Following the timber harvest, 548 of these acres would be treated with a pre-commercial thinning in which a portion of the smaller diameter trees would be cut. Finally, sanitation/salvage timber harvest, removing only spruce beetle-infested and recently killed trees, would be implemented on another 691 acres of spruce/fir.

Of the approximately 2,647 acres of aspen in the project area, approximately 350 acres would be clear-cut in 12 blocks of up to 40 acres in size using a commercial timber harvest. An additional 433 acres of aspen would be treated by hand cutting understory conifer trees less than 8 inches in diameter at breast height (DBH).

Within approximately 82 acres along the Antimony Creek drainage, conifer trees greater than or equal to 6″ DBH would be girdled to create snags. Conifer trees smaller than 6″ DBH would be cut by hand and left on the ground.

Approximately 9.0 miles of new roads would be constructed and added to the forest road system. Approximately 7.0 miles of currently unauthorized roads would be added to the NFS road system. Up to 13.4 miles of existing NFS roads would be improved for timber hauling.

Possible Alternatives

The Forest Service will likely consider an alternative to the proposed action that reduces permanent road construction.

Responsible Official

Robert A. Russell, Forest Supervisor, Dixie National Forest, 1789 Wedgewood Lane, Cedar City, UT 84720.

Nature of Decision To Be Made

The responsible official must decide whether to proceed with the project as proposed, to proceed by an alternative method, or to forgo the project at this time.

Scoping Process

In addition to the publication of this notice in the **Federal Register,** the Dixie National Forest will mail a copy of the proposed action to those individuals and groups who may be affected by the proposed action or who have expressed

interest in the proposed action. The mailing will contain instructions for submitting comments and will request that comments be submitted by the close of the scoping period, July 31, 2006.

Preliminary Issues

Timber harvest and road construction may impact the undeveloped characteristics of a portion of the project area.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Forest Service uses scoping early in its projects as a means to gather information about significant, site-specific issues that are directly elated to the proposed action. Comments that express concern about a resource but include no specific information regarding how the proposed action will affect that resource, do not constitute issues. Issues that the analysis shows to be significant will be resolved through project mitigation measures or through the development of alternatives that address those particular issues. While your comments are always welcome, comments received by July 31, 2006 will be most helpful.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Services believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day Draft Environmental Impact Statement comment period (expected in November, 2006) so that comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement.

Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: June 6, 2006.

Robert A. Russell,

Forest Supervisor, Dixie National Forest.

[FR Doc. 06–5466 Filed 6–15–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Kootenai National Forest, Lincoln County, MT; Grizzly Vegetation and Transportation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of vegetation management, fuels reduction, watershed rehabilitation activities, wildlife habitat improvement, and access management changes, including road decommissioning. The project is located in the Grizzly planning subunit on the Three Rivers Ranger District, Kootenai National Forest, Lincoln County, Montana, and northeast of Troy, Montana.

DATES: Comments concerning the scope of the analysis should be received by July 17, 2006. The draft environmental impact statement is expected to be available by February, 2007, and the final environmental impact statement is expected by June, 2007.

ADDRESSES: Send written comments to Doug Grupenhoff, Acting District Ranger, Three Rivers Ranger District, 1437 N. Hwy 2, Troy, MT 59935. Submit electronic comments to *bdhiggins@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Contact Bruce Higgins, Team Leader at 559–920–2165.

SUPPLEMENTARY INFORMATION: The project area is approximately 18 air miles northeast of Troy, Montana, within all or portions of T34N, R32W–R33W, T35N, R32W–R33w, and T36N, R32W–R33W, Lincoln County, Montana.

Purpose and Need for Action

The objectives of the Grizzly Vegetation and Transportation Management Project are to: (1) Restore healthy diverse forest conditions by increasing western white pine and western larch, increasing mixed fire regime vegetation characteristics, and enhancing aspen habitat; (2) reduce fuel loadings and potential fire hazards by thinning dense stands, removing dead and dying lodgepole pine and other species, and reintroducing fire into the landscape to reduce conifer encroachment; (3) increase grizzly bear habitat and reduce watershed resource damage by decommissioning roads, implementing best management practices, and abandoning roads not necessary for future management access; and (4) produce forest products to contribute towards local and regional economies.

Proposed Action

Vegetation treatments include: Commercial timber harvest of 387 acers of clearcut with reserves, 168 acres of seed tree with reserves, 536 acres of commercial thinning, 218 acres of lodgepole salvage, and 125 acres of aspen release. Approximately 572 acres of existing plantations would be precommercial thinned.

Transportation actions include: Decommissioning 30.0 miles of road, abandonment of 17 miles, conversion of 2.4 miles of road to trails, putting into storage 20.5 miles of road for grizzly bear habitat needs, and applying best management practices to reduce sediment delivery on 55 miles of road. Approximately 2.7 miles of temporary road would be constructed to access

treatment unit and then decommissioned once activities are completed. In response to the final Travel Management Rule, approximately 36 miles of road is proposed for designation as open to motorized use by highway legal vehicles, and 39 miles of trails proposed for non-motorized use.

Possible Alternatives

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities will be implemented. Additional alternatives may examine varying levels and locations for the proposed activities to achieve the purpose and need, as well as to respond to the issues and other resource values.

Responsible Official

The Responsible official for this project is Paul Bradford, Forest Supervisor, Kootenai National Forest, 1101 Highway 2 West, Libby, Montana 59923.

Nature of Decision To Be Made

The decision to be made includes whether to implement the proposed actions, alternatives to the proposed actions, and any design criteria or mitigation measures.

Scoping Process

A scoping package will be sent to all parties that have expressed an interest in management activities in the area, as well as those that reside within or adjacent to the project area. A legal notice will be published in the newspaper of record to notify other interested parties of the opportunity for comments. Public meetings will be held if interest is expressed by the public.

Preliminary Issues

Additional opportunities to meet grizzly bear habitat standards may be identified to meet total managed road densities. The proposed action includes the potential creation of a regeneration opening of approximately 118 acres.

Comment Requested

This notice of intent initiates the scoping process that guides the development of the draft environmental impact statement. Comments should be received 30 days following publication of this notice to be considered in preparation of the DEIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: June 7, 2006.

Thomas Puchlerz,

Acting Forest Supervisor, Kootenai National Forest.

[FR Doc. 06–5328 Filed 6–15–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[06–02–A]

Opportunity for Designation in the Sacramento (CA), Frankfort (IN), Indianapolis (IN), and Virginia Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in December 2006. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the quality of services provided by these currently designated agencies: California Agri Inspection Company, Ltd. (California Agri); Frankfort Grain Inspection, Inc. (Frankfort); Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis); and Virginia Department of Agriculture and Consumer Services (Virginia).

DATES: Applications and comments must be received on or before July 14, 2006.

ADDRESSES: We invite you to submit applications and comments on this notice. You may submit applications and comments by any of the following methods:

- Hand Delivery or Courier: Deliver to Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- Fax: Send by facsimile transmission to (202) 690–2755, attention: Karen Guagliardo.
- E-mail: Send via electronic mail to *Karen.W.Guagliardo@usda.gov*.
- Mail: Send hardcopy to Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

Read Applications and Comments: All applications and comments will be

available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Karen Guagliardo at 202–720–7312, e-mail *Karen.W.Guagliardo@usda.gov.*

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

1. Current Designations Being Announced for Renewal.

Official agency	Main office	Designation start	Designation end
California Agri	West Sacremento, CA	06/01/2005	12/31/2006
Frankfort	Frankfort, IN	01/01/2004	12/31/2006
Indianapolis	Indianapolis, IN	01/01/2004	12/31/2006
Virginia	Richmond, VA	01/01/2004	12/31/2006

a. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of California, is assigned to California Agri.

Bounded on the North by the northern California State line east to the eastern California State line;

Bounded on the East by the eastern California State line south to the southern Mono County line;

Bounded on the South by the southern Mono, Tuolumne, Mariposa, Stanistaus, Santa Clara, San Benito, and Monterey County lines west to the western California State line; and

Bounded on the West by the western California State line north to the northern California State line.

California Agri's assigned geographic area does not include the export port locations inside California Agri's area which are serviced by GIPSA.

b. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Indiana, is assigned to Frankfort.

Bounded on the North by the northern Fulton County line;

Bounded on the East by the eastern Fulton County line south to State Route 19; State Route 19 south to State Route 114; State Route 114 southeast to the eastern Fulton and Miami County lines; the northern Grant County line east to County Highway 900E; County Highway 900E south to State Route 18; State Route 18 east to the Grant County line; the eastern and southern Grant County lines; the eastern Tipton County line; the eastern Hamilton County line south to State Route 32;

Bounded on the South by State Route 32 west to the Boone County line; the eastern and southern Boone County lines; the southern Montgomery County line; and

Bounded on the West by the western and northern Montgomery County lines; the western Clinton County line; the western Carroll County line north to State Route 25; State Route 25 northeast to Cass County; the western Cass and Fulton County lines.

Frankfort's assigned geographic area does not include the following grain elevators inside Frankfort's area which have been and will continue to be serviced by the following official agency: Titus Grain Inspection, Inc.: The Andersons, Delphi, Carroll County; Frick Services, Inc., Leiters Ford, Fulton County; and Cargill, Inc., Linden, Montgomery County.

c. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Indiana, is assigned to Indianapolis.

Bartholomew; Brown; Hamilton, south of State Route 32; Hancock; Hendricks; Johnson; Madison, west of State Route 13 and south of State Route 132; Marion; Monroe; Morgan; and Shelby Counties.

d. Pursuant to section 7(f)(2) of the Act, the following geographic area, the entire State of Virginia, is assigned to Virginia.

2. Opportunity for designation. Interested persons, including California Agri, Frankfort, Indianapolis, and Virginia, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and 7 CFR 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning January 1, 2007, and ending December 31, 2009. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *http://www.gipsa.usda.gov.*

3. Request for Comments. GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the quality of services provided by the California Agri, Frankfort, Indianapolis, and Virginia official agencies. Substantive comments citing reasons and pertinent data for support or objection to the designation of the applicants will be considered in the designation process. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Public Law 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Gary McBryde,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–9457 Filed 6–15–06; 8:45 am]

BILLING CODE 3410–EN–P

ARCTIC RESEARCH COMMISSION

[USARC 06–076]

Notice of Meeting

June 6, 2006.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 80th meeting in Barrow and Anchorage, AK on June 27–29, 2006. The Business Session, open to the public, will convene at 8 a.m. Tuesday, June 27, 2006 in Barrow and June 29, 2006 in Anchorage. An Executive Session will follow adjournment of the Business Session.

The Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 79th Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the meeting will be reports and updates on programs and research projects affecting the Arctic.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: John Farrell, Executive Director, U.S. Arctic Research Commission, 703–725–0111 or TDD 703–306–0090.

John Farrell,

Executive Director.

[FR Doc. 06–5467 Filed 6–15–06; 8:45 am]

BILLING CODE 7555–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* July 16, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: On April 21, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (71 FR 20643) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

Product/NSNs: Load Lifter Attachment Strap.
8465–01–521–7815—Woodland Camouflage.
8465–01–524–7241—Universal Camouflage.
8465–01–519–6132—Desert Camouflage.
NPA: The Arkansas Lighthouse for the Blind, Little Rock, Arkansas.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Product/NSNs: Straps, Lashing.
8465–01–524–7689—Foliage Green.
8465–01–491–2095—Desert Camouflage.
8465–01–465–2095—Woodland Camouflage.
NPA: Travis Association for the Blind, Austin, Texas.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Product/NSNs: System Repair Kit.
8465–01–465–2080—Woodland & Desert Pattern.
8465–01–524–7639—Universal Pattern.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–9441 Filed 6–15–06; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: July 16, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSNs: Bag, Fecal Incontinent 6530–00–NSH–0044.
NPA: Work, Incorporated, North Quincy, Massachusetts.
Contracting Activity: Veterans Affairs National Acquisition Center, Hines, Illinois.
Product/NSNs: SKILCRAFT Cellulose Mop & Refill.
M.R. 1099.
M.R. 1089.
SKILCRAFT Melamine Mop & Refill.
M.R. 1098.
M.R. 1088.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contracting Activity: Defense Commissary Agency (DeCA), Fort Lee, Virginia.

Services

Service Type/Location: Custodial Services, Army Corps of Engineers—Eastern Area Office, 926 SW. Adams Street (Suite 110), Peoria, Illinois.
NPA: Community Workshop and Training Center, Inc., Peoria, Illinois.
Contracting Activity: U.S. Army Corps of Engineers, Rock Island, Illinois.
Service Type/Location: Custodial Services, Frank Peregory U.S. Army Reserve Center, 1634 Cherry Avenue, Charlottesville, Virginia.
NPA: WorkSource Enterprises, Charlottesville, Virginia.
Contracting Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.
Service Type/Location: Custodial Services, Social Security Administration Building, 88 South Laurel Street, Hazelton, Pennsylvania.
NPA: United Rehabilitation Services, Inc., Wilkes-Barre, Pennsylvania.
Contracting Activity: GSA Public Buildings Service, Region 3, Pittsburgh, Pennsylvania.
Service Type/Location: Custodial Services, Tacoma National Cemetery, 18600 240th Avenue, SE., Kent, Washington.
NPA: Northwest Center for the Retarded, Seattle, WA.
Contracting Activity: Department of Veterans Affairs, Tacoma, Washington.
Service Type/Location: Custodial Services, Wayne L. Morse Federal Courthouse, 455 E. 8th Avenue, Eugene, Oregon.
NPA: Garten Services, Inc., Salem, Oregon.
Contracting Activity: GSA, Public Buildings Service—Region 10, Auburn, Washington.
Service Type/Location: Document Destruction, Internal Revenue Service, 474 South Court Street, Room 361, Montgomery, Alabama.
Service Type/Location: Document Destruction, Internal Revenue Service, 801 Tom Martin Drive, Birmingham, Alabama.
NPA: United Cerebral Palsy of Greater Birmingham, Inc., Birmingham, Alabama.
Contracting Activity: U.S. Treasury, IRS, Chamblee, Georgia.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. E6–9442 Filed 6–15–06; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Chemical Weapons Convention, Amendment to the Export Administration Regulations (End-Use Certificates and Advance Notifications and Annual Reports).

Agency Form Number: None.

OMB Approval Number: 0694–0117.

Type of Request: Extension of a currently approved collection of information.

Burden: 17 hours.

Average Time Per Response: 30 minutes.

Number of Respondents: 33 respondents.

Needs and Uses: This collection is required by the Chemical Weapons Convention. The U.S. is under obligation by this international treaty to impose certain trade controls. States Parties may only export Schedule 1 chemicals to other States Parties, must provide advance notification of exports of any quantity of a Schedule 1 chemical, and must submit annual reports of exports of such chemicals during the previous calendar year. The Convention also requires that prior to the export of a Schedule 2 or Schedule 3 chemicals to a non-States Party, the exporter obtain an End-Use Certificate issued by the government of the importing country.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address, *David_Rostker@omb.eop.gov*, or fax number, (202) 395–7285.

Dated: June 12, 2006.

Madeleine Clayton,
Management Analyst, Office of the Chief Information Officer.
[FR Doc. E6–9426 Filed 6–15–06; 8:45 am]
BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Industrial Reports, Wave 1.

Form Number(s): MQ315B, MQ325B, MQ327D, MA311D, MA325F, MA327C, MA331B, MA332Q, MA333A, MA333M, MA333N, MA335F, and MA335K.

Agency Approval Number: 0607–0392.

Type of Request: Revision of a currently approved collection.

Burden: 6,276 hours.

Number of Respondents: 4,650.

Avg. Hours per Response: 1 hour and 21 minutes.

Needs and Uses: The U.S. Census Bureau is requesting a revision of the mandatory and voluntary surveys in Wave I of the Current Industrial Reports (CIR) program. The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the CIR program. The CIR program focuses primarily on the quantity and value of shipments data of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks, and consumption; and comparative data on domestic production, exports, and imports of the products they cover.

Due to the large number of surveys in the CIR program, for clearance purposes, the CIR surveys are divided into "waves." One wave is resubmitted for clearance each year. This year the Census Bureau is submitting the mandatory and voluntary surveys of Wave I for clearance.

A new survey, MQ315B, "Socks Production" will be added in this wave. This new survey was requested by the

American Manufacturing Trade Action Coalition (AMTAC) and other trade associations such as the Domestic Manufacturers Committee and also by the domestic manufacturers. In 2004 and 2005 we collected data on socks as part of the counterpart for the MQ315A, "Apparel" survey.

For copies of the latest instruction manuals and report forms in this wave go to this Web address: *http://www.census.gov/mcd/clearance.*

Primary users of these data are government and regulatory agencies, business firms, trade associations, and private research and consulting organizations. The FRB uses CIR data in its monthly index of industrial production as well as its annual revision to the index. The Bureau of Economic Analysis (BEA) and the Bureau of Labor Statistics (BLS) use the CIR data in the estimate of components of gross domestic product (GDP) and the estimate of output for productivity analysis, respectively. Many government agencies, such as the International Trade Commission, Department of Agriculture, Food and Drug Administration, Department of Energy, Federal Aviation Administration, BEA, and International Trade Administration use the data for industrial analysis, projections, and monitoring import penetration. Private business firms and organizations use the data for trend projections, market analysis, product planning, and other economic and business-oriented analysis. Since the CIR program is the sole, consistent source of information regarding specific manufactured products in the intercensal years, the absence thereof would severely hinder the Federal Government's ability to measure and monitor important segments of the domestic economy, as well as the effect of import penetration.

Affected Public: Businesses or other for profit.

Frequency: Quarterly and Annually.

Respondent's Obligation: Mandatory and Voluntary.

Legal Authority: Title 13, United States Code (U.S.C.), sections 61, 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: June 12, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–9421 Filed 6–15–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 060607156–6156–01]

Solicitation of Applications for the National Technical Assistance Program

AGENCY: Economic Development Administration. Department of Commerce

ACTION: Notice and request for applications.

SUMMARY: The Economic Development Administration (EDA) is soliciting applications for FY 2006 National Technical Assistance Program (NTA Program) funding. EDA's mission is to lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Through its NTA Program, EDA works towards fulfilling its mission by funding research and technical assistance projects to promote competitiveness and innovation in urban and rural regions throughout the United States and its territories. By working in conjunction with its research partners, EDA will help States, local governments, and community-based organizations to achieve their highest economic potential.

DATES: Applications (on Form ED–900A, Application for Investment Assistance) for funding under this notice must be received by the EDA representative listed below under **ADDRESSES** no later than August 1, 2006 at 5 p.m. EDT. Applications received after 5 p.m. EDT on August 1, 2006 will not be considered for funding. By September 1, 2006, EDA expects to notify the applicants selected for investment assistance. The selected applicants should expect to receive funding for their projects within thirty (30) days of EDA's notification of selection.

ADDRESSES: Applications submitted pursuant to this notice may be:

1. E-mailed to William P. Kittredge at *wkittredge@eda.doc.gov*; or

2. Hand-delivered to William P. Kittredge, Senior Program Analyst, Economic Development Administration, Room 7009, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; or

3. Mailed to William P. Kittredge, Senior Program Analyst, Economic Development Administration, Room 7009, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicants are encouraged to submit applications by e-mail. Applicants are advised that, due to mail security measures, EDA's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery. EDA will not accept applications submitted by facsimile.

FOR FURTHER INFORMATION: For additional information, please contact William P. Kittredge at (202) 482–5442 or via e-mail at the address listed above.

SUPPLEMENTARY INFORMATION: *Electronic Access:* The FFO announcement for this competitive solicitation is available at *http://www.grants.gov* and at EDA's Internet Web site at *http://www.eda.gov.* Paper copies of the Form ED–900A, "Application for Investment Assistance" (OMB Control No. 0610–0094), and additional information on EDA and its NTA Program may be obtained from EDA's Internet Web site at *http://www.eda.gov.*

Funding Availability: Funds appropriated under the Science, State, Justice, Commerce and Related Agencies Appropriations Act, 2006 (Pub. L. 109–108, 119 Stat. 2290 (2005)) (2006 Appropriations Act) are available for making awards under the NTA Program authorized by section 207 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3147), as amended (PWEDA), and 13 CFR part 306, subpart A. Approximately $700,000 is available, and shall remain available until expended, for funding awards pursuant to this request for applications. EDA anticipates publishing additional FFO announcements under the NTA Program later during this fiscal year.

Statutory Authority: The authority for the NTA Program is PWEDA. On August 11, 2005, EDA published an interim final rule (70 FR 47002) to reflect the amendments made to EDA's authorizing statute by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108–373, 118 Stat. 1756 (2004)). The interim final rule became effective on October 1, 2005. EDA's public comment period for the interim final rule ran from August 11, 2005 through November 14, 2005. On December 15, 2005, EDA published a

second interim final rule (70 FR 74193) to change provisions of the August 11, 2005 interim final rule consistent with the direction provided in the Conference Report (H.R. Conf. Rep. No. 109–272) accompanying the 2006 Appropriations Act. You may access the currently effective regulations and PWEDA on EDA's Internet Web site at *http://www.eda.gov.*

Catalog of Federal Domestic Assistance (CFDA) Number: 11.303, Economic Development—Technical Assistance.

Eligibility Requirement: Pursuant to PWEDA, eligible applicants for and eligible recipients of EDA investment assistance include a District Organization; an Indian Tribe or a consortium of Indian Tribes; a State; a city or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; an institution of higher education or a consortium of institutions of higher education; a public or private non-profit organization or association; a private individual; or a for-profit organization. *See* section 3 of PWEDA (42 U.S.C. 3122) and 13 CFR 300.3.

Cost Sharing Requirement: Generally, the amount of the EDA grant may not exceed fifty (50) percent of the total cost of the project. Projects may receive an additional amount that shall not exceed thirty (30) percent, based on the relative needs of the region in which the project will be located, as determined by EDA. *See* section 204(a) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(1). The Assistant Secretary of Commerce for Economic Development (Assistant Secretary) has the discretion to establish a maximum EDA investment rate of up to one hundred (100) percent where the project (i) merits and is not otherwise feasible without an increase to the EDA investment rate; or (ii) will be of no or only incidental benefit to the recipient. *See* section 204(c)(3) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(4).

While cash contributions are preferred, in-kind contributions, consisting of assumptions of debt or contributions of space, equipment, and services, may provide the non-federal share of the total project cost. *See* section 204(b) of PWEDA (42 U.S.C. 3144). EDA will fairly evaluate all in-kind contributions, which must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements. Funds from other Federal financial assistance awards are considered matching share funds only if authorized by statute that allows such use, which may be determined by EDA's reasonable interpretation of the statute. *See* 13 CFR 300.3. The applicant must show that the matching share is committed to the project, available as needed and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 CFR 301.5.

Intergovernmental Review: Applications under the NTA Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Evaluation and Selection Procedures: To apply for an award under this request for applications, an eligible applicant must submit a completed application (Form ED–900A, Application for Investment Assistance) to EDA during the specified timeframe specified in the **DATES** section of this notice. Applications received after 5 p.m. EDT on August 1, 2006 will not be considered for funding. By September 1, 2006, EDA expects to notify the applicants selected for investment assistance. Unsuccessful applicants will be notified by postal mail that their applications were not recommended for funding. Applications that do not meet all items required or that exceed the page limitations set forth in this competitive solicitation will be considered non-responsive and will not be considered by the review panel. Applications that meet all the requirements will be evaluated by a review panel comprised of at least three (3) EDA staff members, all of whom will be full-time Federal employees.

Evaluation Criteria: The review panel will evaluate the applications and rate and rank them using the following criteria of approximate equal weight:

1. Conformance with EDA's statutory and regulatory requirements, including the extent to which the proposed project satisfies the award requirements set out below and as provided in 13 CFR 306.2:

a. Strengthens the capacity of local, State or national organizations and institutions to undertake and promote effective economic development programs targeted to regions of distress;

b. Benefits distressed regions; and

c. Demonstrates innovative approaches to stimulate economic development in distressed regions;

2. The degree to which an EDA investment will have strong organizational leadership, relevant project management experience and a significant commitment of human resources talent to ensure the project's successful execution (*see* 13 CFR 301.8(b));

3. The ability of the applicant to implement the proposed project successfully (*see* 13 CFR 301.8);

4. The feasibility of the budget presented; and

5. The cost to the Federal Government.

Selection Factors: EDA expects to fund the highest ranking applications submitted under this competitive solicitation. The Assistant Secretary is the Selecting Official and will normally follow the recommendation of the review panel. However, the Assistant Secretary may not make any selection, or he may select an application out of rank order for the following reasons: (1) A determination that the application better meets the overall objectives of sections 2 and 207 of PWEDA (42 U.S.C. 3121 and 3147); (2) the applicant's performance under previous awards; or (3) the availability of funding.

The 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, published in the **Federal Register** on December 30, 2004 (69 FR 78389), are applicable to this competitive solicitation. This notice may be accessed by entering the **Federal Register** volume and page number provided in the previous sentence at the following Internet Web site: *http://gpoaccess.gov/fr/retrieve.html.*

Paperwork Reduction Act

This request for applications contains a collection of information subject to the requirements of the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) has approved the use of the Application for Investment Assistance (Form ED–900A) under control number 0610–0094. The Form ED–900A also incorporates Forms SF–424 (Application for Financial Assistance), SF–424A (Budget—Non-Construction Programs) and SF–424B (Assurances—Non-Construction Programs). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless the collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866, "Regulatory Planning and Review."

Executive Order 13132

It has been determined that this notice does not contain "policies that have Federalism implications," as that phrase is defined in Executive Order 13132, "Federalism."

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning 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 has not been prepared.

Dated: June 13, 2006.

Benjamin Erulkar,

Deputy Assistant Secretary of Commerce for Economic Development and Chief Operating Officer.

[FR Doc. E6–9519 Filed 6–15–06; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–331–802

Notice of Preliminary Results of New Shipper Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from Ecuador

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

SUMMARY: In response to a request by Studmark S.A. (Studmark), the Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on certain frozen warmwater shrimp from Ecuador for the period of review (POR) August 4, 2004, through July 31, 2005. We preliminarily determine that, during the POR, Studmark sold the subject merchandise at less than normal value. Interested parties are invited to comment on these preliminary results. If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: June 16, 2006.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 2005, we received a request from Studmark S.A. to initiate a new shipper review of Studmark's sales of certain frozen warmwater shrimp from Ecuador. On October 3, 2005, the Department published the notice of initiation of this new shipper antidumping duty review covering the period August 4, 2004, through July 31, 2005. *See Notice of Initiation of New Shipper Antidumping Duty Review: Certain Frozen Warmwater Shrimp from Ecuador*, 70 FR 57562 (October 3, 2005).

We issued a questionnaire to Studmark in October 2005 and received responses in October and November 2005. We issued supplemental questionnaires in December 2005 and January 2006, and received responses to those questionnaires in the same months. In addition, we issued questionnaires to the importer of record, Colorful Butterfly Imports, LLC (Colorful Butterfly), and to Global Shrimp Imports LLC (Global Shrimp), Studmark's U.S. customer, in December 2005 and January 2006, respectively. These companies provided responses in January 2006.

From February 14 through 16, 2006, we conducted a verification of Studmark's questionnaire responses, which included a visit to Oceanpro, S.A., an unaffiliated producer/exporter of subject merchandise that processed and packed Studmark's subject merchandise sales to the United States and the home market under a tolling agreement.

On April 3, 2006, the Department published an extension of the time period for issuing the preliminary results of this review by an additional 120 days, or until July 26, 2006, in accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(2). *See Notice of Extension of Time Limit for the Preliminary Results of New Shipper Review: Certain Frozen Warmwater Shrimp from Ecuador*, 71 FR 16556 (April 3, 2006).

On April 21, 2006, we issued an additional supplemental questionnaire to Studmark, and received Studmark's response, dated May 1, 2006, on May 2, 2006.

Scope of Order

The scope of this order includes certain warmwater shrimp and prawns, whether frozen, wild–caught (ocean harvested) or farm–raised (produced by aquaculture), head–on or head–off, shell–on or peeled, tail–on or tail–off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild–caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: 1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell–on or peeled (HTS subheading 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp–based product: 1) That is produced from fresh (or thawed–from-frozen) and peeled

[1] "Tails" in this context means the tail fan, which includes the telson and the uropods.

shrimp; 2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non–shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. Battered shrimp is a shrimp–based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par–fried.

The products covered by this order are currently classified under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verification of the sales information provided by Studmark. We used standard verification procedures, including examination of relevant sales and financial records. Our verification results are detailed in the verification report placed in the case file in the Central Records Unit (CRU) in room B–099 of the main Department building. *See* March 8, 2006, Memorandum to the File entitled "Verification of the Sales Response of Studmark, S.A. in the Antidumping New Shipper Review of Certain Frozen Warmwater Shrimp from Ecuador" (*Verification Report*).

Product Comparisons

To determine whether Studmark made sales of frozen warmwater shrimp to the United States at less than normal value, we compared the export price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice. As discussed further below, because we determine that a "particular market situation" exists with respect to the Ecuadorian market for frozen warmwater shrimp, we were unable to base NV on Studmark's sales to the home market. Instead, we have compared the EP sale to constructed value (CV).

Export Price

For the price to the United States, we used EP in accordance with section 772(a) of the Act. We calculated EP because Studmark's U.S. sale of subject merchandise was made directly to the first unaffiliated purchaser in the United States prior to importation. We based EP on the packed free–on-board (FOB) prices to the first unaffiliated customer in, or for exportation to, the United States. In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including foreign inland freight, foreign inland insurance, and foreign brokerage and handling.

Studmark reported in its November 9, 2005, Section B and C questionnaire response (QRBC) that it made its U.S. sale on an FOB Ecuador–port basis, but that the foreign inland freight expense was included in the ocean freight expense paid by the U.S. importer. However, at verification, Studmark was unable to support this claim that the importer paid for foreign inland freight. *See Verification Report* at page 15. As the foreign inland freight expense information provided by Studmark could not be verified, in accordance with section 776(a)(2)(D) of the Act, we are applying the facts otherwise available (FA) for this expense. That is, as Studmark could not support its contention that it did not pay for foreign inland freight, as FA for the preliminary results, we are deducting foreign inland freight expenses in our calculation of EP. The only freight expense information on the record of this review is the freight expense Studmark incurred to transport unprocessed shrimp from its supplying farms to the processing plant. *See* QRBC at page 93. As FA, we have derived a per–unit foreign inland freight expense by dividing this farm–to-plant freight expense by the quantity of the U.S. sale.

Studmark reported at page 61 of the QRBC that there is no inland insurance expense to cover merchandise transport from the plant to the port. However, at verification, our review of Studmark's transport insurance policy, found at Exhibit 13 of the *Verification Report*, indicates that the policy covers transport of shrimp from the farm to the processing plant, and from the processing plant to the port. Therefore, to properly account for the inland insurance expense in our EP calculation, we calculated a per–unit amount for the plant–to-port portion of the insurance expense based on half of the reported cost of the insurance premium as FA, in accordance with section 776(a)(1) of the Act.

As discussed at pages 15 and 16 of the *Verification Report*, Studmark incurred foreign brokerage and handling expenses, but reported them as part of its difference–in-merchandise (DIFMER) calculation. We have reclassified this expense as a movement expense and recalculated it, as described at page 16 of the *Verification Report*.

Normal Value

A. Selection of Basis for Normal Value

Section 773(a)(1) of the Act directs the Department to calculate NV based on the price at which the foreign like product is first sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), and that there is no particular market situation that prevents a proper comparison with the EP. Under the statute, the Department will normally consider quantity (or value) insufficient if it is less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. See Section 773(a)(1)(C) of the Act.

In the less–than-fair–value (LTFV) investigation segment of this proceeding, the Department determined that a particular market situation existed which rendered the Ecuadorian market inappropriate for purposes of determining NV for the three respondents in the LTFV investigation. *See* Memorandum dated June 7, 2004, entitled "Home Market as Appropriate Comparison Market" (*Market Memo*), as included at Attachment II to the Department's December 8, 2005, supplemental questionnaire. Specifically, we noted that:

- The Ecuadorian shrimp industry, as a whole, is export oriented;
- The shrimp sold by the LTFV respondents in the home market was of inferior quality and not suitable for export, and none of these respondents had sufficient home market sales of export–quality merchandise to constitute a viable comparison market;
- The LTFV respondents' marketing and distribution of domestically sold non–export-quality shrimp were perfunctory, with home market sales made on an "as is," "as available" and "ex–plant" basis;
- The non–export quality shrimp was sold at significantly reduced prices to home market customers in order to offset losses. If the non–export-quality shrimp had not been sold in the home market, it would have been disposed of as waste, and the respondents would have had to take a complete loss on the product;
- The LTFV respondents did not negotiate over price prior to the

transaction in the home market, but rather sold the shrimp on sight at the plant with transport being the responsibility of the purchaser; and
• The majority of the LTFV respondents' sales was to export markets; home market sales were incidental to the respondents' overall business operations.

We concluded that:

> Given the evidence on the record regarding the nature of the Ecuadorian market, the marketing and selling practices of the respondents, and the quality distinctions between the overwhelming majority of the frozen shrimp sold in the home market and the shrimp sold for export, we recommend finding that a particular market situation exists which renders the Ecuadorian market inappropriate for purposes of determining normal value in this investigation. As a result, we recommend for purposes of this investigation to determine normal value based on the respondents' sales to third country markets.

See Market Memo at page 6. Accordingly, we based NV in the LTFV investigation on the respondents' sales to third–country markets.

In the December 8, 2005, supplemental questionnaire, we requested that Studmark address how its sales to the home market compare to the sales described in the memorandum, and to explain why its sales to the home market are appropriate for comparison to U.S. sales. Studmark explained at page 8 of its December 21, 2005, supplemental questionnaire response (SQR) that it produced and sold only export–quality shrimp to both the home market and the U.S. market. While in the LTFV investigation, none of the three respondents had sufficient home market sales of export–quality merchandise to constitute a viable comparison market, almost all of Studmark's sales are of export–quality merchandise and the sales quantity is well above five percent of Studmark's U.S. sales quantity. Studmark stated that its home market sales of export–quality shrimp are neither perfunctory nor incidental to its export business.

Our analysis of Studmark's sales data confirms that, unlike the LTFV respondents' home market sales, nearly all of Studmark's home market sales were of export–quality shrimp comparable to the merchandise sold to the United States and, as noted above, the quantity of these sales was well above five percent of the quantity of the U.S. sale. However, Studmark reported that its home market sales process differed from its U.S sales process in that the home market sales prices were negotiated after production, while U.S. sales prices were negotiated prior to production, with prices confirmed through a *pro forma* invoice. Studmark sold its home market sales on an ex–plant basis, while U.S. sales were sold FOB port. *See* SQR at page 5.

At verification, we found that the home market sales were made on a more perfunctory and incidental basis than Studmark had represented in its questionnaire responses. Studmark explained that it had to buy the entire pond harvests from the shrimp farmers in order to obtain sufficient processed shrimp to complete its U.S. sales order. After arranging for the farm purchases, Studmark determined that it would have a surplus amount of shrimp from the shrimp harvest which would be too small for a container–size sale typical for export orders. Accordingly, Studmark contacted local buyers to purchase the remaining shrimp. *See Verification Report* at pages 7–8. The export–quality shrimp was sold to a home market customer more than two weeks after the U.S. sale was shipped. *See, e.g.*, home market sales documents included in Exhibit 10 of the *Verification Report*.

Documentation regarding the shrimp Studmark sold to the U.S., which was processed according to a tolling agreement with Oceanpro, S.A., was first submitted for the record on October 6, 2005. In the agreement, Studmark is consistently referred to as "THE EXPORTER," and described as "a company whose main activity is the export of seafood, in its different presentations, to markets in USA and Europe." *See* page 1 of the English translation of the tolling agreement, included as an unnumbered exhibit to the SQR. The tolling agreement describes all the arrangements between the parties on the assumption that all processing performed is for shrimp to be exported. For example, at page 3 of the English translation, the agreement reads "THE EXPORTER shall make, by its account and previous to each export, the analysis that determine the INP and/or the client abroad...." Studmark did not maintain a separate tolling agreement for home market sales. In its February 2, 2006, letter, Studmark stated that "{t}he tolling agreement previously submitted governed domestic sales as well as export sales."

While we note that Studmark's sales to the home market differ from the LTFV respondents in that the vast majority of its home market sales were of export–quality shrimp, rather than substandard quality shrimp, its home market sales situation is similar to that described in the *Market Memo*. Studmark's sales to home market customers are incidental to its principal business of selling to export markets. The home market sales were of products left over from the U.S. sale transaction, and sold on sight at the plant. In general, Studmark's home market does not differ markedly from the LTFV respondents' home market where we found a particular market situation under section 773(a)(1)(B)(ii) of the Act. Accordingly, we preliminarily determine that a particular market situation exists for Studmark's home market during the POR. As a result, we cannot rely on Studmark's home market sales to calculate NV.

Studmark's only export sale during the POR was to the United States. That is, Studmark had no third–country sales during the POR. The only other basis for calculating NV is CV, based on the data Studmark submitted for DIFMER adjustments, and on data collected at verification. Accordingly, we have calculated NV based on CV, as discussed below.

B. Level of Trade Analysis

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as U.S. sales. *See* 19 CFR 351.412. The NV LOT is the level of the starting–price sale in the home market. For EP, the U.S. LOT is based on the starting price, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the home market. If the comparison–market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In the United States, Studmark made EP sales to wholesalers/distributors through the same channel of distribution, performing the identical selling functions. Therefore, we determine that there is only one LOT for EP sales.

When NV is based on CV, as in this case, the NV LOT is that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. (*See Notice of Preliminary*

Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile, 63 FR 2664 (January 16, 1998)). As discussed below, we based the CV selling expenses on Studmark's home market sales as FA, and based CV profit on the weighted–average profits earned by the respondents in the LTFV investigation. We are unable to determine that the LOT of the sales from which we derived selling expenses and profit for CV is different from the EP LOT. Further, there is only one NV LOT, and there is insufficient information on the record that would enable us to determine that an LOT adjustment is warranted. Therefore, we have no basis upon which to make an LOT adjustment to NV.

C. Calculation of Normal Value Based on Constructed Value

We calculated CV in accordance with section 773(e) of the Act, which indicates that CV shall be based on the sum of a respondent's cost of materials and fabrication for the subject merchandise, plus amounts for SG&A expenses, profit and U.S. packing costs. We relied on the information submitted by Studmark to calculate CV as follows:

To calculate the cost of materials and fabrication, we used the cost of manufacture data Studmark reported in its questionnaire responses for calculating DIFMER adjustments. Based on verification findings, we found that the calculations of the variable costs of manufacture for the DIFMER adjustment included misclassified expenses. Accordingly, we recalculated the variable costs of manufacture and some expenses were reclassified as movement expenses or direct selling expenses. *See* alternative calculation worksheets in Appendix IV of the *Verification Report*.

To calculate selling expenses, as FA, we used the information Studmark reported for expenses on home market sales. We calculated the general and administrative expense ratio based on the fiscal year 2005 trial balance information, as detailed in the Memorandum to the File entitled *Studmark Preliminary Results Notes and Margin Calculation*, dated the same as this notice (*Preliminary Results Calculation Memo*).

To calculate profit, for purposes of the preliminary results, we used the weighted–average profit rate derived from LTFV comparision market data from the LTFV respondents, Exportadora de Alimentos S.A. (Expalsa), Exporklore, S.A. and Promarisco, S.A., in accordance with section 773(e)(2)(B)(iii) of the Act. Because Studmark does not have a viable comparison market, we could not determine CV profit under section 773(e)(2)(A) of the Act. The statute does not establish a hierarchy for selecting among the alternative profit methodologies. *See* Statement of Administrative Action Accompanying the URAA, H.R. Rep. No. 103–316, vol. 1, at 840 (1994). Nonetheless, we examined each alternative in searching for an appropriate method. Because Studmark did not have sales of any product in the same general category of products as the subject merchandise, we were unable to apply alternative (i) of section 773(e)(2)(B) of the Act. Further, we cannot calculate profit based on alternative (ii) of this section because there are no other respondents in this review, and 19 CFR 351.405(b) requires that a profit ratio under this alternative be based on home market sales, which we have determined cannot be used.

Therefore, we calculated Studmark's CV profit based on alternative (iii) of section 773(e)(2)(B) of the Act, which is any other reasonable method. As a result, we calculated Studmark's CV profit ratio as a weighted–average of the profit ratios calculated for the respondents in the LTFV investigation on their sales to their third–country comparison markets. We applied this ratio to the sum of the cost of materials and fabrication, plus the amounts for general and administrative expenses, to calculate an amount for profit.

Pursuant to alternative (iii), the Department has the option of using any other reasonable method, as long as the result is not greater than the amount realized by exporters or producers "in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise" (*i.e.*, the "profit cap"). The Department attempted to identify appropriate profit cap data for sales in Ecuador of merchandise "in the same general category of products" as frozen shrimp through a broad–based internet search. We applied various search terms in English and Spanish and reviewed various business directory Web sites, including Goliath, Thomson Gale's online–business content service, "PaginaAmarillas.com" (Yellow Pages), and Ecuadorian government sites. *See Preliminary Results Calculation Memo* for a discussion of the Department's search attempt. Although we were able to obtain profit ratios for companies listed as the "1,000 Most Important Companies in 2004" from the Ecuadorian Superintendency of Companies, the sector of business that includes the subject merchandise, the agricultural sector, is overly broad because it includes tobacco, meat, and baking companies as well as seafood processors. Moreover, we are unable to ascertain whether the companies sell their merchandise in Ecuador. Among these companies are several shrimp exporters, such as Expalsa, one of the LTFV respondents, and other seafood processing companies, which, based on the limited information observed on internet Web sites, appear to be export–oriented companies.

In addition to our own research, we provided Studmark with the opportunity to submit information relevant to the amount of profit to be applied in the CV calculation under section 773(e)(2)(B) of the Act, including the amount of profit normally realized by Ecuadorian exporters or producers in connection with the sale, for consumption of the merchandise that is in the same general category of products as the subject merchandise. *See* April 21, 2006, supplemental questionnaire (as corrected per a Memorandum to the File dated April 25, 2006). Studmark did not provide any such information in its May 1, 2006, response. Accordingly, as FA, we applied option (iii) without quantifying a profit cap.

To determine the most appropriate profit rate under alternative (iii), we weighed several factors. Among them are: (1) The similarity of the potential surrogate companies' business operations and products to those of respondent; (2) the extent to which the financial data of the surrogate companies reflect sales in the United States as well as the home market; (3) the contemporaneity of the surrogate data with the POR; and (4) the similarity of the customer base. The greater the similarity in business operations, products, and customer base, the more likely that there is a greater correlation between the profit experience of the companies in question. Because the Department typically compares U.S. sales to a NV based on sales in the home market or third country, the Department does not normally construct a NV based on financial data that contains exclusively or predominantly U.S. sales. Finally, contemporaneity is a concern because markets change over time and the more current the data, the more reflective it will be of the market in which the respondent is operating (*see Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 8, and *Notice of Final Determination of Sales at Not Less Than Fair Value: Certain*

Color Television Receivers from Malaysia, 69 FR 20592 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 26).

Based on the record of this review to date, we determine that the use of the weighted–average profit rate of the LTFV respondents is a reasonable method for the following reasons. First, the products sold by the other respondents in their respective third–country markets are substantially similar to those sold by Studmark (*i.e.*, sales of frozen, head–off, uncooked shrimp). Second, the CV profit rate for the LTFV respondents excludes sales to the United States. Third, the LTFV respondents sold to distributor/wholesalers similar to Studmark's U.S. customer (*i.e.*, they had the same type of customer base). We note that the weighted–average CV profit rate calculated for the LTFV respondents covers a time frame that is not contemporaneous with the POR. The LTFV investigation period was from October 1, 2002, through September 30, 2003, while the instant POR is August 4, 2004, through July 31, 2005. However, there is no other CV profit data available that meets the other criteria and is contemporaneous with the POR, and there is no information currently on the record to indicate that the difference in the time periods is distortive. In addition, the Department verified the LTFV respondents' third–country market information and ascertained the reliability of the data.

Currency Conversion

As Studmark reported its prices, expenses, and costs in U.S. dollars, no currency conversions were required in our margin calculations.

Preliminary Results of New Shipper Review

As a result of our review, we preliminarily determine that the following percentage margin exists for Studmark for the period August 4, 2004, through July 31, 2005:

Manufacturer/Exporter	Margin (percent)
Studmark, S.A.	12.53

The Department will disclose the calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held 44 days after the date of publication of these preliminary results, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs limited to issues raised in such briefs may be filed no later than 35 days after the date of publication of the preliminary results. *See* 19 CFR 351.309(d).

Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Further, parties submitting briefs are requested to provide the Department with an additional copy of the public version of any such briefs on diskette. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 90 days of publication of these preliminary results.

Assessment Rate

If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this administrative review. Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for the importer of subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sale, to the total entered value of the examined sale. Where the assessment rate is above *de minimis*, the importer–specific rate will be assessed uniformly on all entries made during the POR.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Studmark of certain frozen warmwater shrimp from Ecuador entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review. The following cash–deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of the subject merchandise from Studmark, entered or withdrawn from warehouse, for consumption on or after the publication date as provided for by section 751 (a)(2)(C) of the Act:

- for shipments of subject merchandise manufactured and exported by Studmark, the cash deposit rate shall be the rate determined in the final results of the review;
- for shipments of subject merchandise from Studmark but not produced by Studmark, the cash–deposit rate will be the "All Others" rate, 3.58 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

This new shipper review is issued and published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: June 9, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–9475 Filed 6–15–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–815)

Gray Portland Cement and Cement Clinker from Japan: Continuation of Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the Department of Commerce and the International Trade Commission that revocation of the antidumping duty order on gray portland cement and cement clinker from Japan would be likely to lead to continuation or recurrence of dumping and of material injury to an industry in the United States within a reasonably foreseeable time, the Department is publishing notice of the continuation of this antidumping duty order.

EFFECTIVE DATE: June 16, 2006.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Minoo Hatten, Office 5, AD/CVD Operations, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3931 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2005, the Department of Commerce (the Department) initiated and the International Trade Commission (ITC) instituted the second sunset review of the antidumping duty order on gray portland cement and cement clinker from Japan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-year ("Sunset") Reviews, 70 FR 57560 (October 3, 2005); Institution of Five-year Reviews concerning the Antidumping Duty Orders on Gray Portland Cement and Cement Clinker from Japan and Mexico*, 70 FR 57617 (October 3, 2005). As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked. *See Gray Portland Cement and Clinker from Japan; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 71 FR 6268 (February 7, 2006). On May 26, 2006, the ITC determined pursuant to section 751(c) of the Act that revocation of the antidumping duty orders on gray portland cement and cement clinker from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Gray Portland Cement and Cement Clinker from Japan*, 71 FR 32127 (June 2, 2006), and ITC Publication 3856 (May 2006), entitled *Gray Portland Cement and Cement Clinker from Japan: Investigation No. 731–TA–461 (Second Review)*.

Scope of the Order

The products covered by this order are cement and cement clinker from Japan. Cement is a hydraulic cement and the primary component of concrete. Cement clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Microfine cement was specifically excluded from the antidumping duty order. Cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29, and cement clinker is currently classifiable under HTS item number 2523.10. Cement has also been entered under HTS item number 2523.90 as "other hydraulic cements." The Department made two scope rulings regarding subject merchandise. *See Scope Rulings*, 57 FR 19602 (May 7, 1992), classes G and H of oil well cement are within the scope of the order, and *Scope Rulings*, 58 FR 27542 (May 10, 1993), "Nittetsu Super Fine" cement is not within the scope of the order. The order remains in effect for all manufacturers, producers, and exporters of cement from Japan.

The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive as to the scope of the product coverage.

Determination

As a result of the determinations by the Department and ITC that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on gray portland cement and cement clinker from Japan.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than May 2011.

These five-year (sunset) reviews and this notice are in accordance with section 751(c) of the Act.

Dated: June 9, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–9476 Filed 6–15–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–863

Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review

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

SUMMARY: On December 16, 2005, the Department published the *Preliminary Results* of the third administrative review of the antidumping duty order on honey from the People's Republic of China (PRC). *Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 74764 (December 16, 2005) (*Preliminary Results*). This review covers eight exporters or producer/exporters: (1) Anhui Honghui Honghui Foodstuff (Group) Co., Ltd. (Anhui Honghui); (2) Jiangsu Kanghong Natural Healthfoods Co., Ltd. (Jiangsu Kanghong); (3) Jinfu Trading Co., Ltd. (Jinfu); (4) Shanghai Eswell Enterprise Co., Ltd. (Eswell); (5) Zhejiang Native Produce and Animal By–Products Import & Export Group Corp. (Zhejiang); (6) Chengdu Waiyuan Bee Products Co., Ltd. (Chengdu Waiyuan); (7) Eurasia Bee's Products Co., Ltd. (Eurasia); and (8) Sichuan–Dujiangyan Dubao Bee Industrial Co., Ltd. (Dubao). The period of review (POR) is December 1, 2003, through November 30, 2004. We have made changes to certain surrogate values based on our analysis of the record, including factual information obtained since the *Preliminary Results*. Therefore, the final results differ from the *Preliminary Results*. See "Final Results of Review" section below.

EFFECTIVE DATE: June 16, 2006.

FOR FURTHER INFORMATION CONTACT: Kristina Boughton or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8173 or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

We published in the **Federal Register** the *Preliminary Results* of the third administrative review on December 16, 2005. *Preliminary Results*. The POR is December 1, 2003, through November 30, 2004.

Since the *Preliminary Results* the following events have occurred:

On January 3, 2006, we extended the time limit for submitting further information to value the factors of production until February 2, 2006. On February 2, 2006, we received surrogate value submissions from Anhui Honghui, Jiangsu Kanghong, and Zhejiang (collectively, GDLSK respondents), from Eswell, and from the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners). On February 13, 2006, we received a rebuttal surrogate value submission from the GDLSK

respondents. On February 7, 2006, we invited parties to comment in their briefs on reclassifying employee benefits (i.e., pension and social security expenses) from direct labor to manufacturing overhead in the calculation of financial ratios.

We invited parties to comment on our *Preliminary Results*. We received case briefs from the GDLSK respondents and Eswell on February 21, 2006. We received a rebuttal brief from the petitioners on February 28, 2006.

Scope of the Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Partial Rescission of Administrative Review

In the *Preliminary Results*, the Department issued a notice of intent to rescind this administrative review with respect to Chengdu Waiyuan, as we found that there were no entries of subject merchandise during the POR. *Preliminary Results*, 70 FR at 74765. The Department received no comments on this issue and has no evidence to challenge this finding. Therefore, the Department is rescinding this administrative review with respect to Chengdu Waiyuan.

Separate Rates

Anhui Honghui, Jiangsu Kanghong, Jinfu, Eswell, Zhejiang, and Eurasia requested separate, company–specific antidumping duty rates. In the *Preliminary Results*, we found that Anhui Honghui, Jiangsu Kanghong, Jinfu, Eswell, and Zhejiang had met the criteria for the application of a separate antidumping duty rate. *Preliminary Results*, 70 FR at 74768. Also in the *Preliminary Results*, we found that Eurasia and Dubao did not respond in a complete and timely manner to the Department's requests for information, and hence do not qualify for separate rates, but rather are appropriately considered to be part of the PRC–wide entity. *Id.* The Department did not receive comments on this issue prior to these final results. *See also* "The PRC–Wide Rate and Application of Facts Otherwise Available" section below.

We have not received any information since the *Preliminary Results* with respect to Anhui Honghui, Jiangsu Kanghong, Jinfu, Eswell, and Zhejiang that would warrant reconsideration of our separate–rates determination with respect to these companies. Therefore, we have assigned individual dumping margins to Anhui Honghui, Jiangsu Kanghong, Jinfu, Eswell, and Zhejiang for this review period.

Analysis of Comments Received

All issues raised in the briefs are addressed in the Issues and Decision Memorandum for the Final Results in the 2003–2004 Administrative Review of Honey from the People's Republic of China from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary, dated June 9, 2006 (Issues and Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), room B–099 of the Department of Commerce. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at http://trade.gov/ia. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes since the Preliminary Results

Based on the comments received from the interested parties, we have made company–specific changes to certain surrogate value calculations that affect the margin calculations for Eswell. For a discussion of these changes, *see* the Issues and Decision Memorandum, at Comment 8.

For the final results, we revised our calculation of surrogate financial ratios for factory overhead, selling, general and administrative expenses, and profit, to use the more contemporaneous 2004/2005 annual report from the Mahabaleshwar Honey Producers Cooperative, and applied these new ratios in our margin calculations. We also revised our calculation of the financial ratios by reclassifying employee benefits into overhead, consistent with recent Department determinations. *See, e.g., Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006), and accompanying Issues and Decision Memorandum, at Comment 1B *See also* Issues and Decision Memorandum, at Comments 2, 3, and 6.

The PRC–wide rate has also changed for the final results, from 183.80 percent to 212.39 percent, which represents the calculated rate for Anhui Honghui in these final results and is the highest rate determined in the instant or any previous segment of this proceeding. We will apply the new PRC–wide rate of 212.39 percent to the PRC–wide entity (including Eurasia and Dubao) for the final results. *See* "The PRC–Wide Rate and Application of Facts Otherwise Available" section below. Corroboration of the new PRC–wide rate is not required because this rate is based on, and calculated from, information obtained in the course of this administrative review, *i.e.*, it is not secondary information. *See* 19 CFR 351.308(c) and (d) and section 776(c) of the Tariff Act of 1930, as amended (the Act).

The PRC–Wide Rate and Application of Facts Otherwise Available

As explained above, Anhui Honghui, Jiangsu Kanghong, Jinfu, Eswell, and Zhejiang (collectively, separate rate companies) each have obtained a separate rate. The PRC–wide rate applies to all entries of subject merchandise except for entries from PRC producers/exporters that have their own calculated rate. *See* "Separate Rates" section above.

PRC–wide Entity (including Eurasia and Dubao):

The Department did not receive comments on its preliminary determination to apply adverse facts available (AFA) to the PRC–wide entity (including Eurasia and Dubao) and has no evidence to challenge this finding. Therefore, we have not altered our decision to apply total AFA to the PRC–wide entity (including Eurasia and Dubao) for these final results, in accordance with sections 776(a)(2)(A) and (B) and section 776(b) of the Act. For a complete discussion of the Department's decision to apply total AFA to the PRC–wide entity (including Eurasia and Dubao), *see Preliminary Results*, 70 FR at 74768–74769.

Final Results of Review

We determine that the following antidumping duty margins exist:

Exporter	Margin (percent)
Anhui Honghui Foodstuffs (Group) Co., Ltd.	212.39%
Jiangsu Kanghong Natural Healthfoods Co., Ltd.	210.53%
Jinfu Trading Co., Ltd.	168.88%
Shanghai Eswell Enterprise Co., Ltd.	168.30%
Zhejiang Native Produce and Animal By–Products Import & Export Group Corp.	169.11%
PRC–Wide Rate (including Sichuan–Dujiangyan Dubao Bee Industrial Co., Ltd. and Eurasia's Bee Products Co., Ltd.)	212.39%

For details on the calculation of the antidumping duty weighted–average margin for each company, see the respective company's analysis memorandum for the final results of the third administrative review of the antidumping duty order on honey from the PRC, dated June 9, 2006. Public versions of these memoranda are on file in the CRU.

Assessment of Antidumping Duties

Pursuant to 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. For assessment purposes, where possible, we calculated importer–specific assessment rates for honey from the PRC on a per–unit basis. Specifically, we divided the total dumping margins (calculated as the difference between normal value and export price or constructed export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per–unit assessment amount. We will direct CBP to levy importer–specific assessment rates based on the resulting per–unit (*i.e.*, per–kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

Cash Deposits

The following cash–deposit requirements will be effective upon publication of these final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Anhui Honghui, Jiangsu Kanghong, Jinfu, Eswell, and Zhejiang, we will establish a per–kilogram cash deposit rate which will be equivalent to the company–specific cash deposit established in this review; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding (except for Eurasia, whose cash–deposit rate has changed in this review to the PRC–wide entity rate, as noted below); (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate (including Dubao and Eurasia), the cash–deposit rate will be the PRC–wide rate of 183.80 percent; and (4) for all non–PRC exporters of subject merchandise, the cash–deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as the 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 review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with

19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 9, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

List of Issues

General Issues

Comment 1: Appropriate Surrogate Value for Honey

Comment 2: Appropriate Surrogate Value for Financial Ratios

Comment 3: Calculation of the MHPC Financial Ratios

Comment 4: Brokerage and Handling Expenses

Comment 5: Calculation of the Surrogate Wage Rate

Comment 6: Calculation of Employee Benefits in Financial Ratios

Company–Specific Issues

Shanghai Eswell–Related Issues

Comment 7: Valuation of By–Product for Shanghai Eswell

Comment 8: Calculation of Indirect Selling Expenses for Shanghai Eswell

Jiangsu Kanghong–Related Issues

Comment 9: Appropriate Factors of Production to Value for Jiangsu Kanghong

[FR Doc. E6–9477 Filed 6–15–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–822]

Stainless Steel Bar from the United Kingdom: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: June 16, 2006.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2006, the Department published in the **Federal Register** (71 FR 10642) a notice of "Opportunity To Request Administrative Review" of the antidumping duty order on stainless steel bar from the United Kingdom for the period March 1, 2005, through February 28, 2006. On March 30 and 31, 2006, Firth Rixson Limited (Firth Rixson) and Corus Engineering Steels (CES), respectively, requested an administrative review of their sales for the above–mentioned period. On April 28, 2006, the Department published a notice of initiation of an administrative review of the antidumping duty order on stainless steel bar from the United Kingdom with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 25145.

Partial Rescission of Review

On June 1, 2006, CES timely withdrew its request for an administrative review of its sales during the above–referenced period. Section 351.213(d)(1) of the Department's regulations requires that the Secretary rescind an administrative review if a party requesting a review withdraws the request within 90 days of the date of publication of the notice of initiation. In this case, CES has withdrawn its request for review within the 90-day period. We have received no other submissions regarding CES's withdrawal of its request for review. Therefore, we are rescinding in part this review of the antidumping duty order on stainless steel bar from the United Kingdom with respect to CES. This review will continue with respect to Firth Rixson.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 12, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–9474 Filed 6–15–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060706D]

Endangered Species; File No. 1578

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

ACTION: Notice; Receipt of application.

SUMMARY: Notice is hereby given that the Maine Department of Marine Resources (MDMR) (Gail S. Wippelhauser, Principal Investigator), 21 State House Station, Augusta, ME 04333 has applied in due form for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before July 17, 2006.

ADDRESSES: The application 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 Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (978)281–9328; fax (978)281–9394.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by email. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the email comment the following document identifier: File No. 1578.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Shane Guan (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to determine the location of spawning and feeding habitat, and migratory pathways of sturgeon in the Penobscot and Kennebec Rivers in Maine. The study would also determine the impact of river flows on migration and habitat use. Researchers would annually capture up to 250 sturgeon from the Penobscot River during the study's first three years. Up to 500 sturgeon would be captured annually from the Kennebec River during the last two years of the study. Sturgeon would be captured with gillnets, measured, weighed, tissue sampled, Passive Integrated Transponder tagged, and released. A sample of sturgeon would be acoustic tagged. Researchers would also sample for eggs and larvae. The permit would be issued for five-years.

Dated: June 12, 2006.

P. Michael Payne,

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

[FR Doc. E6–9501 Filed 6–15–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2006–0032]

Grant of Interim Extension of the Term of U.S. Patent No. 4,591,585; atamestane

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of Interim Patent Term Extension.

SUMMARY: The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a third one-year interim extension of the term of U.S. Patent No. 4,591,585.

FOR FURTHER INFORMATION CONTACT: Mary C. Till by telephone at (571) 272–7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Patent Ext., P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7755, or by e-mail to *Mary.Till@uspto.gov*.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On May 9, 2006, Intarcia Therapeutics, Inc., exclusive licensee of U.S. Patent No. 4,591,585, assigned to Schering Aktiengesellschaft, timely filed an application under 35 U.S.C. 156(d)(5) for a third interim extension of the term of U.S. Patent No. 4,591,585. The patent claims the human drug product atamestane. The application indicates that a New Drug Application for the human drug product atamestane has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Because it is apparent that the regulatory review period will continue beyond the extended expiration date of the patent (June 18, 2006), interim extension of the

patent term under 35 U.S.C. 156(d)(5) is appropriate.

A third interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,591,585 is granted for a period of one year from the expiration date of the patent, *i.e.*, until June 18, 2007.

Dated: June 12, 2006.

Jon W. Dudas

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E6–9489 Filed 6–15–06; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2006–0033]

Grant of Interim Extension of the Term of U.S. Patent No. 4,585,597; ANTHÉLIOS SP (HELIOBLOCK SX Cream) (Mexoryl SX (Ecamsule))

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of Interim Patent Term Extension.

SUMMARY: The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a fourth one-year interim extension of the term of U.S. Patent No. 4,585,597.

FOR FURTHER INFORMATION CONTACT: Mary C. Till by telephone at (571) 272–7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Patent Ext., P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7755, or by e-mail to *Mary.Till@uspto.gov*.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On May 16, 2006, patent owner, L Oreal S.A., timely filed an application under 35 U.S.C. 156(d)(5) for a fourth subsequent interim extension of the term of U.S. Patent No. 4,585,597. The patent claims the active ingredient Mexoryl SX (ecamsule), in the human drug product ANTHELIOS SP (HELIOBLOCK SX Cream), a method of use of the active ingredient, and a method of manufacturing the active ingredient. The application indicates, and the Food and Drug Administration has confirmed, that a New Drug Application for the human drug product Mexoryl SX (ecamsule) has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for an additional year as required by 35 U.S.C. 156(d)(5)(B). Because it is apparent that the regulatory review period will continue beyond the extended expiration date of the patent (June 16, 2006), interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate. A fourth interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,585,597 is granted for a period of one year from the extended expiration date of the patent, *i.e.*, until June 16, 2007.

Dated: June 12, 2006.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E6–9490 Filed 6–15–06; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2006–0019]

Grant of Interim Extension of the Term of U.S. Patent No. 4,850,962; Esteem (Totally Implantable Hearing System)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of Interim Patent Term Extension.

SUMMARY: The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 4,850,962.

FOR FURTHER INFORMATION CONTACT: Mary C. Till by telephone at (571) 272–7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Patent Ext., P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7755, or by e-mail to *Mary.Till@uspto.gov*.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On March 31, 2006, patent owner, Envoy Medical Corporation, timely filed an application under 35 U.S.C. 156(d)(5) for an interim extension of the term of U.S. Patent No. 4,850,962. The patent claims the medical device Esteem. (totally implantable hearing system). The application indicates that an Investigational Device Exemption for the medical device Esteem has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Because it is apparent that the regulatory review period will continue beyond the original expiration date of the patent (July 25, 2006), interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,850,962 is granted for a period of one year from the original expiration date of the patent, *i.e.*, until July 25, 2007.

Dated: June 12, 2006.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E6–9494 Filed 6–15–06; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, July 7, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,
Acting Secretary of the Commission.
[FR Doc. 06–5518 Filed 6–14–06; 1:32 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, July 28, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,
Acting Secretary of the Commission.
[FR Doc. 06–5519 Filed 6–14–06; 1:32 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, July 21, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

FOR FURTHER INFORMATION CONTACT: Eileen A Donovan, 202–418–5100.

Eileen A. Donovan,
Acting Secretary of the Commission.
[FR Doc. 06–5520 Filed 6–14–06; 8:45 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, July 14, 2006.

PLACE: 1155 21st St., NW., Washington, DC., 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,
Acting Secretary of the Commission.
[FR Doc. 06–5521 Filed 6–14–06; 1:32 pm]
BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

[DOD–2006–OS–0121]

Defense Finance and Accounting Service; Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice to add a new system of records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This Action will be effective without further notice on July 17, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 90279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 6, 2006, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 2000, 65 FR 239.

Dated: June 12, 2006.

C.R. Choate,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7336

SYSTEM NAME:

MyPay System.

SYSTEM LOCATION:

Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, Cleveland, OH 44199.

Office of Personnel Management, 4685 Log Cabin Drive, Macon, GA 31204–6317.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty and Reserve military personnel, members of the National Guard, military academy cadets, Naval Reserve Officer Training Corps students, and Armed Forces Health Professions Scholarship Program (AFHPSP) students.

All DoD civilian employees paid by appropriated funds.

All Army nonappropriated fund instrumentalities employees paid by nonappropriated funds.

Military retirees, their former spouses (Former Spouse Protection Act (FSPA) Claimants), and annuitants.

Executive Office of the President employees.

Department of Health and Human Services employees.

Department of Energy employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's Name, Social Security Number, employing DoD and other Federal agencies, military branch of service, status (as appropriate), and e-mail addresses are maintained in the Master PIN Database (MPDB).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. Chapter 53, 55, and 81; and E.O. 9397 (SSN).

PURPOSE(S):

The MyPay System is a combination Internet (WEB) based and interactive voice response telephonic system (IVRS) designed to allow authorized individuals the ability to retrieve, review and update payroll information from their specific payroll system(s). Records are also used for extraction or compilation of data and reports for management studies and statistical analyses for use internally or externally as required by DoD or other government agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, and local agencies for the purpose of conducting computer

matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

To individuals authorized to receive retired and annuitant payments on behalf of retirees or annuitants.

To former spouses for purposes of providing information, consistent with requirements of 10 U.S.C. 1050(f)(3).

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and electronic databases.

RETRIEVABILITY:

Retrieved by name and Social Security Number of the individual.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the records in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by passwords, which are changed according to agency security policy.

RETENTION AND DISPOSAL:

Records may be temporary in nature and destroyed when actions are completed, they are superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year, destroyed up to 6 years and 3 months after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager, Defense Finance and Accounting Service—Cleveland, (DFAS–TSBCA/CL), 1240 East Ninth Street, Cleveland, OH 44199–2055.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/ Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Individuals should furnish full name, Social Security Number, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Individuals should furnish full name, Social Security Number, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/ Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

From the individual concerned, Federal other DoD Components.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–5451 Filed 6–15–06; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

[DOD–2006–OS–0145]

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to add systems of records.

SUMMARY: The Office of the Inspector General (OIG) proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on July 17, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, FOIA/PA Office, Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General (OIG) systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on June 6, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: June 12, 2006.

C.R. Choate,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

CIG–24

SYSTEM NAME:

Office Functional Files.

SYSTEM LOCATION:

Office of the General Counsel and Assistant Inspector General for the Office of Legal Counsel, Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Suite 1076, Arlington, Virginia 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who has filed a claim, a complaint, pleading or instituted litigation against the Department of Defense, Office of the Inspector General; or any individual who is under investigation by the Department of Defense, Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain some or all of the following information about an individual: Name, social security number, position description, grade, salary, work history, and complaint. The system may also contain other records such as: Case history files, copies of applicable law(s), working papers of attorneys, testimony of witnesses, background investigation materials, correspondence, damage reports, contracts, accident reports, pleadings, affidavits, estimates of repair costs, invoices, litigation reports, financial reports, financial data, and other data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978 (Pub. L. 95–452), as amended; DoD Directive 5106.1; 5 U.S.C. 301; DoD

Directive 5145.4, Defense Legal Services Agency; and E.O. 9397 (SSN).

PURPOSE:

The records are used to answer, evaluate, adjudicate, defend, prosecute, or settle claims, complaints, lawsuits, or criminal and civil investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Inspector General's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated and paper records stored in file cabinets and computerized database.

RETRIEVABILITY:

Name of litigant or subject.

SAFEGUARDS:

Paper and automated records are stored in rooms with restricted access in a secure building. Access is limited to General Counsel Staff in performance of their official duties. Computer systems in which records reside are protected through the use of assigned user or identification(s) and multiple levels of passwords restricting access. A risk assessment has been performed and will be made available on request.

RETENTION AND DISPOSAL:

Disposition pending until the National Archives and Records Administration has approved the retention and disposal schedule for these records, treat the records as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel and Assistant Inspector General for the Office of Legal Counsel, Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Suite 1076, Arlington, Virginia 22202–4704.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, Department of Defense, Office of the Inspector General, 400 Army Navy Dr, Arlington VA 22202–4704.

The request should contain the individual's full name, address, and telephone number. These items are necessary for the retrieval of information. Requests submitted on behalf of other persons must include their written authorization.

RECORD ACCESS PROCEDURES:

Individuals seeking to access to records about themselves contained in this system of records should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, Department of Defense, Office of the Inspector General, 400 Army Navy Dr, Arlington VA 22202–4704.

The request should contain the individuals's full name, address, and telephone number. These items are necessary for the retrieval of information. Requests submitted on behalf of other persons must include their written authorization.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From all sources with information which may impact upon actual or anticipated litigation, claims or investigations such as administrative boards, other records systems with DoD OIG and other DoD agencies and third parties who provide information voluntarily or response to discovery.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–5453 Filed 6–15–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2006–OS–0146]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: Effective June 16, 2006.

ADDRESSES: OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Irvin at (703) 696–4940.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 12, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DoDDS 02

SYSTEM NAME:

Educator Application Files (May 14, 1997, 62 FR 26483). Reason: The records contained in this system of records are covered by OPM/GOVT–5 (Recruiting, Examining and Placement Records), a government wide system notice.

[FR Doc. 06–5454 Filed 6–15–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2006–OS–0147]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: Effective June 16, 2006.

ADDRESSES: OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters

Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Irvin at (703) 696–4940.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 12, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DoDDS 01

SYSTEM NAME:

Teacher Correspondence Files (May 14, 1997, 62 FR 26483).

Reason: The records contained in this system of records are covered by OPM/GOVT–5 (Recruiting, Examining and Placement Records), a government wide system notice.

[FR Doc. 06–5455 Filed 6–15–06; 8:45 am]

BILLING CODE 4001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice

AGENCY: Department of the Army, DOD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

Name of Committee: Distance Learning/Training Technology Applications Subcommittee of the Army Education Advisory Committee.

Date: July 19–20, 2006.

Place: U.S. Army War College, Carlisle, PA.

Time: 0800–1630 on 19 July 2006; 0800–1600 on 20 July 2006.

Proposed Agenda: The meeting agenda includes updates on The Army Distributed Learning Program (TADLP) and infrastructure, review of selected courseware, and discussions focused on learning and technology.

Purpose of the Meeting: To provide for the continuous exchange of information and ideas for distance learning between the U.S. Army Training and Doctrine Command (TRADOC), HQ, Department of the Army, and the academic and business communities.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to Mr. Carlton Hardy, at HQ, TRADOC, ATTN: ATTG–CL (Mr. Hardy), Fort Monroe, VA 23651–5000; e-mail *carlton.hardy@us.army.mil.*

SUPPLEMENTARY INFORMATION: Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance will be limited to those persons who have notified the Advisory Committee Management Office, in writing, at least 5 days prior to the meeting of their intention to attend. Contact Mr. Hardy for meeting agenda and specific locations.

Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

Robert E. Seger,

Senior Executive Service, Assistant Deputy Chief of Staff for Operations and Training.

[FR Doc. 06–5446 Filed 6–15–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Method of Forming an Electrically Conductive Connection Utilizing a Polynucleotide/Conductive Polymer Complex

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR Part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 7,056,675 B2 entitled "Method of Forming an Electrically Conductive Connection Utilizing a Polynucleotide/Conductive Polymer Complex" issued June 6, 2006. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Arnold Boucher at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone: (508) 233–5431 or e-mail: *Arnold.Boucher@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–5445 Filed 6–15–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare Draft Environmental Impact Statement for the Proposed Implementation of Interim Water Storage Contracts Associated With the Southeastern Federal Power Customers Settlement Agreement, at Lake Sidney Lanier/Buford Dam, GA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Mobile District, intends to prepare a Draft Environmental Impact Statement (EIS), as required by the National Environmental Policy Act (NEPA), to address the proposed implementation of interim water storage contracts at Lake Sidney Lanier/Buford Dam, GA, as contained in a settlement agreement associated with the *Southeastern Federal Power Customers, Inc. (SeFPC)* v. *Secretary of the Army, et al.* (1:00CV02954–TPJ) lawsuit. The Draft EIS will also address any changes in water management operations at the reservoir project, as well as the potential for other changes to operations in downstream reservoir projects, which would result from implementation of the settlement agreement.

FOR FURTHER INFORMATION CONTACT: Questions about this Draft EIS or the NEPA process can be answered by: Ms. Joanne Brandt, Environmental Compliance Manager, Inland Environment Team, U.S. Army Engineer District-Mobile, Post Office Box 2288, Mobile, AL 36628–0001; Telephone (251) 690–3260; or delivered by electronic facsimile at (251) 694–3815; or e-mail: *joanne.u.brandt@sam.usace.army.mil.* You may also request to be included on the mailing list for public distribution of meeting announcements and documents.

SUPPLEMENTARY INFORMATION: *Background.* On December 13, 2000, litigation was filed by the SeFPC, Inc.

(1:00CV02954–TPJ) in the U.S. District Court for District of Columbia, challenging the validity of Corps actions in connection with water withdrawals from Lake Lanier and alleging the water withdrawals adversely affected hydropower generation. A settlement agreement was reached in the SeFPC litigation which involves a proposal to implement interim water storage contracts at Lake Lanier and prescribed payments by the water supply users for interim storage amounts, and credits for hydropower generation foregone. The Corps has been prohibited from implementing the settlement agreement until recent court decisions removed those prohibitions. In a ruling on January 20, 2006, the U.S. District Court for the District of Columbia granted the SeFPC motion to stay the lawsuit for a sufficient amount of time to allow the Corps to complete the NEPA process for the proposed implementation of the settlement agreement.

Accordingly, the Corps is proceeding to fulfill its obligations under NEPA and to comply with other terms of the settlement agreement. The first step of this compliance process is the initiation of a draft EIS to address the proposed implementation of the settlement agreement. The EIS will address the impacts expected to result from implementation of the settlement agreement together with any operational changes that may be required for its implementation.

Public participation throughout the NEPA process is essential. The Corps invites full public participation to promote open communication and better decision making. All persons, stakeholders, and organizations that have an interest in the water allocation formulas, including minority, low-income, disadvantaged and Native American groups, are urged to participate in this NEPA environmental analysis process. Assistance will be provided upon request to anyone having difficulty with understanding how to participate. Scoping meetings are planned and tentatively scheduled for later this summer. Dates and locations for public scoping meetings will be announced by future publication in the **Federal Register** and in the local news media. Tentative dates for publication of the draft EIS and other opportunities for public involvement will also be announced at that time. Public comments are welcomed anytime throughout the NEPA process.

Cooperating Agencies. The lead responsibility for this EIS rests with the Corps. The Corps intends to coordinate and/or consult with an interagency team of Federal and State agencies during scoping and preparation of the draft EIS. Each of these agencies will provide their expertise and assistance in compiling information and evaluating potential impacts. However, these agencies will not serve in an official role as cooperating agencies.

Scoping: The Alabama-Coosa-Tallapoosa Rivers (ACT)/Apalachicola-Chattahoochee-Flint Rivers (ACF) Comprehensive Study and ACF Compact negotiations involved the States (Alabama, Florida and Georgia), stakeholders and the public in identifying areas of concern; collecting and developing water resource, environmental, and socioeconomic data; and developing tools to assist in decisions affecting water resources within the two basins. Scoping for this EIS will continue to build upon the knowledge and information developed during the Comprehensive Study and subsequent Compact negotiations. The comments and opinions of various stakeholders will be sought, including Federal, State and local agencies and officials, affected tribes, other interested parties and the public. Scoping meetings with agencies and stakeholder groups will be scheduled to identify any significant issues and data gaps, focus on the alternatives to be evaluated, and to identify any appropriate updated tools to assist in evaluation of alternatives and analysis of impacts.

Environmental Review and Consultation Requirements. Coordination with the U.S. Fish and Wildlife Service will be accomplished in compliance with the Endangered Species Act and the Fish and Wildlife Coordination Act. Coordination required by other laws and regulations will also be conducted.

Dated: June 8, 2006.

Peter F. Taylor,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 06–5444 Filed 6–15–06; 8:45 am]

BILLING CODE 3410–CR–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–2197–073]

Alcoa Power Generating, Inc.; Errata Notice and Revised Schedule

June 9, 2006.

On May 10, 2006 the Commission issued a "Notice of Application Tendered for Filing" in the above-referenced proceeding. This Errata makes the following corrections to the notice:

(1) Under letter n., paragraph 4, item (8), the number, "447,150 kW," should be replaced with the number, "107,780 kW," to report the total installed capacity of the Narrows Development.

(2) Under letter n., paragraph 6, the last sentence should be replaced with the following sentences: "According to a 1968 Headwaters Benefits Settlement, APGI is to operate High Rock Reservoir such that regulated weekly average stream flow would be reduced to a flow not less than 1,500 cfs during the ten week period preceding May 15; 1,610 cfs during the period May 15 through July 1; and 1,400 cfs during the period July 1 through September 15. During the 2002 drought, APGI and Progress Energy agreed, in a regional Emergency Drought Management Protocol (now expired), to operate the projects so as to achieve a daily average flow of 900 cfs at the Rockingham, North Carolina U.S. Geological Survey gage."

(3) Under letter q. Procedural Schedule: The table is revised as follows:

Milestone	Target date
Tendering Notice	May 10, 2006.
File Additional Study Requests.	June 26, 2006.
Additional Information Requests (if necessary).	July 2006.
Issue Acceptance Letter and Solicit Interventions.	Oct. 2006.
Issue Scoping Document 1 for Comments.	Nov. 2006.
Hold Scoping Meetings	Jan. 2006.
Request Additional Information (if necessary).	March 2007.
Issue Scoping Document 2 (if necessary).	March 2007.
Notice of Application Ready for Environmental Analysis.	April 2007.
Filing of Recommendations, Preliminary Terms and Conditions, and Fishway Prescriptions.	June 2007.
Notice of Availability of Draft EA or EIS.	Sept. 2007.
Comments on Draft EA or EIS and Modified Terms and Conditions.	Nov. 2007.
Notice of Availability of Final EA or EIS.	March 2008.
Ready for Commission Decision on the Application.	April 2008.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9392 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–358–000]

ANR Pipeline Company; Notice of Application

June 9, 2006.

Take notice that on May 30, 2006, ANR Pipeline Company (ANR), 1001 Louisiana, Houston, Texas 77002, filed in Docket No. CP06–358–000, an application pursuant to section 7 of the Natural Gas Act (NGA) for authorization to abandon certain facilities and for a certificate of public convenience and necessity to perform certain enhancements to its storage system in order to optimize its operations by matching inventory and deliverability to market demands at its Lincoln-Freeman, Winfield, Goodwell, and Reed storage fields in Clare, Montcalm, Newaygo, Osceola and Lake Counties, Michigan, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to Dawn McGuire, Counsel, ANR Pipeline Company, 1001 Louisiana, Houston, Texas 77002 at (713) 420–5503.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 30, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9386 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–2206–030]

Carolina Power and Light Company; Errata Notice and Revised Schedule

June 9, 2006.

On May 10, 2006 the Commission issued a "Notice of Application Tendered for Filing" regarding the above-referenced proceeding. This Errata makes the following correction to the notice:

(1) Under letter n., paragraph 4. the last sentence should be replaced by the following sentence: "During the 2002 drought, Progress Energy and APGI agreed, in a regional Emergency Drought Management Protocol (now expired), to operate the projects so as to achieve a daily average flow of 900 cfs at the Rockingham, North Carolina U.S. Geological Survey gage."

(2) Under letter q. Procedural Schedule: The table is revised as follows:

Milestone	Target date
Tendering Notice	May 10, 2006.
File Additional Study Requests	June 26, 2006.
Additional Information Requests (if necessary)	July 2006.
Issue Acceptance Letter and Solicit Interventions	October 2006.
Issue Scoping Document 1 for Comments	November 2006.
Hold Scoping Meetings	January 2006.
Request Additional Information (if necessary)	March 2007.
Issue Scoping Document 2 (if necessary)	March 2007.
Notice of Application Ready for Environmental Analysis	April 2007.
Filing of Recommendations, Preliminary Terms and Conditions, and Fishway Prescriptions	June 2007.
Notice of Availability of Draft EA or EIS	September 2007.
Comments on Draft EA or EIS and Modified Terms and Conditions	November 2007.
Notice of Availability of Final EA or EIS	March 2008.
Ready for Commission Decision on the Application	April 2008.

Magalie R. Salas,
Secretary.
[FR Doc. E6–9393 Filed 6–15–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–500–006]

Chandeleur Pipe Line Company; Notice of Negotiated Rate

June 8, 2006.

Take notice that on May 31, 2006, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifth Revised Sheet No. 73 to become effective July 1, 2006.

Chandeleur states that the proposed change would update its tariff to accurately state the current negotiated rate transaction information as required by section 24.3 of Chandeleur's tariff. Chandeleur states that the proposed change is necessary to delete the information for a contract reflecting a termination date of June 30, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E6–9382 Filed 6–15–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–385–000]

Distrigas of Massachusetts LLC; Notice of Proposed Changes in FERC Gas Tariff

June 8, 2006.

Take notice that on June 5, 2006, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised Tariff sheets proposed to be effective July 6, 2006:

Sixth Revised Sheet No. 29
Fifth Revised Sheet No. 38
Fifth Revised Sheet No. 39
Fifth Revised Sheet No. 40
Fifth Revised Sheet No. 41
First Revised Sheet No. 48A
First Revised Sheet No. 48B
First Revised Sheet No. 48C
First Revised Sheet No. 48D
First Revised Sheet No. 48E
First Revised Sheet No. 48F
First Revised Sheet No. 48G
First Revised Sheet No. 48H
First Revised Sheet No. 48I

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E6–9372 Filed 6–15–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–373–000]

El Paso Natural Gas Company; Notice of Application

June 9, 2006.

Take notice that on June 5, 2006, El Paso Natural Gas Company (EPNG), P.O. Box 1087, Colorado Springs, Colorado, 80944, filed in Docket No. CP06–373–000 an application pursuant to section 7(b) of the Commission's regulations under the Natural Gas Act (NGA) for authorization to abandon, by sale, to West Texas Gas, Inc. (WTG) its Snyder and Sonora Pipeline Systems, with appurtenances, located in Scurry, Borden, Howard, Martin, Andrews, Ector, Sutton, Schleicher, Crockett, Irion, Reagan and Upton Counties, Texas. Additionally, WTG requests that the Commission make a determination that, upon transfer of the Snyder and Sonora Pipelines, the operation and service rendered through these facilities will be exempt from the Commission's jurisdiction under section 1(b) of the Natural Gas Act. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Web at *http://*

www.ferc.gov using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, EPNG proposes to convey to WTG, approximately 236 miles of various-sized pipeline supply laterals and appurtenant facilities located in the Permian Basin area in various counties in West Texas. EPNG has agreed to sell the two pipeline systems for approximately $300,000 and the assumption by WTG of certain liabilities. Upon receipt of the authorizations requested herein and the transfer of the pipelines, WTG intends to operate the Snyder Pipeline as an intrastate pipeline subject to the jurisdiction of the Texas Railroad Commission, and the Sonora Pipeline as a non-jurisdictional gathering facility. Based on the future use of the pipelines, WTG requests the Commission to determine that the future operation and services rendered through these facilities will be exempt from the Commission's jurisdiction under the NGA.

Any questions concerning this application may be directed to Richard Derryberry, Director, Regulatory Affairs, El Paso Natural Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, at (719) 520–3782 or fax (719) 667–7534.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Comment Date: June 30, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9388 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10395–032]

Electric Plant Board of the City of Augusta, KY; Notice of Withdrawal of Reconsideration and Limited Stay of Order Terminating License

June 9, 2006.

On March 31, 2006, the City of Hamilton, Ohio, filed a request for reconsideration and limited stay of the Commission's March 1, 2006 order terminating license for the Meldahl Project No. 10395.

On May 12, 2006, the City of Hamilton, Ohio, filed a notice of withdrawal of its request for reconsideration and limited stay. No one filed a motion in opposition to the withdrawal, and the Commission took no action to disallow it. Accordingly, pursuant to Rule 216 of the Commission's Rules of Practice and Procedure, 18 CFR 385.216 (2006), the withdrawal of the pleadings became effective on May 27, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9391 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–822–001; EL06–48–001]

Fore River Development, LLC; Braintree Electric Light Department; Notice of Filing

June 9, 2006.

Take notice that on May 30, 2006, ISO New England Inc. submitted for filing the above-referenced generating units are no longer deemed to be needed for reliability must agreements.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy

of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9389 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–4902–000]

Hoolihan, James J.; Notice of Filing

June 8, 2006.

Take notice that on May 11, 2006, James J. Hoolihan filed an application for authorization to hold interlocking positions pursuant to section 305(b) of the Federal Power Act, part 45 of the Commission's Rules of Practice and Procedure and Order No. 664.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 22, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9378 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS04–249–002]

Kinder Morgan Pipelines; Notice of Compliance Filing

June 9, 2006.

Take notice that on May 18, 2005, the Kinder Morgan Pipelines (KM Pipelines) submitted a filing in compliance with a Commission Order issued April 19, 2005. KM Pipelines states this is to further describe and explain the information requested by the April 19 Order as it relates to their affiliated intrastate storage management, system design, project management, operations, gas control and engineering.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 16, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9384 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–2268–018; EL05–10–000; ER99–4124–015; EL05–11–000; ER00–3312–016; EL05–12–000; ER99–4122–019; EL05–13–000]

Pinnacle West Capital Corporation; Arizona Public Service Company; Pinnacle West Energy Corporation; APS Energy Services Company, Inc.; Notice of Filing

June 8, 2006.

Take notice that on May 17, 2006, pursuant to the Commission's Order issued on April 17, 2006, in the above-captioned proceeding, Arizona Public Service Company (APS) filed an offer of settlement, settlement agreement and explanatory statement in support of the offer of settlement, intended to resolve all outstanding issues between APS and the Town of Wickenburg.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 29, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9376 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–2268–019; EL05–10–000; ER99–4124–016; EL05–11–000; ER00–3312–017; EL05–12–000; ER99–4122–018; EL05–13–000]

Pinnacle West Capital Corporation; Arizona Public Service Company; Pinnacle West Energy Corporation; APS Energy Services Company, Inc.; Notice of Filing

June 8, 2006.

Take notice that on May 17, 2006, pursuant to the Commission's Order issued on April 17, 2006, in the above-captioned proceeding, Pinnacle West Companies filed revised market-based rate tariffs to limit sales at market-based rates to areas outside of the APS control area and a separate tariff to provide for the default cost-based rates for the APS control area, to be effective February 27, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 29, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9377 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG06–46–000]

Rumford Falls Hydro LLC; Notice of Filing

June 8, 2006.

Take notice that on June 6, 2006, pursuant to Commission's inquiry, Rumford Falls Hydro LLC filed a supplement to its notice of self-certification of exempt wholesale Generator Status filed with the Commission on April 17, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 27, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9374 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–369–000]

Straight Creek Gathering, LP; Notice of Petition

June 9, 2006.

Take notice that on May 30, 2006, Straight Creek Gathering, LP (Straight Creek), 11251 Northwest Freeway, Suite 400, Houston, Texas 77092, filed in Docket No. CP06–369–000, a petition for a declaratory order pursuant to Rule 207

of the Commission's Rules and Regulations (18 CFR 385.207) holding that certain facilities proposed for construction in Floyd, Johnson, Lawrence, Carter, Magoffin, Elliot, Martin, and Pike Counties, Kentucky will be gathering facilities exempt from the Commission's jurisdiction pursuant to section 1(b) of the Natural Gas Act (NGA). Alternatively, Straight Creek requests that the Commission declare that the facilities will be non-jurisdictional pursuant to section 1(b) of the NGA, and issue a limited-term, limited-jurisdictional certificate to permit Straight Creek to receive gas from Columbia Gas Transmission Company until Straight Creek can construct its own gathering lateral line into the supply area, all as more fully set forth in the application which is on file with the Commission and open for public inspection. This filing is accessible on-line at *http://www.ferc.gov*, using the "library" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is a "subscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Any questions regarding this application should be directed to counsel for Straight Creek, Michael J. Manning or Glenn S. Benson, Fulbright & Jaworski, L.L.P., at 801 Pennsylvania Avenue, NW., Washington, DC 20004; or (202) 662–4550 (Michael Manning) or (202) 662–4589 (Glenn Benson), or by fax at (202) 662–4643.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "defiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: June 30, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9387 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–82–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

June 8, 2006.

Take notice that on May 17, 2006, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, with an effective date of May 9, 2006:

Forty-Eighth Revised Sheet No. 5
First Revised Sheet No. 1170
First Revised Sheet No. 1262
First Revised Sheet No. 1463
First Revised Sheet No. 1476
First Revised Sheet No. 1815
First Revised Sheet No. 1883

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. Eastern Time on June 14, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9373 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–317–003]

Texas Gas Transmission, LLC; Notice of Compliance Filing

June 9, 2006.

Take notice that on May 30, 2006, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective on the dates set forth on the respective tariff sheets in accordance with Article II of the Stipulation and Agreement of Settlement.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9395 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC06–153–000]

Transcontinental Gas Pipe Line Corporation; Notice of Restatement of Financial Statements

June 9, 2006.

Take notice that on April 11, 2006, Transcontinental Gas Pipeline Corporation (Transco) notified the Commission, by letter, of its intent to restate financial statements for 2004. Transco states that the restatement is to correct an error related to methodology used to calculate the average cost of its natural gas inventory. Transco states that it intends to file its revised 2004 Form 2, containing restated financial statements for the years 2003 and 2004. Transco further states that it also intends to record the adjustment applicable to periods prior to 2003 in Account 439, Adjustments to Retain Earnings.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 23, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9398 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–386–000]

Viking Gas Transmission Company; Notice of Tariff Filing

June 9, 2006.

Take notice that on June 7, 2006, Viking Gas Transmission Company (Viking) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 143, to become effective on July 7, 2006.

Viking states that the purpose of this filing is to update Viking's tariff to reflect a change in the name of the operator of Viking from Northern Plains Natural Gas Company, LLC to ONEOK Partners GP, L.L.C.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9397 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–76–000]

Arkansas Public Service Commission v. Entergy Services, Inc., Entergy Louisiana, L.L.C., Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc.; Notice of Complaint

June 8, 2006.

Take notice that on June 7, 2006, the Arkansas Public Service Commission, pursuant to section 206 and 207 of the Federal Power Act and Rule 206 of the Commission Rules of Practice and Procedure, filed with the Commission a Complaint against Entergy Services, Inc., Entergy Louisiana, L.L.C., Entergy Arkansas, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, Entergy) seeking an investigation into the prudence of all of Entergy's practices affecting production costs, particularly generation costs, wholesale purchasing practices, and adequacy of Entergy's transmission system. The Arkansas Public Service

Commission asks that a refund effective date be set for the earliest possible date.

The Arkansas Public Service Commission certifies that copies of the complaint were served on the contacts for Entergy listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 27, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9375 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 7, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–126–000; ES06–50–000.

Applicants: Commonwealth Electric Company; Cambridge Electric Light Company; Commonwealth Electric Company; Canal Electric Company; Boston Edison Company.

Description: NSTAR Operating Companies submits an application under Section 203 of the Federal Power Act to merge & consolidate their facilities & Boston Edison Company to increase its authorization to issue short-term debt.

Filed Date: 5/26/2006.

Accession Number: 20060602–0329.

Comment Date: 5 p.m. Eastern Time on Friday, June 16, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–1551–016; EL05–2–000; ER01–615–012.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits its compliance filing pursuant to the Commission's Order issued 4/21/06.

Filed Date: 5/30/2006.

Accession Number: 20060602–0333.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 20, 2006.

Docket Numbers: ER01–2562–004.

Applicants: Competitive Energy Services, LLC.

Description: Competitive Energy Services LLC submits its revised market-based rate tariff designated as Revised Rate Schedule 1.

Filed Date: 5/3/2006.

Accession Number: 20060530–0041.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 14, 2006.

Docket Numbers: ER02–2134–004.

Applicants: Just Energy, LLC.

Description: Just Energy, LLC submits a supplemental triennial market analysis filing.

Filed Date: 5/23/2006.

Accession Number: 20060601–0069.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 13, 2006.

Docket Numbers: ER04–954–001.

Applicants: Ritchie Energy Products, L.L.C.

Description: Ritchie Energy Products, LLC submits a notification of a non-material change in status relating to its authorization to sell power at market-based rates.

Filed Date: 5/26/2006.

Accession Number: 20060605–0297.

Comment Date: 5 p.m. Eastern Time on Friday, June 16, 2006.

Docket Numbers: ER06–973–000.

Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.

Description: Allegheny Power submits a withdrawal of its Notice of Cancellation filed 5/8/06 in reference to a Power Supply Agreement with Baltimore Gas & Electric Company.

Filed Date: 5/30/2006.

Accession Number: 20060530–5006.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 20, 2006.

Docket Numbers: ER06–977–000.

Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.

Description: Allegheny Power submits a withdrawal of its Notice of Cancellation filed 5/8/06 in reference to a Power Supply Agreement with Delmarva Power & Light Company.

Filed Date: 5/30/2006.

Accession Number: 20060530–5007.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 20, 2006.

Docket Numbers: ER06–978–000.

Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.

Description: Allegheny Power submits a withdrawal of its Notice of Cancellation filed 5/8/06 in reference to a Power Supply Agreement with Philadelphia Electric Company.

Filed Date: 5/30/2006.

Accession Number: 20060530–5008.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 20, 2006.

Docket Numbers: ER06–980–000.

Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.

Description: Allegheny Power submits a withdrawal of its Notice of Cancellation filed 5/8/06 in reference to a Power Supply Agreement with Public Service Electric & Gas Company.

Filed Date: 5/30/2006.

Accession Number: 20060530–5009.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 20, 2006.

Docket Numbers: ER06–982–000.

Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.

Description: Allegheny Power submits withdrawal of its Notice of Cancellation filed 5/8/06 in reference to a Power Supply Agreement with Pennsylvania Power and Light Company.

Filed Date: 5/30/2006.

Accession Number: 20060530–5011.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 20, 2006.

Docket Numbers: ER06–1017–000.

Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.

Description: Allegheny Power submits withdrawal of its Notice of Cancellation filed 5/8/06 in reference to a Power Supply Agreement with Atlantic City Electric Company.

Filed Date: 5/30/2006.

Accession Number: 20060530–5013.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 20, 2006.

Docket Numbers: ER06–1056–000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co submits proposed amendments to its Metering Service Agreement with Wisconsin Public Power Inc, FERC Tariff 115.

Filed Date: 5/31/2006.

Accession Number: 20060602–0336.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 21, 2006.

Docket Numbers: ER06–1057–000.

Applicants: WPS Resources Operating Companies.

Description: WPS Resources Operating Companies, on behalf of Wisconsin Public Service Corp and Upper Peninsula Power Company, submits an executed service agreement with Wisconsin Public Power Inc.

Filed Date: 5/30/2006.

Accession Number: 20060602–0335.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 20, 2006.

Docket Numbers: ER06–1058–000.

Applicants: New Covert Generating Company, LLC.

Description: New Covert Generating Company, LLC submits its proposed FERC Electric Tariff, Original Volume 2 and supporting cost data under which it specifies its revenue requirement for providing cost-based reactive supply and voltage control.

Filed Date: 5/31/2006.

Accession Number: 20060605–0098.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 21, 2006.

Docket Numbers: ER06–1059–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc submits executed Large Generator Interconnection Agreement among Ameren Services Co et al.

Filed Date: 5/31/2006.

Accession Number: 20060602–0334.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 21, 2006.

Docket Numbers: ER06–1060–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc submits executed interconnection agreement with Associated Electric Cooperative Inc and Oklahoma Gas and Electric Company designated as Service Agreement No. 1249.

Filed Date: 5/31/2006.

Accession Number: 20060602–0337.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 21, 2006.

Docket Numbers: ER06–1061–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp on behalf of AEP Eastern Operating Companies submits proposed revisions to Second Amended and Restated PJM Services and Cost Allocation Agreement.

Filed Date: 5/31/2006.

Accession Number: 20060602–0338.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 21, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9369 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

June 8, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–3001–015.

Applicants: New York Independent System Operator, Inc.

Description: New York ISO submits its Tenth Biannual Compliance Report on Demand Response Programs and the Addition of New Generation, pursuant to Commission's 10/25/01 order.

Filed Date: 6/1/2006.

Accession Number: 20060601–5041.

Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–191–003; ER06–193–003.

Applicants: ISO New England Inc.; New England Participating Transmission Owners; Maine Electric Power Company; New England Power Pool Participants Committee.

Description: ISO New England, Inc et al submit an errata to correct the inadvertent omissions of its 5/15/06 filing.

Filed Date: 6/1/2006.

Accession Number: 20060607–0075.

Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–730–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc. submits proposed revisions to Section 39.2.12 of its OAT&EM Tariff, Third Revised Volume No. 1.

Filed Date: 5/31/2006.

Accession Number: 20060607–0074.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 21, 2006.

Docket Numbers: ER06–864–001.

Applicants: Bear Energy LP.
Description: Bear Energy LP submits a notification to FERC that it has entered into an energy management agreement with LSP Gen Finance Co, LLC in accordance with Order 652.
Filed Date: 6/1/2006.
Accession Number: 20060607–0073.
Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–882–001.
Applicants: Bayside Power L.P.
Description: Bayside Power LP submits revised tariff sheets containing the appropriate headers and footers as required by Order 614.
Filed Date: 6/1/2006.
Accession Number: 20060607–0072.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 14, 2006.

Docket Numbers: ER06–894–001.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc submits an errata to its 4/27/06 filing to include cover sheets with appropriate rate schedule designations for Prescott's Network Operating Agreement and Network Integration Transmission Service Agreement.
Filed Date: 5/31/2006.
Accession Number: 20060607–0071.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 21, 2006.

Docket Numbers: ER06–976–001.
Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.
Description: West Penn Power Company submits an amended notice of cancellation of Allegheny Power's Power Interchange and Resale Agreement with American Municipal Power-Ohio, Rate Schedule No. 50, et al.
Filed Date: 6/1/2006.
Accession Number: 20060601–5006.
Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–981–000.
Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.
Description: West Penn Power Company, et al submit a request to withdraw it Notice of Cancellation filed 5/8/06 in reference to a Power Interchange and Resale Agreement with American Municipal Power-Ohio.
Filed Date: 5/18/2006.
Accession Number: 20060518–5014.
Comment Date: 5 p.m. Eastern Time on Thursday, June 8, 2006.

Docket Numbers: ER06–1050–000; ER06–1036–000; ER06–1037–000; ER06–1095–000.
Applicants: RockGen OL–1, LLC; RockGen OL–2, LLC, RockGen OL–3, LLC, RockGen OL–4.
Description: RockGen OL–1, LLC et al submits an application for order authorizing market-based rates, waivers and blanket authorizations and request for expedited action.
Filed Date: 5/26/2006.
Accession Number: 20060607–0070.
Comment Date: 5 p.m. Eastern Time on Friday, June 16, 2006.

Docket Numbers: ER06–1062–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Co submits modifications to and subsequent cancellation of Minnesota Methane's Service Agreement for Firm Point-to-Point Transmission Service.
Filed Date: 5/31/2006.
Accession Number: 20060607–0069.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 21, 2006.

Docket Numbers: ER06–1063–000.
Applicants: Xcel Energy Services Inc.; Southwestern Public Service Company.
Description: Xcel Energy Services, Inc on behalf of Southwestern Public Service Corp submits a Connection Agreement with Golden Spread Electric Cooperative, Inc pursuant to Order 614.
Filed Date: 6/1/2006.
Accession Number: 20060607–0068.
Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–1064–000.
Applicants: California Independent System Operator Corporation
Description: California Independent System Operator Corp submits an informational filing regarding the revised Transmission Access Charges effective 3/1/06.
Filed Date: 6/1/2006.
Accession Number: 20060607–0067.
Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–1065–000.
Applicants: Northeast Utilities Service Company.
Description: Northeast Utilities Service Co on behalf of operating companies, The Connection Light & Power Co et al submits amendments to and service agreement under Schedule 21–NU to Section II of ISO New England, Inc Transmission, Markets and Services Tariff.
Filed Date: 5/31/2006.
Accession Number: 20060607–0078.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 21, 2006.

Docket Numbers: ER06–1066–000.
Applicants: American Electric Power Service Corporation; Indiana Michigan Power Company.
Description: The American Electric Power Service Corp as agent for its affiliate Indiana & Michigan Power Co submits an original interconnection and local delivery service agreement with the City Bluffton, Indiana.
Filed Date: 6/1/2006.
Accession Number: 20060607–0076.
Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–1067–000.
Applicants: American Electric Power Service Corporation; Indiana Michigan Power Company.
Description: The American Electric Power Service Corp as agent for its affiliate Indiana & Michigan Power Co submits an original interconnection and local delivery service agreement with the City of Mishawaka, Indiana.
Filed Date: 6/1/2006.
Accession Number: 20060607–0077.
Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–1068–000.
Applicants: Indiana Michigan Power Company; American Electric Power Service Corporation.
Description: Indiana Michigan Power Co submits a Cost-Based Formula Rate Agreement for Full Requirements Electric Service with the City of Avilla, Indiana.
Filed Date: 6/1/2006.
Accession Number: 20060607–0079.
Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–1069–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to the Schedule 24–A of its OAT&EM Tariff, Third Revised Volume No. 1.
Filed Date: 6/1/2006.
Accession Number: 20060607–0066.
Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Magalie R. Salas,

Secretary.

[FR Doc. E6–9370 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 9, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–1070–000.

Applicants: New England Power Pool Participants Committee.

Description: New England Power Pool Participants Committee submits a counterpart signature page of the New England Power Pool Agreement, to expand NEPOOL membership to include Cinergy Marketing & Trading LP.

Filed Date: 6/1/2006.

Accession Number: 20060607–0087.

Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–1071–000.

Applicants: Kuehne Chemical Company, Inc.

Description: Kuehne Chemical Co Inc submits a petition for acceptance of its initial tariff, Original Volume No. 1, waivers, and blanket authority.

Filed Date: 6/1/2006.

Accession Number: 20060607–0088.

Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–1072–000.

Applicants: South Carolina Electric & Gas Company.

Description: South Carolina Electric & Gas Co submits a Facilities Agreement with the Town of Winnsboro, SC.

Filed Date: 6/2/2006.

Accession Number: 20060607–0086.

Comment Date: 5 p.m. Eastern Time on Friday, June 23, 2006.

Docket Numbers: ER06–1075–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Co dba Progress Energy Carolinas Inc submits a Partial Requirements Service Agreement with Piedmont Electric Membership Corp, Rate Schedule No. 172.

Filed Date: 6/1/2006.

Accession Number: 20060607–0081.

Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–1076–000.

Applicants: Indiana Michigan Power Company; American Electric Power Service Corporation.

Description: Indiana Michigan Power Co submits a Cost-Based Formula Rate Agreement for Full Requirements Electric Service with the City of Bluffton, Indiana.

Filed Date: 6/2/2006.

Accession Number: 20060607–0092.

Comment Date: 5 p.m. Eastern Time on Friday, June 23, 2006.

Docket Numbers: ER06–1077–000.

Applicants: Indiana Michigan Power Company; American Electric Power Service Corporation.

Description: Indiana Michigan Power Co submits a Cost-Based Formula Rate Agreement for Full Requirements Electric Service with South Haven, Michigan.

Filed Date: 6/2/2006.

Accession Number: 20060607–0093.

Comment Date: 5 p.m. Eastern Time on Friday, June 23, 2006.

Docket Numbers: ER06–1078–000.

Applicants: Indiana Michigan Power Company; American Electric Power Service Corporation.

Description: Indiana Michigan Power Co submits a Cost-Based Formula Rate Agreement for Full Requirements Electric Service with the City of Niles, Michigan.

Filed Date: 6/2/2006.

Accession Number: 20060607–0094.

Comment Date: 5 p.m. Eastern Time on Friday, June 23, 2006.

Docket Numbers: ER06–1079–000.

Applicants: Indiana Michigan Power Company; American Electric Power Service Corporation.

Description: Indiana Michigan Power Co submits a Cost-Based Formula Rate Agreement for Full Requirements Electric Service with the City of Mishawaka, Indiana.

Filed Date: 6/2/2006.

Accession Number: 20060607–0095.

Comment Date: 5 p.m. Eastern Time on Friday, June 23, 2006.

Docket Numbers: ER06–1081–000.

Applicants: Indiana Michigan Power Company; American Electric Power Service Corporation.

Description: Indiana Michigan Power Co submits a Cost Based Formula Rate Agreement for Full Requirements Electric Service with the City of Warren, Indiana.

Filed Date: 6/2/2006.

Accession Number: 20060607–0091.

Comment Date: 5 p.m. Eastern Time on Friday, June 23, 2006.

Docket Numbers: ER06–1082–000.

Applicants: Indiana Michigan Power Company; American Electric Power Service Corporation.

Description: Indiana Michigan Power Co submits a Cost-Based Formula Rate Agreement for Full Requirements Electric Service with the City of Garrett, Indiana.

Filed Date: 6/2/2006.

Accession Number: 20060607–0090.

Comment Date: 5 p.m. Eastern Time on Friday, June 23, 2006.

Docket Numbers: ER06–1083–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an Interconnection Service Agreement with Premcor Refining Group, Inc and Delmarva Power & Light Co and a notice of cancellation for an ISA that has been superseded.

Filed Date: 6/2/2006.

Accession Number: 20060607–0085.

Comment Date: 5 p.m. Eastern Time on Friday, June 23, 2006.

Docket Numbers: ER06–1084–000.

Applicants: Central Hudson Gas & Electric Corporation.

Description: Central Hudson Gas & Electric Corp submits a Notice of Cancellation of its Rate Schedule 56.

Filed Date: 6/2/2006.

Accession Number: 20060607–0084.

Comment Date: 5 p.m. Eastern Time on Friday, June 23, 2006.

Docket Numbers: ER06–1085–000.

Applicants: Deseret Generation & Transmission Co-Operative, Inc.

blanket approvals and request for expedited treatment.

Filed Date: 6/2/2006.

Accession Number: 20060608–0622.

Comment Date: 5 p.m. Eastern Time on Friday, June 23, 2006.

Docket Numbers: ER06–1094–001.

Applicants: Western Electricity Coordinating Council.

Description: Western Electricity Coordinating Council submits Request for Waiver of Western Electricity Coordinating Council and Motion to Intervene.

Filed Date: 6/1/2006.

Accession Number: 20060601–5065.

Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–1094–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Op. submits a Request for Waiver of Standards and Extension of Time of the Midwest Independent Transmission System Operator, Inc. under ER06–1094.

Filed Date: 6/1/2006.

Accession Number: 20060601–5072.

Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–1094–003.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits its Request for limited waiver of NAESB WEQ Standards.

Filed Date: 6/1/2006.

Accession Number: 20060608–0584.

Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–1094–004.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits its request for waiver of NAESB WEQ business standards.

Filed Date: 6/1/2006.

Accession Number: 20060608–0583.

Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–1094–006.

Applicants: SOWEGA Power LLC.

Description: SOWEGA Power LLC submits its Requests for waiver of FERC's newly adopted OASIS related standards.

Filed Date: 5/26/2006.

Accession Number: 20060608–0590.

Comment Date: 5 p.m. Eastern Time on Friday, June 16, 2006.

Docket Numbers: ER06–1094–007.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits its requests FERC to grant waiver of the newly adopted OASIS related standards promulgated in Order 676 for its South Dakota operations.

Filed Date: 6/1/2006.

Accession Number: 20060608–0587.

Comment Date: 5 p.m. Eastern Time on Thursday, June 22, 2006.

Docket Numbers: ER06–1097–000.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas and Electric Co submits a Notice of Termination of the Control Area and Transmission Service Agreement with Power Exchange Corp.

Filed Date: 6/2/2006.

Accession Number: 20060608–0624.

Comment Date: 5 p.m. Eastern Time on Friday, June 23, 2006.

Docket Numbers: ER06–1098–000.

Applicants: JJR Power LLC.

Description: JJR Power LLC submits a Petition for acceptance of Initial Tariff, Waivers and Blanket Authority & request acceptance of FERC Electric Tariff, Original Volume 1.

Filed Date: 6/5/2006.

Accession Number: 20060608–0610.

Comment Date: 5 p.m. Eastern Time on Monday, June 26, 2006.

Docket Numbers: ER06–1099–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits revisions to its OAT&EM Tariff, FERC Electric Tariff, Volume 1.

Filed Date: 6/5/2006.

Accession Number: 20060608–0609.

Comment Date: 5 p.m. Eastern Time on Monday, June 26, 2006.

Docket Numbers: ER06–1100–000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Golden Spread Electric Coop, Inc submits its Sixth Informational Filing setting forth updated fixed cost associated with rates charges for sales of replacement energy pursuant to Rate Schedule 35, Order 614.

Filed Date: 6/5/2006.

Accession Number: 20060608–0608.

Comment Date: 5 p.m. Eastern Time on Monday, June 26, 2006.

Docket Numbers: ER06–1102–000.

Applicants: Central Power Maine Power Company.

Description: Central Maine Power Co's submits a petition to terminate its Executed Interconnection Agreement, Long-Term Pt-to-Pt Transmission Agreement and Unexecuted Local Network Transmission Service Agreement with Androscoggin Energy, LLC.

Filed Date: 6/5/2006.

Accession Number: 20060608–0605.

Comment Date: 5 p.m. Eastern Time on Monday, June 26, 2006.

Docket Numbers: ER06–1103–000; ER06–1104–000; ER06–1105–000; ER06–1106–000; ER06–1107–000; ER06–1108–000; ER06–1109–000; ER06–1110–000; ER06–1111–000.

Applicants: Bridgeport Energy, LLC; Casco Bay Energy Company, LLC; Griffith Energy LLC; LSP Arlington Valley, LLC; LSP Mohave, LLC; LSP Morro Bay, LLC; LSP Moss Landing, LLC; LSP Oakland, LLC; LSP South Bay, LLC.

Description: Bridgeport Energy LLC, Casco Bay Energy Company, LLC et al submit Notices of Succession, revised tariffs, and notices of cancellations.

Filed Date: 6/2/2006.

Accession Number: 20060608–0611.

Comment Date: 5 p.m. Eastern Time on Friday, June 23, 2006.

Docket Numbers: ER06–1112–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits an informational compliance report which describes the status of efforts to develop a replacement for interim resource adequacy plan.

Filed Date: 6/6/2006.

Accession Number: 20060608–0603.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 27, 2006.

Docket Numbers: ER06–1113–000.

Applicants: Cinergy Marketing & Trading, LP.

Description: Cinergy Marketing & Trading, LP submits amendment to its market-based rate tariff and request for expedited treatment.

Filed Date: 6/5/2006.

Accession Number: 20060608–0558.

Comment Date: 5 p.m. Eastern Time on Monday, June 26, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9406 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9184–013–WI]

Flambeau Hydro, LLC; Notice of Availability of Environmental Assessment

June 9, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a subsequent license for the Danbury Hydroelectric Project, located on the Yellow River in Burnett County, Wisconsin, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that issuing a subsequent license for the project, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission. 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix "Danbury Project No. 9184–013" to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. For further information, contact Tim Konnert at (202) 502–6359.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9394 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12597–002—Montana; Project No. 12598–002—Montana; Project No. 12599–002—Montana]

Lower Turnbull Drop; Upper Turnbull Drop; Mill Coulee Drops; Notice of Availability of Environmental Assessment

June 8, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), Office of Energy Projects staff has reviewed the application for Birch Power Company's proposed Lower Turnbull Drop and Upper Turnbull Drop projects and Wade Jacobsen's proposed Mill Coulee Drops Project and prepared an environmental assessment (EA). The proposed projects would be located on the Spring Valley and Mill Coulee Canals, near the Town of Fairfield, in Teton and Cascade counties, Montana.

This EA contains the Commission staff's analysis of the potential future environmental effects of the project, and staff has concluded that licensing the projects, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter one of the projects'' docket numbers, excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to these or other pending projects.

Please file any comments (an original and 8 copies) within 30 days from the date of this letter. The comments should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Lower Turnbull Drop Project No. 12597–002, Upper Turnbull Drop Project No. 12598–002, and Mill Coulee Drops Project No. 12599–002" to all comments. Comments may be filed electronically via the Internet in lieu of paper.

See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-filing" link. The Commission strongly encourages electronic filings.

Please contact Dianne Rodman by telephone at 202–502–6077 or by e-mail at *dianne.rodman@ferc.gov* if you have any questions.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9379 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–409–000]

Calypo U.S. Pipeline, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Modifications to the Calypso U.S. Pipeline Project and Request for Comments on Environmental Issues

June 9, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) and the Minerals Management Service (MMS) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Modifications to the Calypso U.S. Pipeline Project (Project) proposed by Calypso U.S. Pipeline, LLC (Calypso) in Broward County, Florida, State Waters of Florida, and Federal Waters of the United States.[1] The Tractebel Calypso Pipeline Project received a Certificate of Public Convenience and Necessity from the Commission on March 24, 2004 in Docket Nos. CP01–409–000, *et al.* Calypso was formerly named Tractebel Calypso Pipeline, LLC, and hereafter the name "Calypso" is used to refer to the applicant for the proposed Project, including references to activities that occurred before Calypso's name change. Calypso has now proposed modifications to their original proposal, and those proposed modifications will be reviewed by Commission and MMS staff. The Project modifications reflect the incorporation of tunnel construction methodology for the nearshore portion of the pipeline, as well as certain other design changes, for the natural gas pipeline between the United States and the Bahamas. This EA will be used by the Commission in its decision-making process to determine whether the Project modifications are in the public convenience and necessity. The MMS will have primary responsibility for offshore analysis in U.S. waters and will coordinate with the U.S. Army Corps of Engineers regarding Florida State waters review.

The FERC is the lead agency and the MMS is a federal cooperating agency for the Project because the MMS has jurisdiction by law, as well as special expertise, regarding the potential environmental impacts associated with that portion of the proposed pipeline that would be installed on the Outer Continental Shelf.

This notice is being sent to affected landowners; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries and newspapers; and other parties that expressed an interest in the original project and received a copy of FERC's *Final Environmental Impact Statement for the Tractebel Calypso Pipeline Project* (issued January 23, 2004). The notice is also being sent to all identified potential right-of-way grantors. No new landowners are affected by the proposed modifications.

If you are a landowner receiving this notice, you may be contacted by a Calypso representative about the acquisition of an easement to construct, operate, and maintain the proposed Project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the Project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings.

Summary of the Proposed Project

As certificated, the Calypso Project would consist of a new 24-inch-diameter interstate natural gas pipeline, and certain ancillary facilities, that would extend approximately 42.5 miles from a receipt point on the Exclusive Economic Zone (EEZ) boundary between the United States and the Bahamas to an interconnect with the existing Florida Gas Transmission System (FGT) pipeline at the Florida Power and Light (FPL) Fort Lauderdale Power Plant in Broward County, Florida. Calypso's proposed modifications reflect the incorporation of tunnel construction methodology for the nearshore portion of the pipeline, as well as certain other design changes. Calypso developed the proposed modifications to enhance flexibility for gas deliveries to FGT and address certain delays that it has encountered in meeting its initially proposed construction schedule.

Calypso explains that the use of the tunnel construction methodology would allow it to construct the nearshore portion of the pipeline using an approximately 3.2-mile-long tunnel, with certain minor route changes to accommodate the methodology, as opposed to the series of horizontal directional drills (HDDs) that the Commission has already approved. Calypso also proposes to increase the pipeline diameter from 24 inches to 30 inches and internally coat the pipeline, to allow for increased hourly flow rates, but does not propose to increase the certificated capacity (832,000 dekatherms/day) or the maximum operating pressure (MAOP) of its pipeline. Though the MAOP would remain 2,200 pounds per square inch gauge (psig), Calypso indicates that the pipeline would most likely be operated at approximately 1,530 psig. The onshore aboveground facilities would be identical to the certificated Project with the exception of newly proposed tunnel shaft access facilities and relocation of the underground block valve facility from the certificated landfall point at John U. Lloyd Beach State Park to the modified landfall point within Port Everglades.

Calypso designed the proposed tunnel installation to further minimize the potential for direct impacts and the risk of inadvertent impacts to sensitive marine resources, particularly the hardbottom and coral reef resources that occur in the nearshore environment of the Project area. The proposed tunnel modification would replace previously certificated plans to perform an HDD of the Port Everglades Turning basin and two HDDs beneath the nearshore reef systems, with the latter two HDDs connected by an open-cut trench through the a dredged material disposal site referred to as the submerged breakwater spoil area (SBSA). The tunnel modification would avoid the need for offshore construction workspaces within the SBSA and to the west of the dominant reef trends. Calypso indicates that elimination of those offshore workspaces would minimize direct impacts and significantly reduce the potential for inadvertent impacts in proximity to the reefs (*e.g.*, unanticipated spills, anchor impacts, work vessel passage over reefs, etc.). Additionally, Calypso states that the equipment used to construct the tunnel would not use drilling fluids under high pressure, thereby minimizing the potential risk of an inadvertent release of drilling muds, or frac-out, which could potentially have

[1] Calypso's application was filed with the Commission on May 9, 2006, pursuant to section 7 of the Natural Gas Act (NGA) and part 157 and part 284 of the Commission's Regulations.

occurred in association with the HDD installation methodology.

The proposed tunnel would extend from an entrance point to the north of Spangler Boulevard within Port Everglades (milepost [MP] 36.8), to an exit point on the sea floor where the water depth is approximately 126 feet deep, seaward of the mapped edge of the easternmost reef trend. A 20-foot by 50-foot, 210-foot-deep entrance shaft would be constructed at the tunnel entry point. From that point, a slurry shield tunnel boring machine (TBM) would be used to construct a watertight, approximately 16,900-foot-long, 10-foot-internal diameter, concrete-lined tunnel. Following completion of tunnel construction, all operating machinery would be removed from the TBM, but the TBM shield and steel case would be left in place. Once complete, the tunnel would provide a conduit for installation of the nearshore portion of the pipeline. The pipeline string to be installed within the tunnel would be assembled inside the tunnel.

At the end of the tunnel (MP 33.6), a single basin measuring approximately 20 feet deep, 75 feet long, and 60 feet wide, would be dredged over the top of the tunnel endpoint to facilitate connection between the tunnel and offshore, direct lay segments of the proposed pipeline. At the end of the tunnel, a 60-inch-diameter steel casing would be drilled from above into the tunnel lining, and a vertical pipeline riser would be installed within the casing. A riser casing head box would be installed over the riser and casing within the dredged basin, and the connection to the offshore, direct lay portion of the pipeline would be accomplished inside the riser casing head box. Beyond the tunnel exit point, the pipeline would be installed on the seafloor using specialized pipelay barges, as described in the final Environmental Impact Statement prepared for the Calypso Pipeline Project.

Following pipeline installation, the dredged basin would be backfilled with at least three feet of clean calcium carbonate (limestone) with the uppermost 18 inches of backfill consisting of approximately 1- to 2-foot-diameter lime rock cobbles. Articulated concrete mats would be used to cover and protect the approximately 1,700-foot-long segment of the pipeline extending from the dredged basin to a water depth of 200 feet. Between depths of 200 and 1,000 feet, the pipeline would be coated with concrete for on-bottom stability and protection. At depths greater than 1,000 feet, the pipeline would not be covered, but would be coated for corrosion protection and designed with a heavier wall thickness for on-bottom stability.

No onshore alignment changes would be required in association with the proposed modifications west of the proposed landfall in Port Everglades. Calypso has slightly revised its proposed nearshore route to accommodate the tunnel installation methodology and to minimize construction activities outside the tunnel. The revised nearshore route would reduce the length of the proposed pipeline by approximately 0.2 mile, but would not differ substantively in alignment from the certificated Project route. However, as a result of the proposed changes, a pipeline alignment through, and construction work areas within, John U. Lloyd Beach State Park would be completely avoided. Seaward of the tunnel exit point, the previously authorized offshore Project route would be unchanged by the proposed modifications.

The previously certificated facilities, as modified by the Calypso proposal, are summarized in Table 1 below, and the proposed alignment of the modified nearshore Project facilities is depicted in Appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the Project, submit your request using the form in Appendix 2.

TABLE 1.—CALYPSO U.S. PIPELINE PROJECT SUMMARY OF PREVIOUSLY AUTHORIZED PROJECT FACILITIES AS MODIFIED BY THE CURRENT PROPOSAL

Facility	Pipeline diameter	Approximate length (miles) [1]	Milepost	Location/jurisdiction
Pipeline Facilities:				
Offshore pipeline	30-inch*	31.6	0.0 to 31.6	U.S. Federal Waters.
Offshore pipeline	30-inch*	5.3*	31.6 to 36.8*	Florida State Waters.
Onshore pipeline	30-inch*	5.5*	36.8 to 42.3*	Broward County.
Total Length [2]		42.3		
Aboveground Facilities:				
Tunnel shaft access*	N/A	N/A	36.8*	Broward County.
Block valve (below ground)	N/A	N/A	36.9*	Broward County.
Meter and pressure regulation station	N/A	N/A	42.2	Broward County.
Block valve	N/A	N/A	42.3	Broward County.

Notes:
N/A = not applicable.
*Denotes Project facilities or characteristics included in the proposed modification and that would differ from the certificated facilities.
[1] Approximate length provided in statute miles. Total values may not be additive due to rounding.
[2] Does not include 53.9 miles of nonjurisdictional pipeline that would be constructed in waters between the Bahamas and the Exclusive Economic Zone boundary.

Land Requirements for Construction

As a result of the tunnel installation methodology, Calypso indicates that the total area of seafloor affected by pipeline installation would be reduced from approximately 15.9 acres to approximately 11.2 acres. The portion of the pipeline in State of Florida territorial waters (MP 31.6 to MP 36.8) would be constructed within a 25-foot-wide right-of-way, which would be permanently retained for pipeline operation and maintenance. The alignment and width of the proposed

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (map), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the Public Participation section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

200-foot-wide construction and operational right-of-way for the offshore segment of the pipeline in Federal waters (MP 0.0 to MP 31.6) would be unaffected by the proposed modifications.

Other than the change in the landfall point for the pipeline, Calypso is not proposing any alignment changes to the onshore portion of the Project. Calypso does not anticipate that the increase in diameter of the pipeline from 24 inches to 30 inches would affect the size of the onshore construction or permanent rights-of-way. As described in the Final EIS, pipe storage and contractor yard land requirements would total approximately 15 acres. However, Calypso now indicates that those facilities, which would be located off of Eisenhower Boulevard, south of Spangler Boulevard, within the South Port area of Port Everglades, would also be used for temporary storage of spoils removed from the tunnel. Temporary construction work at the tunnel entry point along Spangler Boulevard would total approximately 0.9 acres. In addition, a temporary concrete segment fabrication batch plant would be required to fabricate the tunnel concrete segments, but Calypso has not yet identified the actual location or land requirements for that facility. With the exception of Calypso's temporary concrete-segment fabrication batch plant facility and the construction work area at the tunnel entry point, the onshore construction activities west of the tunnel entry point would not deviate from the certificated land requirements for extra work areas.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [3] will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

- Geology;
- Soils and sediments;
- Water resources;
- Marine biological resources;
- Endangered and threatened species;
- Land use and visual resources;
- Cultural resources;
- Socioeconomics;
- Air quality and noise;
- Reliability and safety; and
- Cumulative impacts.

We will not discuss impacts to certain resource areas since they are not present in the Project area, or would not be affected by the proposed facilities in a manner substantially different than has already been evaluated in the certificated Project. These resource areas include:

- Vegetation and wetlands;
- Onshore fish and wildlife;
- Recreation; and
- Alternatives.

Our independent analysis of the issues will be included in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section of this notice.

Currently Identified Environmental Issues

FERC staff attended a public open house (informational meeting) sponsored by Calypso on April 12, 2006, in the Project area. The issues and concerns identified by the commentors during that meeting will be considered in the preparation of the EA. In addition, FERC staff will also participate in an interagency meeting on June 27, 2006, to discuss the proposed Project and its associated environmental review process with key federal and state agencies.

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Calypso. This preliminary list of issues may be changed based on your comments and our analysis. The issues include:

- Fishery resources and benthic communities, especially relating to potential impacts to marine hardbottom habitats and coral reef resources;
- Water resources, including the potential for sedimentation and/or turbidity effects associated with dredging activities at the eastern terminus of the tunnel;
- Tunnel stability and the potential for subsidence;
- Aquatic toxicity of soil conditioners used during tunnel construction;
- Potential impacts to operations at the U.S. Navy's Naval Surface Warfare Center, Carderrock Division (NSWCCD) resulting from the proposed modifications;
- Increased onshore vehicle traffic and congestion associated with the proposed modified installation method;
- Safety and security of the proposed modifications; and
- Potential cumulative effects of the deepwater port project proposed by an affiliate of Calypso.

Calypso indicates that the proposed tunnel modification would further avoid or minimize impacts to the nearshore reef systems and significantly reduce the risk of unanticipated impacts, as compared to the HDD construction methodology authorized by the FERC certificate. Table 2 summarizes and compares the anticipated direct and indirect marine habitat impacts associated with the proposed modifications to those associated with the HDD construction methodology. Specifically, the landfall HDD exit point, the reef HDD entry point, and the 2,132-foot-long open-cut trench through the SBSA would be eliminated under the proposed modification. Additionally, the pipestrings that would have been assembled, dragged, and pulled back into the landfall and reef HDDs would be eliminated. Because these elements of the Project and their associated construction workspaces would be eliminated, Calypso indicates that the tunnel modification would significantly reduce direct impacts and the risk of inadvertent impacts in proximity to the reefs. Further, Calypso states that the TBM would not use drilling fluids under high pressure, thereby minimizing the potential risk of a frac-out, which could potentially have occurred in association with the HDD installation methodology.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

The proposed tunnel installation methodology also greatly reduces the potential for turbidity and sedimentation generating activities. As mentioned above, the tunnel modification would avoid dredging of entry and exit pits for the reef and landfall HDDs, respectively, as well as the open-cut trench through the SBSA. Additionally, Calypso would further minimize the extent of required dredging activities by abandoning the TBM in place rather than recovering it. Although the proposed tunnel installation methodology would require dredging to excavate a basin at the tunnel exit point, the extent of dredging activities would be the same as that required for the previously approved reef HDD exit point. Calypso would therefore use its previous estimates for turbidity and sedimentation associated with the HDD installation exit point as a means of estimating indirect impacts to marine resources for the proposed tunnel modification. Calypso would also continue with its plans to monitor for potential unanticipated environmental damage resulting from sedimentation and turbidity during construction.

TABLE 2.—CALYPSO U.S. PIPELINE PROJECT COMPARISON OF TOTAL MARINE BENTHIC IMPACTS AS MODIFIED BY THE CURRENT PROPOSAL [1]

Habitat type	Certificated HDD installation method		Proposed tunnel installation method	
	Permanent direct impact (acres)	Temporary indirect impact (acres)	Permanent direct impact (acres)	Temporary indirect impact (acres)
First Reef	0.00	0.00	0.00	0.00
Submerged Breakwater Spoil Area	1.46	2.80	0.00	0.00
Second Reef	0.00	0.00	0.00	0.00
Second Reef—Sand	0.12	0.00	0.00	0.00
Third Reef	0.02	0.00	0.00	0.00
Third Reef—Sand	0.14	0.00	0.00	0.00
Third Reef Transitional	1.41	0.32	0.99	0.20
Third Reef Transitional/Crater Zone Overlap	0.07	0.00	0.02	0.00
Crater Zone	0.54	0.00	0.15	0.00
Crater Zone/White Cerianthid Overlap	0.13	0.00	0.12	0.00
White Cerianthid Zone	0.24	0.00	0.28	0.00
White Cerianthid/Textured Sediment Overlap	0.00	0.00	0.00	0.00
Textured Sediment Zone	0.08	0.00	0.07	0.00
Sand/Uncolonized Bottom	7.95	0.58	9.39	0.00
Subtotal	12.16	3.7	11.02	0.20
Total Impact [2]:	15.86		11.22	

[1] For comparative purposes, both scenarios exclude those impacts associated with geotechnical investigations. Total marine benthic impacts resulting from geotechnical investigations were estimated as 0.34 acres in the Final EIS, but the reported total marine benthic impacts for that investigation were 0.31 acres.

[2] Total impact includes estimated additive effect of both temporary and permanent impacts.

Calypso has reported that after review of existing geotechnical information, as well as consultation with tunneling experts, there appears to be no major constructability issues that would constrain successful completion of the proposed tunnel. During tunnel construction, Calypso would implement various measures to stabilize the tunnel, monitor operations, and minimize the potential for tunnel collapse. Pre-fabricated concrete segments designed to withstand internal and external loading forces would be used to stabilize the tunnel as the TBM advances. The Commission will evaluate the feasibility of the proposed tunnel modification in consideration of site-specific geologic conditions and experience gained from other tunneling projects.

The U.S. Navy's NSWCCD is located in proximity to the proposed nearshore pipeline route. The NSWCCD uses systems that are highly sensitive to magnetic interference and that could be affected by the proposed pipeline Project. In order to address the Navy's concerns, Calypso previously proposed to construct approximately 2.6 miles of its pipeline using stainless steel pipe. Under the proposed modification, Calypso would change the pipeline materials for that portion of the Project route back to carbon steel. Calypso is coordinating the proposed modifications with the NSWCCD and anticipates amending the September 2003 Memorandum of Agreement with NSWCCD to accommodate technical issues related to the proposed modifications.

Spoil materials removed from the tunnel would be loaded on trucks at the construction work area north of Spangler Boulevard and stockpiled temporarily at the contractor yard along McIntosh Drive before being removed offsite for disposal. Calypso estimates that about 7,930 cubic yards of spoil would be removed to construct the tunnel shaft and about 83,600 cubic yards of spoil would be removed to construct the tunnel. The tunnel shaft would be located in an area historically associated with industrial activities, and therefore soils encountered during excavation activities could be contaminated. Similarly, the TBM could require the use of soil conditioners to stabilize the tunnel face during excavation activities, which could contaminate spoil materials removed during tunneling activities. Calypso anticipates that proper testing and/or handling of tunnel shaft and tunnel spoils would prevent any potential degradation of soil, surface water, or ground water quality.

The pre-fabricated concrete segments used to line the tunnel and the pipeline segments to be installed within the tunnel would be delivered to the Spangler Boulevard construction site. This activity in combination with the removal of spoil from the site could impact local traffic flow patterns. These activities would generate an increased

volume of traffic through the duration of the tunnel boring and pipeline installation process, which is expected to last approximately 16 months. Calypso would coordinate with Port Everglades and other local authorities to ensure that construction activities avoid or minimize any impact to the local traffic flow. Calypso may also be required to complete a traffic study to gauge the anticipated increased truck traffic in and around the Spangler Boulevard work area associated with implementation of the proposed installation modifications. If required, Calypso would file the traffic study with FERC once the study is complete.

The pipeline and ancillary facilities associated with the proposed Project would be designed, constructed, operated, and maintained in accordance with the U.S. Department of Transportation Minimum Federal Safety Standards in 49 CFR part 192, and any other applicable safety standards. These standards govern the distance between sectionalizing block valves and require the pipeline owner to install cathodic protection, use other corrosion-preventing procedures, and perform various maintenance activities. During construction, pipeline weld inspections and hydrostatic tests would be conducted to verify pipeline integrity and ensure the pipeline's ability to withstand the maximum designed operating pressure. Additionally, the proposed tunnel would be designed, constructed, installed, inspected, operated, and maintained, as applicable, in accordance with applicable U.S. Department of Labor, Occupational Health and Safety Administration, and local building code requirements. Precautions would also be taken to ensure that the facilities associated with the proposed modifications are secured during operation. The tunnel shaft access point that would be located north of Spangler Boulevard, would be enclosed by a fenced area and sited within the secured limits of Port Everglades.

The nonjurisdictional facilities associated with the previously certificated Calypso Project, which consist of a pipeline and liquefied natural gas (LNG) terminal and regasification facility that would be located within the jurisdiction of the Bahamian government, are discussed in the Final EIS. We will briefly describe the status of these facilities in the EA.

In addition, Calypso LNG, LLC, an affiliate of Calypso, recently proposed to construct and operate a deepwater port approximately 10 miles offshore of Port Everglades for the purpose of receiving and sending out new supplies of LNG through an interconnect with the Calypso U.S. Pipeline Project. As defined in the Deepwater Port Act of 1974 (as amended by the Maritime Transportation Security Act of 2002 to include natural gas facilities), deepwater ports include a fixed or floating structure (other than a vessel) or a group of structures that are located off the coast of the U.S. and that are used as a port or terminal for the transportation, storage, and further handling of oil or natural gas. This legislation requires that the DOT (U.S. Maritime Administration) and the U.S. Coast Guard (Coast Guard) regulate the licensing, siting, construction, and operation of deepwater ports for natural gas in Federal waters. The Coast Guard is currently assessing the completeness of the application that was filed by Calypso LNG, LLC in March 2006. The FERC has no jurisdiction over the siting or authorization of the proposed deepwater port facilities, but it is anticipated that the Coast Guard would adopt the Final EIS for the Calypso Project, as well as the EA for the proposed modifications, as part of its NEPA review for the deepwater port project.

Calypso reports that it is possible that the proposed deepwater port, if authorized and constructed, could provide a source of natural gas for the proposed Project, in lieu of natural gas that would be received from the nonjursidictional Bahamian LNG terminal and pipeline. In that event, the pipeline segment extending from the deepwater port location to the exclusive economic zone boundary would not be required. We will briefly describe the location, status, and potential cumulative effects of the proposed deepwater port facilities in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. Your comments should focus on the potential environmental effects of the proposal and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP01–409–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before July 14, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this Project. However, the Commission strongly encourages electronic filing of any comments in response to this Notice of Intent. For information on electronic filing of comments, please see the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide, as well as information in 18 CFR 385.2001(a)(1)(iii). Before you can submit comments you will need to create a free account, which can be created on-line.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or "intervenor". To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov*. Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

If you received this notice, you are on the environmental mailing list for this Project. If you do not want to send comments at this time, but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be removed from the Commission's environmental mailing list.

Availability of Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the "eLibrary link," select "General Search" and enter the Project docket number excluding the last three digits (i.e., CP01–409) in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits, if conducted, would be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9385 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

June 8, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2512–059.

c. *Date Filed:* May 19, 2006.

d. *Applicants:* Elkem Metals Company-Alloy, LP (transferor); and Alloy Power, LLC (transferee).

e. *Name and Location of Project:* The Hawks Nest—Glen Ferris Project is located on the New and Kanawha Rivers in Fayette County, West Virginia.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For the transferor: Robert C. Fallon, Dickstein Shapiro Morin & Oshinsky LLP, 2101 L Street NW., Washington, DC 20037, (202) 861–9134.

For the transferee: James F. Bowe Jr., Dewey Ballantine LLP, 1775 Pennsylvania Avenue NW., Washington, DC 20006, (202) 862–1000.

h. *FERC Contact:* Robert Bell at (202) 502–6062.

i. *Deadline for filing comments, protests, and motions to intervene:* June 23, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants seek Commission approval to transfer the license for the Hawks Nest—Glen Ferris Project from Elkem Metals Company-Alloy, LP to Alloy Power, LLC (Alloy).

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number (P–2512) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicants. If an agency does not file

comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants' representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9380 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License and Soliciting Comments, Motions To Intervene, and Protests

June 8, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.:* 271–095.

c. *Date Filed:* May 23, 2006.

d. *Applicant:* Entergy Arkansas, Inc. (Entergy).

e. *Name of Project:* Carpenter-Remmel Project.

f. *Location:* The project is located on the Quachita River in Hot Springs and Garland Counties, Arkansas on Hamilton Lake. The project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Blake Hogue, Hydro Operations, Entergy Arkansas, Inc., 141 West County Line Road, Malvern, AR 72104. Phone: (501) 844–2197.

i. *FERC Contact:* Gina Krump, *gina.krump@ferc.gov*, 202–502–6704.

j. *Deadline for filing comments and or motions:* July 7, 2006.

All documents (original and eight copies) should be filed with Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please reference "Carpenter-Remmel Project, FERC Project No. 271–095" on any comments or motions filed.

k. *Description of the Application:* Entergy requests Commission approval to permit John Carter to construct three docks with a total of 13 slips, one fuel dock with 6 double-wide slips, and a 600-foot-long boardwalk along the perimeter of the island for use as a commercial marina. Fueling facilities will contain both above and below-ground fuel tanks with a total of six fuel dispensers. All facilities will be handicap accessible.

l. *Locations of the Application:* This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "E-library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9381 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–422–000]

El Paso Natural Gas Company; Notice of Revised Date and Time of Settlement Conference

June 9, 2006.

On June 7, 2006, the Commission issued a "Notice of Informal Settlement Conference" in the above-referenced docket for the purpose of exploring a possible settlement. A new date and time has been established for the informal settlement conference as follows:

Date: June 14, 2006.

Time: 9 a.m. (EST).

The settlement conference will be held in Hearing Room 1, at the Commission's offices, 888 First Street, NE., Washington, DC 20426.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9396 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1551–013; ER96–1551–014; ER96–1551–015; ER01–615–009; ER01–615–010; ER01–615–011; EL05–2–000]

Public Service Company of New Mexico; Notice of Technical Conference and Denial of Motion for Extension of Time

June 9, 2006.

On June 6, 2006, Public Service Company of New Mexico (PNM) filed a motion requesting that the Commission convene a technical conference to discuss issues related to the possible mitigation of PNM's market-based rates in the El Paso Electric Company (El Paso) control area as provided for in an order issued on April 21, 2006, in these proceedings.[1] PNM also asks the

[1] *Public Service Company of New Mexico*, 115 FERC ¶ 61,090 (2006) (April 21 Order).

Commission to grant a 30-day extension of time to comply with Ordering Paragraph C of the April 21 Order.

PNM's motion for technical conference is granted. However, PNM's motion for extension of time to comply with the April 21 Order is denied.

Take notice that the Federal Energy Regulatory Commission will hold a technical conference to discuss mitigation for the El Paso control area. This technical conference will be held on June 14, 2006, in Hearing Room 2 of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, from approximately 9 a.m. until approximately 1 p.m. (EST).

Federal Energy Regulatory Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

All interested parties and staff are permitted to attend the technical conference. For additional information regarding the meeting, please contact Cynthia Henry at *Cynthia.Henry@ferc.gov* no later than 5 p.m. (EST), Tuesday, June 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9390 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD06–9–000]

RTO Border Utility Issues; Notice of Technical Conference on RTO Border Utility Issues

June 8, 2006.

Take notice that on July 10, 2006, staff of the Federal Energy Regulatory Commission will convene a technical conference on RTO border utility issues. The conference will be held at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will be open to the public. Commission staff will lead the conference and the Commissioners plan to attend.

In a recent Commission proceeding, parties raised the issue of an electric utility's ability to benefit from an RTO/ISO's regional markets while avoiding some or all of the costs attributable to membership in the RTO/ISO.[1] The Commission found that the issues raised "generic concerns with implications applicable to all RTOs and ISOs and to all market participants with whom they interact, whether directly or indirectly." The Commission then announced its intention to establish a technical conference to hear from interested parties concerning this issue.

Conference participants are asked to identify discrete concerns and contrasting views, establish which specific market services, reliability functions, and other features of RTO/ISO markets provide non-members with benefits for which they may not bear an appropriate share of the respective costs, or otherwise should not be entitled to, and propose solutions to identified problems. The Commission wishes to be informed about this issue across the country and invites representatives of all regions to participate.

Persons wishing to participate as panelists in the conference are asked to e-mail the following information to Commission staff by June 15, 2006: Name, organizational affiliation name and mailing address, title, voice and fax telephone numbers, e-mail address, brief bio, and a description of the proposed topic of presentation. Persons interested in attending the conference as a member of the audience are encouraged to e-mail their name and affiliation to facilitate security check in and to estimate meeting room needs. Both prospective panelists and audience members should e-mail their *information to Kristine.Bailey@ferc.gov*. In the body of the e-mail, please identify yourself as a potential panelist or audience member, and use "RTO Border Utility Conference" on the e-mail subject line. If you do not have access to e-mail, you may call Ms. Bailey at 202–502–6072.

An agenda will be issued prior to the conference. You may use the Commission's e-subscription service to be notified of future notices in this proceeding. Please visit *http://www.ferc.gov/docs-filing/esubscription.asp*.

A free webcast of this event will be available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts. It also offers access to open meetings via television in the DC area and via phone bridge for a fee. Visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

During the summer months, Commission employees adopt business casual dress, and the Commission encourages conference participants and attendees to do the same.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a Fax to 202–208–2106 with the required accommodations.

For further information on this conference, please contact: Udi Helman, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 202–502–8080. *Udi.Helman@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9383 Filed 6–15–06; 8:45 am]

BILLING CODE 6717–01–P

[1] *Louisville Gas and Electric Company, et al.*, 114 FERC ¶ 61,282 (2006) at P 64–65.

DEPARTMENT OF ENERGY

Southwestern Power Administration

Integrated System Power Rates

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of public review and comment.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), has prepared Current and Revised 2006 Power Repayment Studies which show the need for an increase in annual revenues to meet cost recovery criteria. Such increased revenues are needed primarily to cover increased investments and replacements in hydroelectric generating facilities and increased purchased power expenses. The Administrator has developed proposed Integrated System rates, which are supported by a rate design study, to recover the required revenues. The May 2006 Revised Study indicates that the proposed rates would increase annual system revenues approximately 25.9 percent from $136,267,400 to $171,505,848, over a three-year period to meet projected annual expenses and repay the investments in facilities over the required number of years.

DATES: The consultation and comment period will begin on the date of

publication of this **Federal Register** notice and will end August 15, 2006. The consultation and comment period has been shortened by the Administrator in accordance with Sec. 903.14(a) of 10 CFR part 903, because of the need to assure new rates are in place by October 1, 2006, to respond to financial difficulties resulting from FY 2006 drought conditions. A combined Public Information and Comment Forum (Forum) will be held in Tulsa, Oklahoma at 9 a.m. on July 12, 2006.

ADDRESSES: The Forum will be held in Southwestern's offices, Room 1460, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6696, *gene.reeves@swpa.gov*.

SUPPLEMENTARY INFORMATION: Originally established by Secretarial Order No. 1865 dated August 31, 1943, Southwestern is an agency within the U.S. Department of Energy which was created by an Act of the U.S. Congress, entitled the Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977. Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2 entitled Power Marketing Administration Financial Reporting. Procedures for Public Participation in Power and Transmission Rate Adjustments of the Power Marketing Administrations are found at title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR part 903). Procedures for the confirmation and approval of rates for the Federal Power Marketing Administrations are found at title 18, part 300, subpart L of the Code of Federal Regulations (18 CFR part 300).

Southwestern markets power from 24 multi-purpose reservoir projects with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these States plus Kansas and Louisiana. The costs associated with the hydropower facilities of 22 of the 24 projects are repaid via revenues received under the Integrated System rates, as are those of Southwestern's transmission facilities, which consist of 1,380 miles of high-voltage transmission lines, 24 substations, and 46 microwave and VHF radio sites. Costs associated with the Sam Rayburn and Robert D. Willis Dams, two Corps of Engineers projects that are isolated hydraulically, electrically, and financially from the Integrated System are repaid under separate rate schedules and are not addressed in this notice.

Following Department of Energy guidelines, Southwestern's Administrator, prepared a Current Power Repayment Study using existing system rates. The Study indicates that Southwestern's financial requirement to repay annual operating costs and the investment in power generating and transmission facilities for power and energy marketed by Southwestern will not be met without an increase in revenues. The need for increased revenues is primarily due to projected increases in investments and replacements at hydroelectric generating facilities of the U.S. Army's Corps of Engineers. Increased revenues are also needed because of higher projected average purchased power expenses due to market price increases and a severe drought during FY 2006 which has caused Southwestern to incur substantially more than average purchased power costs. The Revised Power Repayment Study shows that additional annual revenues of $35,238,448 (a 25.9 percent increase) are needed to meet these increased operating expense requirements and satisfy repayment criteria.

A Rate Design Study has also been completed which allocates the revenue requirement to the various system rate schedules for recovery, and provides for transmission service rates in general conformance with FERC Order Nos. 888 (A–C). The proposed rates would increase estimated annual revenues from $136,267,400 to $171,505,848 and would meet annual operating expenses and repay project and transmission system investments within the required number of years. As indicated in the Integrated System Rate Design Study, this revenue would be developed through increases in the charges for sales of capacity and energy, and transmission services, including some of the ancillary services for deliveries of both Federal and non-Federal power and associated energy from the transmission system of Southwestern.

Another component of the Integrated System rates for power and energy, the Purchased Power Adder (PPA), produces revenues to cover the cost of power purchased to meet contractual obligations. The PPA is based on Southwestern's average annual purchased power needs and has been increased from the existing rate to reflect projected power costs based on present market rates. Southwestern is further proposing to expand the Administrator's authority to adjust the PPA at his discretion (Discretionary Purchased Power Adder Adjustment) to increase the size of the Discretionary PPA Adjustment and the frequency of its application to no more than twice annually (limited to ±$0.0067 (6.7 mills)/kWh per year) based on the need for greater flexibility to better manage cash flow during drought conditions. With increased flexibility, Southwestern will be able to alleviate some of the increased revenue pressure of drought situations, such as has occurred during the drought of 2006, by implementing increases more frequently.

Because of concerns expressed by Southwestern's customers, during their informal participation in the development of the Power Repayment and Rate Design Studies, regarding the magnitude and underlying causes of the proposed increase, Southwestern is proposing to increase revenue in three steps over a three-year period.

The first step of the rate increase, beginning October 1, 2006, will incorporate increased PPA costs ($8,562,500 or 6.3 percent), with the PPA increasing from $0.0029 (2.9 mills)/kWh to $0.0067 (6.7 mills)/kWh during the period that the rates are in effect. The Administrator's Discretionary PPA Adjustment will be set to recover purchased power costs for all of FY 2006 resulting from the drought which far exceed the average. Presently, this rate would be $0.0034 (3.4 mills)/kWh ($7,620,216 or 5.6 percent) based on current costs through May 2006. All other rates currently approved will remain in effect through September 30, 2007.

The second step of the rate increase, beginning October 1, 2007, through September 30, 2008, will incorporate ½ of the remaining revenue requirement ($9,527,866 or 7.0 percent) caused by increased investments and replacements in facilities. As a result, the rate for supplemental peaking energy will increase to $0.0082 (8.2 mills)/kWh and the capacity charge will increase to $3.18/KW/Mo.

The final step of the rate increase, beginning October 1, 2008, through September 30, 2010, will reach the full revenue requirement of $19,055,732, or 14.0 percent revenue increase, caused by the increased investments and replacements, and combined with the PPA increase to $0.0067 (6.7 mills)/kWh ($8,562 500 or 6.3 percent) and the $0.0034 (3.4 mills)/kWh Discretionary PPA Adjustment increase ($7,620,216 or 5.6 percent) from the first and second years, will ensure that cost recovery will

be accomplished as required. The capacity rate will increase to $3.51/kW/Mo and ancillary services will increase modestly, while the transmission capacity rate will increase to $0.95/kW/Mo, as well as the rate for network service.

Below is a general comparison of the existing and proposed system rates:

Generation rates	Existing rates	Proposed rates		
	Rate schedule P–05 (System Peaking)	Rate schedule P–06 (System Peaking) Step 1 10/1/06–9/30/07	Rate schedule P–06 (System Peaking) Step 2 10/1/07–9/30/08	Rate schedule P–06 (System Peaking) Step 3 10/1/08—9/30/10
Capacity				
Grid or 138–161 kV	$3.03/kW/Mo	$3.03/kW/Mo	$3.18/kW/Mo	$3.51/kW/Mo.
Required Ancillary Services (generation in control area).	$0.09/kW/Mo	$0.09/kW/Mo	$0.09/kW/Mo	$0.10/kW/Mo.
Regulation & Freq. Response (generation in control area).	$0.08/kW/Mo	$0.08/kW/Mo	$0.08/kW/Mo	$0.09/kW/Mo.
Reserve Ancillary Services (generation in control area).	$0.0158/kW/Mo	$0.0158/kW/Mo	$0.0158/kW/Mo	$0.0184/kW/Mo.
Transformation Service 69 kV (applied to usage, not reservation).	$0.30/kW/Mo	$0.30/kW/Mo	$0.30/kW/Mo	$0.30/kW/Mo.
Energy				
Peaking Energy	$0.0082/kWh	$0.0082/kWh	$0.0082/kWh	$0.0082/kWh.
Supplemental Peaking Energy	$0.0055/kWh	$0.0055/kWh	$0.0082/kWh	$0.0082/kWh
Purchased Power Adder (PPA)	$0.0029/kWh	$0.0067/kWh	$0.0067/kWh	$0.0067/kWh.
Administrator's Discretionary PPA Adjustment Applied.	$0.0/kWh	$0.0034/kWh	$0.0034/kWh	$0.0034/kWh.
Administrator's Discretionary PPA Adjustment Authority.	±$0.0011/kWh annually.	±$0.0067/kWh annually.	±$0.0067/kWh annually.	±$0.0067/kWh annually.

Transmission rates	Rate schedule NFTS–5 (Transmission)	Rate schedule NFTS–06 (Transmission)	Rate schedule NFTS–06 (Transmission)	Rate schedule NFTS–06 (Transmission)
Capacity (Firm Reservation with energy) Grid or 138–161 kV.	$0.90/kW/Mo, $0.225/kW/Week, $0.0409/kW/Day.	$0.90/kW/Mo, $0.225/kW/Week, $0.0409/kW/Day.	$0.90/kW/Mo, $0.225/kW/Week, $0.0409/kW/Day.	$0.95/kW/Mo, $0.238/kW/Week, $0.0432/kW/Day.
Required Ancillary Services	$0.09/kW/Mo, or $0.023/kW/Week, or $0.0041/kW/Day.	$0.09/kW/Mo, or $0.023/kW/Week, or $0.0041/kW/Day.	$0.09/kW/Mo, or $0.023/kW/Week, or $0.0041/kW/Day.	$0.10/kW/Mo, or $0.025/kW/Week, or $0.0045/kW/Day.
Reserve Ancillary Services (generation in control area).	$0.0158/kW/Mo, or $0.00395/kW/Week, or $0.00072/kW/Day.	$0.0158/kW/Mo, or $0.00395/kW/Week, or $0.00072/kW/Day.	$0.0158/kW/Mo, or $0.00395/kW/Week, or $0.00072/kW/Day.	$0.0184/kW/Mo, or $0.0046/kW/Week, or $0.00084/kW/Day.
Regulation & Freq Response (deliveries within control area).	$0.08/kW/Mo, or $0.020/kW/Week, or $0.0036/kW/Day.	$0.08/kW/Mo, or $0.020/kW/Week, or $0.0036/kW/Day.	$0.08/kW/Mo, or $0.020/kW/Week, or $0.0036/kW/Day.	$0.09/kW/Mo, or $0.023/kW/Week, or $0.0041/kW/Day.
Transformation Service 69 kV and below (applied on usage, not reservation) No weekly/daily rates.	$0.30/kW/Mo	$0.30/kW/Mo	$0.30/kW/Mo	$0.30/kW/Mo.
Capacity (Non-firm with energy)	No capacity charge 80% of firm monthly charge divided by 4 for weekly rate, divided by 22 for daily rate, and divided by 352 for hourly rate.	No capacity charge 80% of firm monthly charge divided by 4 for weekly rate. divided by 22 for daily rate, and divided by 352 for hourly rate.	No capacity charge 80% of firm monthly charge divided by 4 for weekly rate, divided by 22 for daily rate, and divided by 352 for hourly rate.	No capacity charge 80% of firm monthly charge divided by 4 for weekly rate, divided by 22 for daily rate, and divided by 352 for hourly rate.
Network Service	$0.90/kW/Mo	$0.90/kW/Mo	$0.90/kW/Mo	$0.95/kW/Mo.
Required Ancillary Services	$0.09/kW/Mo	$0.09/kW/Mo	$0.09/kW/Mo	$0.10/kW/Mo.
Reserve Ancillary Services (generation in control area).	$0.00158/kW/Mo	$0.00158/kW/Mo	$0.00158/kW/Mo	$0.00184/kW/Mo.
Regulation & Freq Response (deliveries within control area).	$0.08/kW/Mo	$0.08/kW/Mo	$0.08/kW/Mo	$0.09/kW/Mo.

	Rate schedule EE–05 (Excess Energy)	Rate schedule EE–06 (Excess Energy)	Rate schedule EE–06 (Excess Energy)	Rate schedule EE–06 (Excess Energy)
Energy	$0.0055/kWh	$0.0055/kWh	$0.0082/kWh	$0.0082/kWh.

Opportunity is presented for Southwestern's customers and other interested parties to receive copies of the Integrated System Studies. If you desire a copy of the Integrated System Power Repayment Studies and Rate Design Study Data Package, submit your request to Mr. Forrest E. Reeves, Assistant Administrator, Office of

Corporate Operations, Southwestern Power Administration, One West Third, Tulsa, OK 74103 (918) 595–6696.

A Public Information and Comment Forum is scheduled for July 12, 2006, to explain to the public the proposed rates and supporting studies and to allow for comment. The proceeding will be transcribed. A chairman, who will be responsible for orderly procedure, will conduct the Forum. Questions concerning the rates, studies, and information presented at the Forum will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing, except that questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices.

Persons desiring to attend the Forum should indicate in writing (address cited above) by letter, email or facsimile transmission (918–595–6656) by July 1, 2006, their intent to appear at such Forum. If no one so indicates his or her intent to attend, no such Forum will be held. Persons interested in speaking at the Forum should submit a request to Mr. Forrest E. Reeves, Assistant Administrator, Southwestern, at least seven (7) calendar days prior to the Forum so that a list of forum participants can be developed. The chairman may allow others to speak if time permits.

A transcript of the Forum will be made. Copies of the transcript may be obtained, for a fee, from the transcribing service. Copies of all documents introduced will also be available from the transcribing service upon request for a fee. Five copies of all written comments, together with a diskette or compact disk in MS Word, on the proposed Integrated System Rates are due on or before August 15, 2006. Comments should be submitted to Forrest E. Reeves, Assistant Administrator, Southwestern, at the above-mentioned address for Southwestern's offices.

Following review of the oral and written comments and the information gathered in the course of the proceeding, the Administrator will submit the finalized Integrated System Rate Proposal, Power Repayment Studies, and Rate Design Study in support of the proposed rates to the Deputy Secretary of Energy for confirmation and approval on an interim basis, and subsequently to the Federal Energy Regulatory Commission (Commission) for confirmation and approval on a final basis. The Commission will allow the public an opportunity to provide written comments on the proposed rate increase before making a final decision.

Dated: May 30, 2006.

Michael A. Deihl,

Administrator.

[FR Doc. E6–9443 Filed 6–15–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2005–0043; FRL–8184–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Notification of Substantial Risk of Injury to Health and the Environment Under TSCA Sec. 8(e); EPA ICR; No. 0794.11, OMB No. 2070–0046

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces the submission of an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: (Notification of Substantial Risk of Injury to Health and the Environment Under TSCA Sec. 8(e); EPA ICR No. 0794.11, OMB No. 2070–0046. This is a request to renew an existing approved collection that is scheduled to expire on June 30, 2006. Under OMB regulations, the AGency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before July 17, 2006.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2005–0043, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code; 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408, 1200 Pennsylvania Ave., NW., Washington,DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@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 October 20, 2005 (70 FR 611240, EPA sought comments on this renewal ICR. EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the Supporting Statement of the ICR. Any comments related to 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–OPPT–2005–0043, which is available for online viewing at *http://www.epa.gov/edocket,* or in person inspection at the OPPT 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 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 Pollution Prevention and Toxics Docket is 202–566–0280. Use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search" then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose pubic disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov*. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, as

whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov*. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Notification of Substantial Risk of Injury to Health and the Environmental under TSCA Sec. 8(e).

ICR Status: This is a request to renew an existing approved collection. This ICR is scheduled to expire on June 30, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while submission is pending at OMB.

Abstract: Section 8(e) of the Toxic Substances Control Act (TSCA) requires that any person who manufactures, imports, processes or distributes in commerce a chemical substance or mixture and which obtains information that reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment must immediately inform EPA of such information. EPA routinely disseminates TSCA section 8(e) data it receives to other Federal agencies to provide information about newly discovered chemical hazards and risks.

Responses to the collection of information are mandatory (see 15 U.S.C. 2607(e)). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. the OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average between 5 hours and 51 hours per response, depending upon the type of submission. 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.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, import, process or distribute in commerce a chemical substance or mixture and which obtain information that reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment.

Frequency of Collection: On occasion.

Estimated average number of responses for each respondent: 1.3.

Estimated No. of Respondents: 345.

Estimated Total Annual Burden on Respondents: 18,135 hours.

Estimated Total Annual Costs: $979,290.

Changes in Burden Estimates: This request reflects an increase of 11,704 hours (from 6,431 hours to 18,135 hours) in the total estimated respondent burden from that currently in the OMB inventory. This increase is primarily due to an increase in estimated managerial and technical staff time to review and evaluate data to determine section 8(e) reportability, as well as the incorporation of two additional factors not previously considered separately, based on industry comments on the proposed ICR published in the **Federal Register**. Estimated managerial and staff time to review and evaluate data was revised upward from 25 to 45 hours, considering that many large companies may depend on a committee or team rather than one person to decide whether data are reportable. The other factors added to the estimate of submitter reporting burden are staff training for TSCA 8(e) regulatory requirements (4 hours per submission) and taking into account the time and resources needed to review data that may not be ultimately reported (estimated to be 50% of the number of initial section 8(e) submissions). This change is an adjustment.

Dated: June 8, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 06–5469 Filed 6–15–06; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2005–0061; FRL–8184–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Data Submissions for the Voluntary Children's Chemical Evaluation Program (VCCEP); EPA ICR No. 2055.02, OMB No. 2070–0165

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Data Submissions for the Voluntary Children's Chemical Evaluation Program (VCCEP); EPA ICR No. 2055.02, OMB No. 2070–0165. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before July 17, 2006.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2005–0061 to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@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 December 13, 2005 (70 FR 73741), EPA sought comments on this renewal ICR. EPA sought comments on this ICR

pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any comments related to 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–OPPT–2005–0061, which is available for online viewing at *http://www.regulations.gov*, or in person inspection at the OPPT 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 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 Pollution Prevention and Toxics Docket is 202–566–0280. Use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the docket ID number identified above and click submit.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *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. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *www.regulations.gov*. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *www.regulations.gov*. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Data Submissions for the Voluntary Children's Chemical Evaluation Program (VCCEP).

ICR Numbers: EPA ICR No. 2055.02, OMB Control No. 2070–0165

ICR Status: This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: VCCEP is a voluntary program intended to provide data to enable the public to understand the potential health risks to children associated with certain chemical exposures. EPA has asked companies that manufacture and/or import 23 chemicals that have been found in human tissues and the environment to volunteer to sponsor their evaluation in VCCEP. VCCEP consists of three tiers which a sponsor may commit to separately. Thus far, EPA has received Tier 1 commitments for 20 chemicals. As part of their sponsorship, companies will submit commitment letters, collect and/or develop health effects and exposure information on their chemical(s), integrate that information in a risk assessment, and develop a "Data Needs Assessment." The Data Needs Assessment will discuss the need for additional data, which could be provided by the next tier, to fully characterize the risks the chemical may pose to children.

The information submitted by the sponsor will be evaluated by a group of scientific experts with extensive, relevant experience in toxicity testing and exposure evaluations, a Peer Consultation Group. This Group will forward its opinions to EPA and the sponsor(s) concerning the adequacy of the assessments and the need for development of any additional information to fully assess risks to children. EPA will consider the opinions of the Peer Consultation Group and announce whether additional higher tier information is needed. Sponsors and the public will have an opportunity to comment on EPA's decision concerning data needs. EPA will consider these comments and issue a final decision. If the final decision is that additional information is needed, sponsors will be asked to volunteer to provide the next tier of information. If additional information is not needed, the risk communication and, if necessary, risk management phases of the program will be initiated.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 231.4 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; 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: Manufacturers, processors, importers, or distributors in commerce of certain chemical substances or mixtures who have volunteered to sponsor a chemical under the VCCEP.

Frequency of Collection: On occasion.

Estimated average number of responses for each respondent: 3.5.

Estimated No. of Respondents: 20.

Estimated Total Annual Burden on Respondents: 106,256 hours.

Estimated Total Annual Costs: $8,973,067.

Changes in Burden Estimates: There is a decrease of 48,076 hours (from 154,332 hours to 106,256 hours) in the total estimated respondent burden compared with that identified in the information collection most recently approved by OMB. This decrease represents the net effect of several changes in estimates and assumptions made from the previous VCCEP ICR, based on recent experiences with the VCCEP pilot. First, the estimated number of chemicals participating in the program was reduced from 23 to 20, based on actual participation. Second, because the Tier 1 Peer Consultation Documents submitted thus far to EPA have been so comprehensive (*e.g.*, many have contained information on Tier 2- and Tier 3-level tests), EPA is estimating that fewer chemicals will advance to the higher tiers. This decrease is an adjustment.

Dated: June 9, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–9458 Filed 6–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0066; FRL–8184–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Petroleum Dry Cleaners, EPA ICR Number 0997.08, OMB Control Number 2060–0079

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (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 collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 17, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2005–0066, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division (CAMPD), Office of Compliance, (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@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 September 21, 2005 (70 FR 55368), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no 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 number EPA–HQ–OECA–2005–0066, which is available for public viewing online at *http://www.regulations.gov*, or in-person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, 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 Enforcement and Compliance Docket is (202) 566–1927.

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, Confidential Business Information, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NSPS for Petroleum Dry Cleaners (40 CFR part 60, subpart JJJ).

ICR Numbers: EPA ICR Number 0997.08, OMB Control Number 2060–0079.

ICR Status: This ICR is scheduled to expire on June 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, and 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 New Source Performance Standards (NSPS) for petroleum dry cleaning industry were proposed on December 14, 1982, promulgated on September 21, 1984, and amended on October, 17, 2000 (65 FR 61773). These standards apply to each petroleum dry cleaning facility, which commenced construction, reconstructed, or modified after December 14, 1982, with a total manufacturer's rated dryer capacity equal to or greater than 38 kilograms (84 pounds).

Owners or operators of the affected facilities must make the required initial notifications, and performance tests. Respondents must also maintain record of performance tests. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part must maintain a file of these measurements, and retain the file for at least two years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

An agency may not conduct or sponsor, and a person is not required to respond to, a request for 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, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 25 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: Petroleum dry cleaners facilities.

Estimated Number of Respondents: 18.

Frequency of Response: Initially.

Estimated Total Annual Hour Burden: 1,664.

Estimated Total Annual Cost: There are no annualized capital/startup or O&M costs associated with this ICR.

Changes in the Estimates: There is an increase of 181 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The increase in burden from the most recently approved ICR is due to the fact that we are accounting for not only technical person-hours but also management and clerical person-hours.

There are no capital/startup and operations and maintenance (O&M) costs associated with this ICR.

Dated: June 8, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–9464 Filed 6–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8184–3]

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. 1884.03; Partial Update of the TSCA Section 8 (b) Inventory Data Base, Production and Site Reports; in 40 CFR part 710; was approved May 3, 2006; OMB Number 2070–0162; expires May 31, 2009.

EPA ICR No. 0138.08; Modification of Secondary Treatment Requirements for Discharges into Marine Waters; in 40 CFR part 125, subpart G; 40 CFR 124.53; 40 CFR 124.54; 40 CFR 125.59(c),(d), (f) and (g); 40 CFR 125.68(c) and (d) 40 CFR 125.63(b), (c), and (d); 40 CFR 125.66; 40 CFR 125.61(b)(2) and 125.64(b); was approved May 1, 2006; OMB Number 2040–0088; expires May 31, 2009.

EPA ICR No. 2067.03; Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium under the Safe Drinking Water Act; was approved May 9, 2006; OMB Number 2040–0246; expires May 31, 2009.

EPA ICR No. 1395.06; Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304 (Renewal); in 40 CFR part 355; was approved May 9, 2006; OMB Number 2050–0092; expires May 31, 2009.

EPA ICR No. 2219.01; Tips and Complaints Regarding Environmental Violations; was approved May 17, 2006; OMB Number 2020–0032; expires November 30, 2006.

EPA ICR No. 1189.17; Identification, Listing and Rulemaking Petitions for Wastewater Treatment Exemptions for Hazardous Waste Mixtures (Final Rule); in 40 CFR 261.3(a)(2)(iv); (A)–(G) (Revision) was approved May 25, 2006; OMB Number 2050–0053; expires January 31, 2008.

EPA ICR No. 2076.02; Reporting Requirements Under EPA's National Partnership for Environmental Priorities (Renewal); was approved May 30, 2006; OMB Number 2050–0190; expires May 31, 2009.

EPA ICR No. 2169.02; Cooling Water Intake Structures at Phase III Facilities (Final Rule); in 40 CFR 435.10, 40 CFR 435.40, 40 CFR 125.131 subpart N, Section 316(b); was approved May 31, 2006; OMB Number 2040–0268; expires May 31, 2009.

EPA ICR No. 1055.08; NSPS for Kraft Pulp Mills (Renewal); in 40 CFR part 60,subpart BB; was approved May 31, 2006; OMB Number 2060–0021; expires May 31, 2009.

Comment Filed

EPA ICR No. 1591.20; Regulation of Fuel and Fuel Additives: Gasoline Benzene Program (Proposed Rule); OMB Number 2060–0277; OMB filed comments on May 25, 2006.

Short Term Extensions

EPA ICR No. 0916.10; Final Consolidated Emissions Reporting Rule; OMB Number 2060–0088; on May 25, 2006 OMB extended the expiration date to June 30, 2006.

EPA ICR No. 1995.02; NESHAP for Coke Oven: Pushing, Quenching, and Battery Stacks (Final Rule); in 40 CFR part 63, subpart CCCCC; OMB Number 2060–0521; on May 12, 2006; OMB extended the expiration date to August 31, 2006.

EPA ICR No. 1541.07; NESHAP: Benzene Waste Operations; in 40 CFR part 61, subpart FF; OMB Number 2060–0183; on May 12, 2006; OMB extended the expiration date to August 31, 2006.

EPA ICR No. 2029.02; NESHAP for Asphalt Processing and Asphalt Roofing Manufacturing (Final Rule); in 40 CFR part 63, subpart LLLLL; on May 12, 2006; OMB Number 2060–0520; OMB extended the expiration date to June 30, 2006.

Dated: June 9, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–9465 Filed 6–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2006–0074; FRL–8184–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Voluntary Customer Satisfaction Surveys; ICR No. 1711.05, OMB Control No. 2090–0019

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 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 July 17, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OA–2006–0074 to: (1) EPA online using *http://www.regulations.gov* (preferred method), by e-mail to *docket.oei@epa.gov*, or by mail to: OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., 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.

FOR FURTHER INFORMATION CONTACT: Patricia Bonner, Office of Environmental Policy Innovation (MC 1807T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2204; fax number: 202–566–2200; e-mail address: *bonner.patricia@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 February 6, 2006 (71 FR 6070), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no 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–OA–2006–0074, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the OEI 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 OEI Docket is 202–566–1752.

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: Voluntary Customer Satisfaction Surveys.

ICR numbers: EPA ICR No. 1711.05, OMB Control No. 2090–0019.

ICR status: This ICR is scheduled to expire on June 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: EPA uses voluntary surveys to learn how satisfied EPA customers are with our services, and how we can improve services, products and processes. EPA surveys individuals who use services or could have. During the next three years, EPA plans up to 72 surveys, and will use results to target/measure service delivery improvements. By seeking renewal of the generic clearance for customer surveys, EPA will have the flexibility to gather the views of our customers to better determine the extent to which our services, products and processes satisfy their needs or need to be improved. The generic clearance will speed the review and approval of customer surveys that solicit opinions from EPA customers on a voluntary basis, and do not involve "fact-finding" for the purposes of regulatory development or enforcement.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5.4 minutes 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: The Executive Order describes a customer as "* * * an individual or entity who is directly served by a department or agency." The EPA, by the very nature of its mandate, serves very large and diverse groups that receive or are in some way affected by EPA services. Past EPA customer groups targeted for customer satisfaction surveys include individual citizens, industry/business, states/other governments, and Web users. Because several customer groups use the same services, a survey may reach more than one of the designated customer categories. (The code standard industrial code (SIC) for "General Public" is 99.)

Estimated Number of Respondents: 18,735.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 1,671.

Estimated Total Annual Cost: $8,466, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 1,295 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is in large part due to greater use of online survey tools.

Dated: June 9, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–9466 Filed 6–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6676–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 2006 (71 FR 17845).

Draft EISs

EIS No. 20050549, ERP No. D–BLM–K65296–AZ, Aqua Fria National Monument and Bradshaw-Harquahala, Proposed Resource Management Plan, Implementation, Yavapai County, AZ.

Summary: EPA expressed environmental concerns about impacts to riparian resources and air quality, and recommended additional

protections for these resources be included in the Final EIS. Rating EC2.

EIS No. 20060066, ERP No. D–CGD–G11047–00, Beacon Port Deepwater Port License Application, Construction and Operation, Deepwater Port and Offshore Pipeline, U.S. COE Section 404 and 10 Permits, Gulf of Mexico, San Patricio County, TX.

Summary: EPA expressed environmental objections to the open rack re-gasification system due to adverse environmental impacts to Gulf waters and habitat. EPA believes that these impacts can be corrected by the project modifications or other feasible technology, and requested additional information to evaluate and resolve the outstanding issues. Rating EO2.

EIS No. 20060117, ERP No. D–FHW–G40188–LA, I–49 South Wax Lake Outlet to Berwick Route US–90, Transportation Improvements, Funding and Right-of-Way Acquisition, St. Mary Parish, LA.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20060119, ERP No. D–FHW–D40335–VA, Harrisonburg Southeast Connector Location Study, Transportation Improvements from U.S. Route 11 to U.S. Route 33, Funding and U.S. Army COE Section 404 Permit, City of Harrisonburg, Rockingham County, VA.

Summary: EPA expressed environmental concerns about the proposed project, primarily regarding potential impacts to historic resources and impacts arising from induced growth in the study area. Rating EC2.

EIS No. 20060126, Erp No. Ds–Noa–K91012–00, Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region, Approval for Measures to End Bottomfish Overfishing in the Hawaii Archipelago, HI, GU and AS.

Summary: EPA expressed environmental concern about uncertainties of project alternatives due to a lack of data, and recommended adaptive management and a more conservative mortality reduction target be established. Rating EC2.

Final EISs

EIS No. 20060099, ERP No. F–AFS–J65428–CO, Vail Valley Forest Health Project, Landscape-Scale Vegetation Management and Fuels Reduction, White River National Forest, Holy Cross Ranger District, Eagle County, CO.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20060128, ERP No. F–FHW–J40167–UT, Brown Park Road Project, Reconstruction (Paving) and Partial Re-Alignment from Red Creek to Colorado State Line, Diamond Mountain Resource Management Plan Amendment (BLM), U.S. Army COE Section 404 Permit, Daggett County, UT.

Summary: EPA does not object to the proposed project.

EIS No. 20060153, ERP No. F–FHW–D40317–VA, Capital Beltway Study, Transportation Improvement to the 14–Mile Section of Capital Beltway (I–495) between the I–95/I–395/I–495 Interchange and the American Legion Bridge, Fairfax County, VA.

Summary: EPA continues to have environmental concern about the proposed project, particularly regarding potential noise issues as well as the lack of public involvement in the implementation of a High Occupancy Toll (HOT) lane concept.

EIS No. 20060159, ERP No. F–NPS–L61229–AK, Denali National Park and Preserve, Draft South Denali Implementation Plan, Matanuska-Susitna Borough, AK.

Summary: EPA does not object to the proposed project.

EIS No. 20060190, ERP No. F–AFS–F65054–MI, Ottawa National Forest, Proposed Land and Resource Management Plan, Forest Plan Revision, Implementation, Baraga, Gogebic, Houghton, Iron, Marquette and Ontonagan Counties, MI.

Summary: EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

Dated: June 13, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–9459 Filed 6–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–6676–3]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed June 5, 2006 Through June 9, 2006 Pursuant to 40 CFR 1506.9.

EIS No. 20060236, Draft Supplement, AFS, ID, Hidden Cedar Project, Updated Information, Manage Vegetation Conditions and the Transportation System, Idaho Panhandle National Forests, St. Joe Ranger District, Benewah, Latah and Shoshone Counties, ID , Comment Period Ends: July 31, 2006, Contact: Peter Ratcliffe 208–245–2531.

EIS No. 20060237, Draft EIS, AFS, AK, Traitors Cove Timber Sale Project, Timber Harvest and Road Construction, Implementation, Revillagigedo Island, Ketchikan-Misty Fiords Ranger District, Tongrass National Forest, AK, Comment Period Ends: July 31, 2006, Contact: Rob Reeck 907–228–4114.

EIS No. 20060238, Draft EIS, NRS, 00, West Tarkio Creek Watershed Plan, Construction of a Multiple-Purpose Structure for Rural Water Supply, Recreational Opportunities and Agricultural Pollution Control, Page, Montgomery and Fremont Counties, IA and Atchison County, MO, Comment Period Ends: July 31, 2006, Contact: David Beck 515–284–4135.

EIS No. 20060239, Draft EIS, NPS, WA, Olympic National Park General Management Plan, Implementation, Clallam, Grays Harbor, Jefferson and Mason Counties, WA, Comment Period Ends: September 15, 2006, Contact: Nancy Hendricks 360–565–3008.

EIS No. 20060240, Final Supplement, AFS, ID, West Gold Creek Project, Updated Information, Forest Management Activities Plan, Implementation, Idaho Panhandle National Forests, Sandpoints Ranger District, Bonner County, ID, Wait Period Ends: July 17, 2006, Contact: Albert Helgengerg 208–265–6643.

EIS No. 20060241, Draft EIS, AFS, WA, Olympic National Forest, Beyond Prevention: Site-Specific Invasive Plant Treatment Project, Implementation, Clallam, Grays Harbor, Jefferson and Mason Counties, WA, Comment Period Ends: July 31, 2006, Contact: Joan Ziegltrum 360–956–2320.

EIS No. 20060242, Draft EIS, FHW, WI, Tier 1—DEIS—United States Highway 8 Project, Construction from Wis 35 (N) to USH 53, Funding and Right-of-Way Permit, Polk and Barron Counties, WI, Comment Period Ends: August 11, 2006, Contact: Peter M. Garcia 608–829–7513.

EIS No. 20060243, Final Supplement, FHW, 00, MN–36/WI–64 St. Croix River Crossing Project, Construction a new Crossing between the Cities of Stillwater and Oak Park Heights, Washington County, MN and the town of St. Joseph in St. Croix County, WI, Wait Period Ends: July

17, 2006, Contact: Cheryl Martin 651–291–6120.

EIS No. 20060244, Final EIS, IBR, CA, San Luis Drainage Feature Re-evaluation Project, Provide Agricultural Drainage Service to the San Luis Unit, Several Counties, CA, Wait Period Ends: July 17, 2006, Contact: Gerald Robbins 916–978–5061.

EIS No. 20060245, Draft EIS, FHW, SC, Interstate 73 Southern Project, Construction from I–95 to the Myrtle Beach Region, Funding, NPDES Permit, U.S. Coast Guard Permit, U.S. Army COE Section 404 Permit, Dillon, Horry and Marion Counties, SC, Comment Period Ends: July 31, 2006, Contact: Patrick L. Tyndall 803–765–5460.

EIS No. 20060246, Draft EIS, NRC, NJ, Generic—License Renewal of Nuclear Plants (GEIS) Regarding Oyster Creek Nuclear Generating Station Supplement 28 to NUREG–1437, Located adjacent to Barnegat Bay, Lacy and Ocean Townships, Ocean County, NJ, Comment Period Ends: September 8, 2006, Contact: M. Masnick 301–415–1191.

EIS No. 20060247, Draft Supplement, FTA, FL, Miami North Corridor Project, Updated Information, Transit Improvement between NW 62 Street at Dr. Martin Luther King Jr. Station and NW 215th Street at the Dade/Broward Counties Line, Funding, Dade County, FL, Comment Period Ends: July 31, 2006, Contact: Mayra Diaz 305–375–4623.

EIS No. 20060248, Draft EIS, NRS, KY, Rockhouse Creek Watershed Plan, To Protect Residential and Non-residential Structures from Recurrent Flood Problem, Leslie County, KY, Comment Period Ends: July 31, 2006, Contact: David Sawyer 859–224–7399.

EIS No. 20060249, Draft Supplement, FRC, 00, Northeast (NE)-07 Project, Construction and Operation a Natural Gas Pipeline Facilities, Millennium Pipeline Project—Phase I, U.S. Army COE Section 10 and 404 Permits, several counties, NY, Morris County, NJ and Fairfield and New Haven Counties, CT, Comment Period Ends: July 31, 2006, Contact: Todd Sedmak 1–866–208–3372.

EIS No. 20060250, Final EIS, FHW, NC, Greensboro-High Point Road (NC–1486–NC–4121) Improvements from U.S. 311 (I–74) to Hilltop Road (NC–1424), Funding, Cities of Greensboro and High Point, Town of Jamestown, Guilford County, NC, Wait Period Ends: July 17, 2006, Contact: Jennifer Fuller 919–733–7842 Ext 244.

EIS No. 20060251, Final EIS, USA, AK, U.S. Army Alaska Battle Area Complex (BAX) and a Combined Arms Collective Training Facility (CACTF), Construction and Operation, Selected the Preferred Alternative, within U.S. Army Training Lands in Alaska, Wait Period Ends: July 17, 2006, Contact: Kevin Gardner 907–384–3331.

EIS No. 20060252, Final EIS, AFS, CA, Brown Project, Proposal to Improve Forest Health by Reducing Overcrowded Forest Stand Conditions, Trinity River Management Unit, Shasta-Trinity National Forest, Weaverville Ranger District, Trinity County, CA, Wait Period Ends: July 17, 2006, Contact: Ralph Phipps 530–226–2421.

Amended Notices

EIS No. 20060229, Revised Draft EIS, FHW, TX, Grand Parkway (State Highway 99) Updated Information, Segment F–2 from SH 249 to IH 45, Right-of-Way Permit and U.S. Army COE Section 404 Permit, Harris County, TX, Comment Period Ends: September 7, 2006, Contact: Gary N. Johnson 512–536–5964. Revision of Notice Published in FR June 9, 2006: Correction to the Title and Comment Period.

EIS No. 20060230, Draft Supplement, BLM, UT, Price Field Resource Management Plan, Supplemental Information and Analysis, Areas of Critical Environmental Concerns, Implementation, Carbon and Emery Counties, UT, Comment Period Ends: September 8, 2006, Contact: Floyd Johnson 435–636–3600 Revision of Notice Published in FR June 9, 2006: Correction to Comment Period from July 24, 2006 to September 8, 2006.

Dated: June 13, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–9460 Filed 6–15–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of New Exposure Draft *Definition and Recognition of Elements of Accrual-Basis Financial Statements*

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued an exposure draft, *Definition and Recognition of Elements of Accural-Basis Financial Statements.*

The Exposure Draft poses questions for respondents on issues such as the essential characteristics of assets and liabilities, deriving the definition of revenue and expense from the definitions of assets and liabilities, the government's ability to change laws in the future, uncertainty related to existence and measurement, and recognition criteria.

The Exposure Draft is available on the FASAB home page *http://www.fasab.gov/exposure.html.* Copies can be obtained by contacting FASAB at (202) 512–7350. Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by August 5th, 2006, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

For Further Information Contact: Wendy Comes, Executive Director, 441 G Street, NW., Washington, DC 20548, or call (202 512–7350.

Authority: Federal Advisory Committee Act, Public Law 92–463.

Dated: June 14, 2006.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 06–5495 Filed 6–15–05; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

June 13, 2006.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Ronnie Banks, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0600.

OMB Approval Date: 6/02/2006.

Expiration Date: 11/30/2006.

Title: Application to Partricipate in an FCC Auction.

Form No.: FCC–175.

Estimated Annual Burden: 560 responses; 765 total annual burden hours; 1.5 hours average per respondent.

Needs and Uses: The collection of information needed to implement the Commission's modified designated entity eligibility rules is essential to the Commission's mission. This information collection enables the Commission to ensure that only legitimate small businesses reap the benefits of the Commission's designated entity program. The information collected will be used by the Commission to determine if the applicant is legally, technically, and financially qualified to participate in an FCC auction. In addition, if the applicant applies for status as a particular type of auction participant pursuant to the Commission's rules, the Commission will use the information to determine if the applicant is eligible for the status requested. The Commission's auction rules and requirements are designed to ensure that the competitive bidding process is limited to serious qualified applicants; to deter possible abuse of the bidding and licensing process; and to enhance the use of competitive bidding to assign Commission licenses in furtherance of the public interest.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–9547 Filed 6–15–06; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Proposed Privacy Act System of Records

AGENCY: General Services Administration.

ACTION: Notice of establishment of a Government-wide system of records subject to the Privacy Act of 1974.

SUMMARY: The General Services Administration (GSA) proposes to establish a Government-wide system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system of records, GSA SmartPay® Purchase Charge Card Program (GSA/GOVT–6), will ensure that the Federal Purchase Charge Card Program, for which GSA has Government-wide responsibility, assembles and maintains information necessary for the efficient and cost effective operation, control, and management of commercial purchasing activities by Federal agencies. The system includes personal information of individuals to enhance the Federal Government's ability to monitor official purchases, payments, and expenses involving charge card transactions.

DATES: The system of records will become effective on July 26, 2006 unless comments received on or before that date result in a contrary determination.

ADDRESSES: ADDRESS: Comments should be directed to: Director, Support Services Division, Federal Acquisition Service, General Services Administration, 1901 South Bell Street, Arlington VA 22202.

FOR FURTHER INFORMATION CONTACT: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW, Washington, DC 20405; telephone (202) 501–1452.

Dated: June 8, 2006.

June V. Huber,

Director, Office of Information Management.

GSA/GOVT-6

System name: GSA SmartPay® Purchase Charge Card Program

System location: System records are located at the Federal agency for which an individual is authorized to perform purchase charge card transactions. Records necessary for a contractor to perform under a Federal agency contract are located at the contractor's facility. Contact the System Manager for additional information.

Categories of individuals covered by the system: Individuals covered by the system are Federal employees, contractors, and other individuals who apply for and/or use Government-assigned purchase charge cards.

Categories of records in the system: The system provides control over expenditure of funds through the use of Federal Government purchase cards. System records include:

a. Personal information on individuals who apply for and use Federal Government charge cards, including name, Social Security Number, agency of employment, business address (including city, state, country, and zip code), title or position, business telephone, business fax number, and e-mail address.

b. Account processing and management information, including purchase authorizations and vouchers, charge card applications, charge card receipts, terms and conditions for card use, charge card transactions, contractor monthly reports showing charges to individual account numbers, account balances, and other data needed to authorize, account for, and pay authorized purchase card expenses.

Authorities for maintenance of the system: E.O. 9397; E.O. 12931; 40 U.S.C. §§ 501–502.

Purpose: To establish and maintain a system for operating, controlling, and managing a purchase charge card program involving commercial purchases by authorized Federal Government employees and contractors.

Routine uses of the system records, including categories of users and their purpose for using the system:

System information may be accessed and used by authorized Federal agency employees or contractors to conduct official duties associated with the management and operation of the purchase charge card program. Information from this system also may be disclosed as a routine use:

a. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where an agency becomes aware of a violation or potential violation of civil or criminal law or regulation.

b. To an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; or other official engaged in investigating, or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To officials of labor organizations recognized under Pub. L. 95–454, when necessary to their duties of exclusive representation on personnel policies, practices, and matters affecting working conditions.

d. To another Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; clarifying a job; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

e. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), the Government Accountability Office (GAO) or other Federal agency when the information is required for program evaluation purposes.

f. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To an expert, consultant, or contractor in the performance of a Federal duty to which the information is relevant, including issuance of charge cards.

i. To GSA in the form of listings, reports, and records of all transportation related transactions, including refunds

and adjustments, by the contractor to enable audits of transportation related charges to the Government.

j. To GSA contract agents assigned to participating agencies for billing of purchase expenses.

k. To agency finance offices for debt collection purposes.

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 may be retrieved by name, Social Security Number, credit card number, and/or other personal identifier or appropriate type of designation.

Safeguards: System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and OMB Circular A–130. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data stored, processed, and transmitted. Paper records are stored in secure cabinets or rooms. Electronic records are protected by passwords and other appropriate security measures.

Retention and disposal: Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2A and CIO P 1820.1), authorized GSA records schedules, and by individual agencies.

System manager and address: Director, Office of Commercial Acquisition (FC), General Services Administration, 1901 South Bell Street, Arlington VA 22202. Also, officials responsible for individual agency purchase card programs using the SmartPay®system.

Notification procedure: Individuals may obtain information about their records from the purchase charge card program manager of the agency for which they transact purchases.

Record access procedures: Requests from individuals for access to their records should be addressed to their agency's purchase charge card program manager or to the finance office of the agency for which the individual transacts purchases.

Contesting record procedures: Individuals may access their records, contest the contents, and appeal determinations according to their agency's rules.

Record source categories: Information is obtained from individuals submitting charge card applications, monthly contractor reports, purchase records, managers, other agencies, non-Federal sources such as private firms, and other agency systems containing information pertaining to the purchase charge card program.

[FR Doc. E6–9407 Filed 6–15–06; 8:45 am]

BILLING CODE 6820–34–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension With Change of the Expiration Date of the Title VI Program Performance Report

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by July 17, 2006.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St., NW., rm. 10235, Washington, DC 20503, Attn: Brenda Aguilar, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Yvonne Jackson; Director; Office for American Indian, Alaskan Native and Native Hawaiian Programs; Administration on Aging, Washington, DC 20201; (202) 357–3501; *Yvonne.Jackson@aoa.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

The Program Performance Report provides a data base for AoA to (1) Monitor program achievement of performance objectives; (2) establish program policy and direction; and (3) prepare responses to Congress, the OMB, the General Accounting Office, other Federal departments, and public and private agencies as required by the OAA Title II sections 202(a)19 and 208; and prepare data for the Federal Interagency Task Force on Older Indians established pursuant to section 134(d) of the 1987 Amendments to the OAA.

AoA estimates the burden of this collection of information as follows: The estimate of total respondent burden is 243 hours per year to prepare reports.

In the **Federal Register** of February 23, 2006 (Vol. 71, No. 36, Page 9345), the agency requested comments on the proposed collection of information. No comments were received.

Dated: June 13, 2006.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E6–9487 Filed 6–15–06; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

2005 White House Conference on Aging

AGENCY: Administration on Aging, HHS.

ACTION: Notice of conference call.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given that the Policy Committee of the 2005 White House Conference on Aging will discuss items related to the final report of the Conference during a conference call. The conference call will be open to the public to listen, with call-ins limited to the number of telephone lines available. Individuals who plan to call in and need special assistance, such as TTY, should inform the contact person listed below in advance of the conference call. This notice is being published less than 15 days prior to the conference call due to scheduling problems.

DATES: The conference call will be held on Wednesday, June 14, 2006, at 11 a.m., Eastern Standard Time.

ADDRESSES: The conference call may be accessed by dialing, U.S. toll-free, 1–800–369–3181, passcode: 2108199, call leader: Nora Andrews, on the date and time indicated above.

FOR FURTHER INFORMATION CONTACT: Nora Andrews, (202) 357–3463, or e-mail at *Nora.Andrews@hhs.gov.* Registration is not required. Call in is on a first come, first-served basis.

Dated: June 13, 2006.

Edwin L. Walker,

Deputy Assistant Secretary for Policy and Programs.

[FR Doc. E6–9463 Filed 6–15–06; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: HIV II—Identifying Ground-Breaking Behavioral Interventions To Prevent HIV Transmission, Program Announcement (PA) PS06–005; Reducing Sexual Risk HIV Acquisition and Transmission, PA PS06–007 and HIV Prevention Intervention Research With HIV Positive Incarcerated Populations, PA PS06–011

Correction: This notice was published in the **Federal Register** on May 26, 2006, Volume 71, Number 102, page 30420. The date of the Special Emphasis Panel meeting has been changed to July 14, 2006.

Titles: HIV II—Identifying Ground-Breaking Behavioral Interventions to Prevent HIV Transmission, Program Announcement (PA) PS06–005; Reducing Sexual Risk HIV Acquisition and Transmission, PA PS06–007 and HIV Prevention Intervention Research With HIV Positive Incarcerated Populations, PA PS06–011.

FOR FURTHER INFORMATION CONTACT: Chris Langub, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road NE., Mailstop D72, Atlanta, GA 30333, Telephone 404–639–4640.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 9, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–9444 Filed 6–15–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Portfolio Review of Early Hearing Detection and Intervention Program

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Portfolio Review of Early Hearing Detection and Intervention Program.

Time and Date: 8:30 a.m.–5 p.m., July 17, 2006 (Closed).

Place: National Center on Birth Defects and Developmental Disabilities, CDC, 12 Executive Park Drive, Atlanta, GA 30329, Telephone Number 404–498–3800.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include a discussion of the "Early Hearing Detection and Intervention Program."

For Further Information Contact: Esther Sumartojo, Associate Director for Science and Public Health, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, NE., Mailstop E–87, Atlanta, GA 30333, Telephone Number 404–498–3800.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 9, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–9447 Filed 6–15–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10078, CMS–10197, CMS–10185 and CMS–685]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Matching Grants to States for the Operation of High Risk Pools and Supporting Regulations at 42 CFR 148.316, 148.318, and 148.320; *Use:* CMS is requiring this information as a condition of eligibility for grants that were authorized in the Trade Act of 2002 (Pub. L. 107–210). The information is necessary to determine if a State applicant meets the necessary eligibility criteria for a grant as required by the law. The respondents will be States that have a high risk pool as defined in Section 2744(c)(2) of the Public Health Service Act. The grants will provide matching funds to States that incur losses in the operation of high risk pools. High risk pools are set up by States to provide health insurance to individuals that cannot obtain health insurance in the private market because of a history of illness. *Form Number:* CMS–10078 (OMB#: 0938–0887); *Frequency:* Reporting—On occasion; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 33; *Total Annual Responses:* 33; *Total Annual Hours:* 1,320.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Evaluation of the Medicare National Competitive Bidding Program for DME; *Use:* Section 302(b) of The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) requires the Centers for Medicare and Medicaid Services (CMS) to begin a program of competitive bidding for durable medical equipment (DME), supplies, certain orthotics, and enteral nutrients and related equipment and supplies. MMA Section 303(d) requires a Report to Congress on the

program, covering program savings, reductions in cost sharing, impacts on access to and quality of affected goods and services, and beneficiary satisfaction. This project's purpose is to provide information for this Report to Congress. *Form Number:* CMS–10197 (OMB#: 0938–New); *Frequency:* Reporting—Other: Baseline and Follow-up; *Affected Public:* Individuals or Households, Business or other for-profit, Federal Government and Not-for-profit institutions; *Number of Respondents:* 12,671; *Total Annual Responses:* 12,671; *Total Annual Hours:* 6,557.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Part D Reporting Requirements and Supporting Regulations under 42 CFR 423.505; *Use:* Data collected via Medicare Part D Reporting Requirements will be an integral resource for oversight, monitoring, compliance and auditing activities necessary to ensure quality provision of the Medicare Prescription Drug Benefit to beneficiaries. Data will be validated, analyzed, and utilized for trend reporting by CMS. If outliers or other data anomalies are detected, CMS will work in collaboration with other CMS divisions for follow-up and resolution. *Form Number:* CMS–10185 (OMB#: 0938–0992); *Frequency:* Reporting: Quarterly and Semi-annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 3,203; *Total Annual Responses:* 12,812; *Total Annual Hours:* 102,496.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease (ESRD) Network Semi-Annual Cost Report Forms and Supporting Regulations in 42 CFR 405.2110 and 42 CFR 405.2112; *Use:* Section 1881(c) of the Social Security Act establishes End Stage Renal Disease (ESRD) Network contracts. The regulations designated at 42 CFR 405.2110 and 405.2112 designated 18 ESRD Networks which are funded by renewable contracts. These contracts are on 3-year cycles. To better administer the program, CMS is requiring contractors to submit semi-annual cost reports. The purpose of the cost reports is to enable the ESRD Networks to report costs in a standardized manner. This will allow CMS to review, compare and project ESRD Network costs during the life of the contract. *Form Number:* CMS–685 (OMB#: 0938–0657); *Frequency:* Reporting—Semi-annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 36; *Total Annual Hours:* 108.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on August 15, 2006.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—A, Attention: Melissa Musotto, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 9, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–9478 Filed 6–15–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–194 and CMS–R–52]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Disproportionate Share Adjustment Procedures and Criteria and Supporting Regulations in 42 CFR 412.106; *Use:* A hospital's disproportionate share adjustment is determined by its fiscal intermediary (FI) using a combination of Medicare Part A and Supplemental Security Income data provided by CMS, and Medicaid data calculated from the hospital's cost report. The data provided through these calculations are then compared to the qualifying criteria located in 42 CFR 412.106 to determine the final adjustment. If these calculations, based on the Federal fiscal year, do not allow the hospital to qualify for a disproportionate share adjustment, the hospital may request that the calculations be performed using its cost reporting period; *Form Number:* CMS–R–194 (OMB#: 0938–0691); *Frequency:* Recordkeeping and Reporting—On occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 100; *Total Annual Responses:* 100; *Total Annual Hours:* 100.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Conditions for Coverage of Suppliers of End Stage Renal Disease (ESRD) Services and Supporting Regulations Contained in 42 CFR 405.2100–405.2171; *Use:* The requirements associated with the Medicare and Medicaid Conditions for Coverage for Suppliers of ESRD Services fall into two categories: record keeping requirements and reporting requirements. With regard to the recordkeeping requirements, CMS uses these conditions for coverage to certify health care facilities that want to participate in the Medicare or Medicaid programs. These record keeping requirements are no different than other conditions for coverage in that they reflect comparable standards developed by industry organizations such as the Renal Physicians Association, American Society of Transplant Surgeons, and the National Association of Patients on Hemodialysis and Transplantation. With respect to reporting requirements, the information is needed to assess and ensure proper distribution and effective utilization of ESRD treatment resources while maintaining or improving quality of care. It is CMS's responsibility to closely monitor ESRD service utilization to prevent over-expansion of facilities

and resultant under-utilization; *Form Number:* CMS–R–52 (OMB#: 0938–0386); *Frequency:* Recordkeeping and Reporting—Annually; *Affected Public:* Business or other for-profit and Federal government; *Number of Respondents:* 4,757; *Total Annual Responses:* 4,757; *Total Annual Hours:* 160,702.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503. Fax Number: (202) 395–6974.

Dated: June 9, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–9479 Filed 6–15–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0222]

Merck & Co., Inc., et al.; Withdrawal of Approval of 65 New Drug Applications and 52 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 65 new drug applications (NDAs) and 52 abbreviated new drug applications (ANDAs) from multiple applicants. The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Effective June 16, 2006.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their requests, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 1–645	Vitamin B6 (pyridoxine hydrochloride (HCl))	Merck & Co., Inc., 770 Sumneytown Pike, P.O. Box 4, BLA–20, West Point, PA 19486–0004
NDA 5–521	Heparin Sodium Injection USP	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285
NDA 5–657	Tubocurarine Chloride Injection USP	Bristol-Myers Squibb Co., P.O. Box 4500, Princeton, NJ 08543–4500
NDA 5–794	Sultrin Triple Sulfa Cream and Triple Sulfa Tablets	Ortho-McNeil Pharmaceutical, Inc., 1000 U.S. Highway 202, P.O. Box 300, Raritan, NJ 08869–0602
NDA 6–012	Folvron (folic acid and iron)	Lederle Laboratories, 401 North Middleton Rd., Pearl River, NY 10965
NDA 7–149	Rubramin (cyanocobalamin) Tablets and Capsules	Bristol-Myers Squibb Co.
NDA 7–504	Acthar (corticotropin for injection)	Aventis Pharmaceuticals, Inc., 200 Crossing Blvd., BX 2–309E, Bridgewater, NJ 08807
NDA 7–794	Neothylline (dyphylline)	Teva Pharmaceuticals USA, 1090 Horsham Rd., P.O. Box 1090, North Wales, PA 19454
NDA 9–176	Cortril (hydrocortisone) Topical Ointment	Pfizer Global Pharmaceuticals, 235 East 42nd St., New York, NY 10017
NDA 10–028	Equanil (meprobamate) Tablets	Wyeth Pharmaceuticals, P.O. Box 8299, Philadelphia, PA 19101–8299
NDA 10–093	Biphetamine (dextroamphetamine and amphetamine) Capsules	Celltech Pharmaceuticals, Inc., 755 Jefferson Rd., P.O. Box 31710, Rochester, NY 14603
NDA 10–513	Ketonil (amino acids and electrolytes)	Merck & Co., Inc.
NDA 10–787	Iron Dextran Injection	Aventis Pharmaceuticals, Inc.
NDA 10–799	Dimetane (brompheniramine maleate) Tablets and Extendtabs	Wyeth Consumer Healthcare, 5 Giralda Farms, Madison, NJ 07940
NDA 11–340	Cerumenex (triethanolamine polypeptide oleate-condensate), 10%	The Purdue Frederick Co., 1 Stamford Forum, Stamford, CT 06901–3431

Application No.	Drug	Applicant
NDA 11–960	Aristocort (triamcinolone diacetate) Syrup	Astellas Pharma US, Inc., 3 Parkway North, Deerfield, IL 60015–2548
NDA 11–984	Decadron Phosphate (dexamethasone sodium phosphate) Sterile Ophthalmic Solution	Merck & Co., Inc.
NDA 12–122	Glucagon (glucagon HCl) for Injection	Eli Lilly & Co.
NDA 12–281	Robaxisal (methocarbamol USP and aspirin USP) Tablets	A.H. Robins Co., c/o Wyeth Pharmaceuticals, P.O. Box 8299, Philadelphia, PA 19101–8299
NDA 12–649	Periactin (cyproheptadine HCl)	Merck & Co., Inc.
NDA 12–703	Elavil (amitriptyline HCl) Tablets	AstraZeneca Pharmaceuticals, 1800 Concord Pike, P.O. Box 8355, Wilmington, DE 19803–8355
NDA 12–704	Elavil (amitriptyline HCl) Injection	Do.
NDA 13–220	Periactin (cyproheptadine HCl) Syrup, 2 milligrams (mg)/5 milliliters (mL)	Merck & Co., Inc.
NDA 13–400	Aldomet (methyldopa) Tablets	Do.
NDA 13–401	Aldomet (methyldopate HCl) Injection, 50 mg/mL	Do.
NDA 13–413	Dexacort Phosphate (dexamethasone sodium phosphate) in Respihaler	Celltech Pharmaceuticals, Inc.
NDA 16–016	Aldoclor–150 and -250 (methyldopa and chlorothiazide) Tablets, 250 mg/150 mg and 250 mg/250 mg	Merck & Co., Inc.
NDA 16–030	Bayer 8 Hour Aspirin and Measurin Aspirin (aspirin extended-release tablets), 650 mg	Bayer Healthcare, LLC, 36 Columbia Rd., P.O. Box 1910, Morristown, NJ 07962–1910
NDA 16–099	Atromid-S (clofibrate) Capsules	Wyeth Pharmaceuticals
NDA 16–745	Jergens Antibacterial Deodorant (triclocarban, 1%) Soap	Kao Brands Co., 2535 Springs Grove Ave., Cincinnati, OH 45214–1773
NDA 16–888	Selsun Blue (selenium sulfide) Cream/Shampoo, 1%	Abbott Laboratories, 625 Cleveland Ave., Columbus, OH 43215–1724
NDA 17–569	Renoquid (sulfacytine) Tablets	Glenwood LLC, 111 Cedar Lane, Englewood, NJ 07631
NDA 17–573	Vanceril (beclomethasone dipropionate) Inhalation Aerosol	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033
NDA 17–659	Alupent (metaproterenol sulfate) Inhalation Solution, 5%	Boehringer Ingelheim Pharmaceuticals, Inc., 900 Ridgebury Rd., P.O. Box 368, Ridgefield, CT 06877–0368
NDA 17–781	Diprosone (betamethasone dipropionate) Lotion	Schering Corp.
NDA 17–820	Dobutrex (dobutamine HCl) Sterile Injection	Eli Lilly & Co.
ANDA 18–023	Lactated Ringer's Injection USP	B. Braun Medical, Inc., 2525 McGaw Ave., P.O. Box 19791, Irvine, CA 92623–9791
ANDA 18–026	5% Dextrose and 0.9% Sodium Chloride (NaCl) Injection	Do.
ANDA 18–046	10% Dextrose Injection USP	Do.
ANDA 18–047	10% Dextrose and 0.9% NaCl Injection USP	Do.
ANDA 18–184	0.45% NaCl Injection USP	Do.
ANDA 18–186	1/6 Molar Sodium Lactate Injection USP in Plastic Container	Do.
ANDA 18–197	Ibuprofen Tablets	BASF Corp., 8800 Line Ave., Shreveport, LA 71106
ANDA 18–252	Isolyte S (multi-electrolyte injection) Injection	B. Braun Medical, Inc.
ANDA 18–256	5% Dextrose in Ringer's Injection	Do.
NDA 18–257	Tonocard (tocainide HCl) Tablets, 400 mg and 600 mg	AstraZeneca Pharmaceuticals

Application No.	Drug	Applicant
ANDA 18–274	Isolyte S (multi-electrolyte injection) with 5% Dextrose in Plastic Container	B. Braun Medical, Inc.
NDA 18–389	Aldomet (methyldopa) Oral Suspension, 250 mg/5 mL	Merck & Co., Inc.
NDA 18–682	TZ–3 (1% tioconazole) Dermal Cream	Pfizer, Inc., 235 East 42nd St., New York, NY 10017
NDA 18–686	Normodyne (labetalol HCl USP) Injection, 5 mg/mL	Schering Corp.
NDA 18–687	Normodyne (labetalol HCl USP) Tablets	Do.
ANDA 18–721	Ringer's Injection USP	B. Braun Medical, Inc.
NDA 18–754	Orudis (ketoprofen) Capsules, 25 mg, 50 mg, and 75 mg	Wyeth Pharmaceuticals
NDA 18–792	Neopham (amino acids) Injection	Hospira, Inc., 275 North Field Dr., Dept. 389, Bldg. 2, Lake Forest, IL 60045
NDA 18–901	Aminess (essential amino acids injection with histidine)	Do.
NDA 18–911	Heparin Sodium in 5% Dextrose Injection and Heparin Sodium in NaCl Injection	Do.
NDA 19–083	Theophylline and 5% Dextrose Injection	B. Braun Medical, Inc.
NDA 19–107	Protropin (somatrem) for Injection	Genentech, Inc., 1 DNA Way MS242, South San Francisco, CA 94080–4990
ANDA 19–138	Alphatrex (betamethasone dipropionate cream USP) 0.05%	Savage Laboratories, 60 Baylis Rd., Melville, NY 11747
ANDA 19–143	Alphatrex (betamethasone dipropionate ointment USP) 0.05%	Do.
NDA 19–383	Proventil (albuterol sulfate extended-release tablets USP) Repetabs	Schering Corp.
NDA 19–401	Pseudo–12 Suspension (pseudoephedrine polistirex extended-release suspension)	Celltech Pharmaceuticals, Inc.
NDA 19–523	Cysteine HCl Injection USP, 7.25%	Hospira, Inc.
NDA 19–589	Vancenase AQ (beclomethasone dipropionate) Nasal Spray	Schering Corp.
NDA 19–621	Ventolin (albuterol sulfate) Syrup	GlaxoSmithKline Pharmaceuticals, 5 More Dr., P.O. Box 13358, Research Triangle Park, NC 27709
NDA 20–035	Ergamisol (levamisole HCl) Tablets	Johnson & Johnson Pharmaceutical Research and Development, LLC, c/o Janssen Pharmaceutical Products, LP, 1125 Trenton-Harbourton Rd., K1–02B, Titusville, NJ 08560–0200
NDA 20–176	VitaPed (multivitamins)	Hospira, Inc.
NDA 20–338	Differin (adapalene) Solution, 0.1%	Galderma Laboratories, LP, 14501 North Freeway, Fort Worth, TX 76177
NDA 20–759	Trovan (trovafloxacin mesylate) Tablets, 100 mg and 200 mg	Pfizer, Inc.
NDA 20–760	Trovan (alatrofloxacin mesylate) Injection	Do.
NDA 20–847	Esclim (estradiol extended-release film) Transdermal System	Women First Healthcare, Inc., 380 Lexington Ave., New York, NY 10168
NDA 20–962	Emla (2.5% lidocaine and 2.5% prilocaine) Anesthetic Disc	AstraZeneca Pharmaceuticals
ANDA 40–023	Adrucil (fluorouracil injection USP), 50 mg/mL	Sicor Pharmaceuticals, Inc., 19 Hughes, Irvine, CA 92618
ANDA 40–147	Leucovorin Calcium Injection USP, 10 mg (base)/mL	Hospira, Inc.
NDA 50–039	Garamycin (gentamicin sulfate) Ophthalmic Solution	Schering Corp.

Application No.	Drug	Applicant
NDA 50–091	Chloroptic (chloramphenicol ophthalmic solution USP), 0.5%	Allergan, Inc., 2525 Dupont Dr., P.O. Box 19534, Irvine, CA 92623–9534
NDA 50–322	Neodecadron (neomycin sulfate and dexamethasone sodium phosphate) Sterile Ophthalmic Solution	Merck & Co., Inc.
NDA 50–368	Ilotycin (erythromycin) Ophthalmic Ointment	Eli Lilly & Co.
NDA 50–571	CefMax (cefmenoxime HCl) Injection	TAP Pharmaceutical Products, Inc., 675 North Field Dr., Lake Forest, IL 60045
NDA 50–648	Clindamycin Phosphate Injection in 5% Dextrose	Baxter Healthcare Corp., Route 120 & Wilson Rd., Round Lake, IL 60073
ANDA 60–429	Sumycin Capsules (tetracycline HCl capsules USP)	Apothecon, c/o Bristol-Myers Squibb Co., P.O. Box 4500, Princeton, NJ 08543–4500
ANDA 62–480	Gentacidin Solution (gentamicin sulfate ophthalmic solution USP)	Novartis Pharmaceuticals Corp., 1 Health Plaza, Bldg. 118, East Hanover, NJ 07936–1080
ANDA 62–597	Mytrex (nystatin and triamcinolone acetonide cream USP) 100,000 units/gram (g) and 1 mg/g	Savage Laboratories
ANDA 62–601	Mytrex (nystatin and triamcinolone acetonide ointment USP) 100,000 units/g and 1 mg/g	Do.
ANDA 62–750	Pipracil (piperacillin for injection), 2 g, 3 g, and 4 g	Wyeth Pharmaceuticals, Inc.
ANDA 63–186	Cephalexin Capsules USP, 250 mg and 500 mg	Apothecon, c/o Bristol-Myers Squibb Co.
ANDA 64–084	Sterile Bleomycin Sulfate for Injection USP, 15 and 30 units/vial	Sicor Pharmaceuticals, Inc.
ANDA 70–083	Ibuprofen Tablets USP, 400 mg	BASF Corp.
ANDA 70–099	Ibuprofen Tablets USP, 600 mg	Do.
ANDA 70–273	Alphatrex (betamethasone dipropionate lotion USP), 0.05%	Savage Laboratories
ANDA 70–745	Ibuprofen Tablets USP, 800 mg	BASF Corp.
ANDA 72–621	Acetylcysteine Solution USP, 10%	Roxane Laboratories, Inc., P.O. Box 16532, Columbus, OH 43216
ANDA 72–622	Acetylcysteine Solution USP, 20%	Do.
ANDA 72–995	Metoclopramide HCl Oral Solution, 10 mg/mL	Do.
ANDA 73–562	Diflunisal Tablets USP, 250 mg	Do.
ANDA 73–563	Diflunisal Tablets USP, 500 mg	Do.
ANDA 74–166	Toposar (etoposide injection USP), 20 mg/mL	Sicor Pharmaceuticals, Inc.
ANDA 74–541	Cimetidine HCl Oral Solution, 30 mg/5 mL	Roxane Laboratories, Inc.
ANDA 74–663	Acyclovir Sodium for Injection USP, 500 mg base/vial and 1 g base/vial	Hospira, Inc.
ANDA 75–179	Nabumetone Tablets	Copley Pharmaceutical, Inc., 1090 Horsham Rd., P.O. Box 1090, North Wales, PA 19454
ANDA 75–875	Carbamazepine Oral Suspension USP, 100 mg/5 mL	Taro Pharmaceutical Industries, Ltd., c/o Taro Pharmaceuticals, U.S. Agent, 5 Skyline Dr., Hawthorne, NY 10532
ANDA 80–643	Diphenhydramine HCl Elixir USP, 25 mg/10 mL	Roxane Laboratories, Inc.
ANDA 81–225	Adrucil (etopside injection USP), 50 mg/mL	Sicor Pharmaceuticals, Inc.
ANDA 83–261	Pentobarbital Sodium Injection USP	Wyeth Pharmaceuticals
ANDA 83–383	Diucardin (hydroflumethiazide tablets USP) Tablets, 50 mg	Do.

Application No.	Drug	Applicant
ANDA 84–015	Bleph–10 (sulfacetamide sodium ophthalmic ointment USP) Ophthalmic Ointment, 10%	Allergan, Inc.
ANDA 84–514	Dilor (dyphylline tablets USP), 200 mg	Savage Laboratories
ANDA 84–751	Dilor–400 (dyphylline tablets USP), 400 mg	Do.
ANDA 85–035	Diphenoxylate HCl and Atropine Sulfate Tablets USP, 2.5 mg and 0.025 mg	R & S Pharma, LLC, 8407 Austin Tracy Rd., Fountain Run, KY 42133
ANDA 85–961	Methocarbamol Tablets USP, 500 mg	Clonmel Healthcare Ltd., c/o STADA Pharmaceuticals, Inc., U.S. Agent, 5 Cedar Brook Dr., Cranbury, NJ 08512
ANDA 85–963	Methocarbomal Tablets USP, 750 mg	Do.
ANDA 86–899	Isoetharine HCl Inhalation Solution USP, 1%	Roxane Laboratories, Inc.
ANDA 87–450	Chlorthalidone Tablets USP, 50 mg	Clonmel Healthcare Ltd.
ANDA 87–451	Chlorthalidone Tablets USP, 25 mg	Do.
ANDA 87–500	Aminophylline Tablets USP, 100 mg	Roxane Laboratories, Inc.
ANDA 87–501	Aminophylline Tablets USP, 200 mg	Do.
ANDA 88–253	T-Phyl (theophylline) Extended-Release Tablets, 200 mg	The Purdue Frederick Co.

Therefore, under section 505(e), of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director, Center for Drug Evaluation and Research, by the Commissioner of Food and Drugs, approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective June 16, 2006.

Dated: May 23, 2006.

Douglas C. Throckmorton,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. E6–9440 Filed 6–15–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0254]

Determination of Regulatory Review Period for Purposes of Patent Extension; INSPRA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for INSPRA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions 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: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product INSPRA (eplerenone). INSPRA is indicated for the treatment of hypertension. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for INSPRA (U.S. Patent No. 4,559,332) from Novartis Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated June 16, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of INSPRA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for

INSPRA is 2,135 days. Of this time, 1,632 days occurred during the testing phase of the regulatory review period, while 303 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective: November 24, 1996. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 24, 1996.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the act: November 29, 2001. FDA has verified the applicant's claim that the new drug application (NDA) for Inspra (NDA 21–437) was initially submitted on November 29, 2001.

3. The date the application was approved: September 27, 2002. FDA has verified the applicant's claim that NDA 21–437 was approved on September 27, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,218 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 15, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 13, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information 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.

Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–9412 Filed 6–15–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0022]

Determination of Regulatory Review Period for Purposes of Patent Extension; SYMLIN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SYMLIN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions 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: Beverly Friedman, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SYMLIN (pramlintide acetate). SYMLIN is given at mealtimes and is indicated for Type 1 diabetes, as an adjunct treatment in patients who use mealtime insulin therapy and who have failed to achieve desired glucose control despite optimal insulin therapy, and for Type 2 diabetes, as an adjunct treatment in patients who use mealtime insulin therapy and who have failed to achieve desired glucose control despite optimal insulin therapy, with or without a concurrent sulfonylurea agent and/or metformin. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for SYMLIN (U.S. Patent No. 5,686,411) from Amylin Pharmaceuticals, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 24, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of SYMLIN represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SYMLIN is 4,620 days. Of this time, 3,060 days occurred during the testing phase of the regulatory review period, while 1,560 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: July 24, 1992. The applicant claims July 29, 1992, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the

IND effective date was July 24, 1992, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 8, 2000. The applicant claims December 7, 2000, as the date the new drug application (NDA) for Symlin (NDA 21–332) was initially submitted. However, FDA records indicate that NDA 21–332 was submitted on December 8, 2000.

3. *The date the application was approved*: March 16, 2005. FDA has verified the applicant's claim that NDA 21–332 was approved on March 16, 2005.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,586 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 15, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 13, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information 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. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–9414 Filed 6–15–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Response to Solicitation on Organ Procurement and Transplantation Network (OPTN) Living Donor Guidelines

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Response to solicitation of comments.

SUMMARY: A notice was published in the **Federal Register** on January 23, 2006 (Vol. 71, No. 14, pages 3519–3520). The purpose of this notice was to solicit comments to assist HRSA in determining whether criteria developed by the Organ Procurement and Transplantation Network (OPTN) concerning organs procured from living donors, including those concerning the allocation of organs from living donors, should be given the same status, and be subject to the same enforcement actions, as other OPTN policies.

FOR FURTHER INFORMATION CONTACT: James F. Burdick, M.D., Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–7577; fax (301) 594–6095; or e-mail: *jburdick@hrsa.gov*.

SUPPLEMENTARY INFORMATION: Congress has provided specific authority under sections 372 of the Public Health Service (PHS) Act, as amended, 42 U.S.C. 274 for the creation of a national OPTN, which is, among other things, to facilitate a donor and recipient matching system; establish membership criteria and medical criteria for allocating donated organs; and provide opportunities to members of the public to comment with respect to proposed criteria.

The OPTN Final Rule (42 CFR part 121) governs the operations of the OPTN and is intended to help achieve the most equitable and medically effective use of human organs that are donated in trust for transplantation. Under the final rule, the OPTN is to develop policies on a variety of issues, including "[p]olicies for the equitable allocation of cadaveric organs [now referred to as deceased donor organs]." 42 CFR 121.4(a)(1). Under the final rule, allocation policies developed by the OPTN under section 121.8 of the final rule will be considered enforceable when and if the Secretary approves the policies as such. Enforceable OPTN policies are subject to the sanctions described in section 121.10(c)(1) of the final rule. Non-enforceable OPTN policies may still be subject to lesser sanctions by the OPTN (*e.g.*, an OPTN member being designated a Member Not in Good Standing).

Although the authorizing statute does not distinguish between transplants using organs from living donors and those using organs from deceased donors, the final rule does not include a requirement that the OPTN develop policies concerning the equitable allocation of living donor organs. Until recently, OPTN policies have predominantly focused on issues related to organ donation and transplantation of deceased donor organs.

However, several widely publicized living donor deaths have caused the OPTN to implement new practices of reviewing and approving, on an advisory basis, the qualifications of living donor transplant programs. Additionally, the increased incidence of altruistic living donations has prompted the OPTN to consider policies that are patient-focused yet address the unique circumstances pertaining to the recovery and transplantation of living donor organs. Section 121.4(a)(6) of the final rule provides that the OPTN shall be responsible for developing policies on a variety of topics, including "[p]olicies on such matters as the Secretary directs." In accordance with that authority, the Healthcare Systems Bureau directed the OPTN to develop allocation guidelines for organs from living donors and other policies necessary and appropriate to promote the safety and efficacy of living donor transplantation for the donor and recipient. It further advised the OPTN that all living donation policies (other than data reporting policies) should be considered as best practices or voluntary guidelines and not subject to regular OPTN sanctions (even those available with respect to violation of non-enforceable policies) until the public has had an opportunity to comment on the matter.

In the January 23, 2006, **Federal Register** notice, comments were requested to assist HRSA in determining whether OPTN living donor guidelines should be given the same status of other OPTN policies, *i.e.*, be treated as policies developed in accordance with 42 CFR 121.8, and be subject to the same enforcement actions. The Secretary explained that if he decided these questions in the affirmative, OPTN policies relating to living donors would be treated the same as other OPTN policies developed in accordance with section 121.8 of the final rule. In other words, OPTN policies concerning living

donors would not be considered enforceable policies under section 121.10 of the final rule, and violations of such policies would not be subject to the sanctions described in section 121.10(c)(1), unless and until the Secretary approved such policies as enforceable.

During the comment period, HRSA received 29 comments from individuals affiliated with or representing universities, hospitals, professional associations, and living donation advocacy organizations; a healthcare accreditation organization; transplant recipients; and family members of donors, recipients and candidates. Twenty of these comments explicitly referenced changing the status of OPTN living donor guidelines. The remaining nine comments expressed views about various aspects of the national transplant system not directly related to the solicitation of comments.

HRSA thanks the respondents for the quality and thoroughness of their comments. The comments and HRSA's decision are discussed below.

I. Living Donor OPTN Policies Consistent With Other OPTN Policies

The majority of respondents indicated that OPTN living donor guidelines should be given the same status of other OPTN policies. Of the 20 comments that explicitly referenced changing the status of OPTN living donor guidelines, 17 were supportive of giving OPTN living donor guidelines the same status, and subjecting these to the same enforcement actions, as other OPTN policies. Supportive comments were received from representatives of academia, transplant surgeons, living donors who had positive donation experiences, living donors who had negative donation experiences, family members of living donors who died or who experienced complications as a result of the donation, living donation advocacy organizations, transplant administrators, the professional societies representing transplant surgeons and transplant physicians, transplant candidate/recipient advocacy organizations, the organization serving as the current OPTN contractor, and an organization that accredits hospitals.

Supportive comments cited the appropriateness of OPTN involvement in policies relating to living donors, including donor evaluation, informed consent, evaluation of surgical outcomes and complications, protection of living donors, peri-operative care, organ allocation, qualifications of transplant programs, and transplant program compliance with living donor policies.

A few comments indicated opposition to giving OPTN living donor guidelines the same status as other OPTN policies. A family member of two kidney transplant candidates who died on the waiting list is now an advocate of potential living donors and recipients meeting on the Internet and is opposed to the OPTN's involvement in living donor policy making because of the perception that the OPTN discourages living donor transplants resulting from such meetings. Another opponent of OPTN involvement is waiting for a liver transplant and does not trust the OPTN policymaking process because of the perception that wealthier candidates receive priority for donor organs. One data manager from a large transplant program commented that mandating data collection on living donors was unlikely to increase donor follow-up form completion rates unless the donors' insurance companies can be persuaded to pay for follow-up visits. HRSA appreciates each of these comments.

II. OPTN Living Donor Policy Making Authority—Organ Allocation

Comments supportive of OPTN involvement in living donor policy making expressed varying views regarding the scope of policies the OPTN should consider. Of the 17 comments that were supportive of OPTN involvement, five suggested areas in which the OPTN should not become involved. One comment did not advocate an intrusive role for the OPTN in the allocation of living donor organs or ethical review of local living donor practices. A transplant administrator offered the similar caution that altruistic living donors may feel a sense of connection to their local transplant center and may not want their organs allocated to a distant center. A representative of the professional society for transplant surgeons offered a comment to HRSA that the OPTN Final Rule does not authorize the OPTN to establish policies for living donor organ allocation. In response to this, HRSA emphasizes that its authority to direct the OPTN to develop living donor organ allocation policies is granted in § 121.4(a)(6) of the OPTN Final Rule which permits the Secretary to develop policies on such other matters as the Secretary directs. The wording in § 121.8(a) of the final rule referring to policies "for the equitable allocation of cadaveric organs" should not be construed as a limitation of the Secretary's policy making authority over living donation.

A representative of a living donor advocacy organization commented that OPTN policies should not interfere with the right of an altruistic living donor to direct their organ to a specific individual. We agree. Section 121.8(h) of the OPTN Final Rule permits the allocation of an organ to a recipient named by those authorized to make the donation. Because we are directing the OPTN to develop living donor allocation policies under section 121.8 of the final rule, section 121.8(h) will apply to living donation equally as it applies to deceased donation.

III. OPTN Living Donor Policy Making Authority—Donor Evaluation

Supportive comments varied in their level of support for OPTN involvement in developing policies for living donor evaluation. Of the 17 comments that were supportive, two were opposed to OPTN policymaking in this area. One comment from a representative of the professional organization for transplant surgeons and another from a transplant surgeon asserted that the OPTN should not develop policy in the area of donor evaluation because there is no clear clinical consensus regarding the policies or standards that should be followed. HRSA believes it is very likely that should the OPTN consider policy making in the area of living donor evaluation that members of OPTN committees and the Board of Directors will consider this perspective and abandon policy making in the absence of clear clinical consensus. Additionally, through its public comment process transplant professionals also have the opportunity to advise the OPTN of the lack of clear clinical consensus, should it exist.

IV. OPTN Living Donor Policy Making—Living Donor Follow-up

Several comments stated greater attention should be given to understanding the impact of donation on living donors. One commenter who represents the professional organization for transplant professionals recommended more Federal funding for a live organ donor database. A comment from a living donor who is a healthcare professional and living donor advocate asserted that there should be mandatory policies to protect living donors and a central source of outcome data via a living donor registry. A comment from a transplant surgeon supports more OPTN involvement in living donor data collection and monitoring living donor outcomes. A comment from a representative of a healthcare accreditation organization stated it is appropriate for the OPTN to establish additional policies to promote the safety of living donor transplantation. A

comment from the mother of a living donor and recipient who both experienced post-transplant complications asserted that stronger policies should be developed to ensure living donor safety.

Conclusion

HRSA has reviewed and considered each aspect of each comment and has determined that OPTN living donor guidelines should be given the same status of other OPTN policies as discussed in the **Federal Register** Notice published on January 23, 2006. Under 42 CFR 121.4(a)(6), the Secretary directs the OPTN to develop policies regarding living organ donors and living organ donor recipients, including policies for the equitable allocation of living donor organs, in accordance with section 121.8 of the final rule. Thus, the OPTN shall develop such policies in the same manner, and with the same public comment process, that it does for policies on deceased organ donors and deceased organ donor recipients. Non-compliance with such policies shall subject OPTN members to the same consequences as noncompliance with policies concerning deceased organ donors and deceased organ donor recipients developed under the final rule.

Dated: June 9, 2006.

Elizabeth M. Duke,

Administrator.

[FR Doc. E6–9401 Filed 6–15–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 Human Genome Research Institute Special Emphasis Panel; Sequencing Centers Review.

Date: July 13, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Geonome Research Institute, National Institutes of Health, Bethesda, MD 20892. 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5471 Filed 6–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Gonadotropin Inhibitors: A Structural Biology Approach To Immunocontraception.

Date: July 6, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892. (301) 435–6884. *ranhandj@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Global Profiling of Molecular Errors Associated With Human Spermatogenic Disorder.

Date: July 6, 2006.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892. (301) 435–6884. *ranhandj@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Immunodominant Ovarian Antigens Involved in Premature Ovarian Failure.

Date: July 7, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892. (301) 435–6884. *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5470 Filed 6–15–06; 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 (5U.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: July 11–12, 2006.

Time: 7:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott, 5701 Marinelli Road, Bethesda, MD 20852.

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.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5472 Filed 6–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: June 22, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIH/NIAMS, Democracy One, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd. Room 824, Bethesda, MD 20892–4872. (301) 594–4955. *browneri@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: June 28, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIH/NIAMS, Democracy One, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd. Room 824, Bethesda, MD 20892–4872. (301) 594–4955. *browneri@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 No. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5473 Filed 6–15–06; 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(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 06–89, Review RFA–RM–06–006.

Date: July 17–18, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Park Clarion Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Norman S. Braveman, PhD, Assistant to the Director, NIH—NIDCR, 31 Center Drive, Bldg. 31, Room 5B55, Bethesda, MD 20892. 301 594–2089. *Norman.Braveman@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 06–96, Review R03.

Date: August 2, 2006.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Specialist, National Institute of Dental & Crainofacial Res., 45 Center Drive, Natcher Bldg., RM 4AN38J, Bethesda, MD 20892–6402. (301) 594–4809. *mary_kelly@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 06–95, Review K23.

Date: August 10, 2006.

Time: 1 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & 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, 06–87, Review R21.

Date: August 16, 2006.

Time: 10 a.m. to 12 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, Associate SRA, 45 Center Dr., 4An 32B, Division of Extramural Research, National Inst. of Dental & 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 06–79, Review R03s, R21s.

Date: August 18, 2006.

Time: 1 p.m. to 3 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: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst. of Dental & 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: June 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5474 Filed 6–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Center of Excellence for Influenza Research and Surveillance.

Date: July 10–12, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn National Airport at Crystal City, 2650 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Barney Duane Price, PhD, Scientific Review Administrator, Scientific Review Program, DHHS/NIH/NIAID/DEA, Room 2217, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–496–2550. *pricebd@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5475 Filed 6–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; NINR Loan Repayment Program Contract Proposals.

Date: June 23, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John E. Richters, PhD, Chief, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Room 715, Bethesda, MD 20817. (301) 594–5971. *jrichters@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. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: June 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5476 Filed 6–15–06; 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 the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Time Sensitive Applications.

Date: July 7, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608. 301–402–852. *mbroitma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 9, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5477 Filed 6–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Course Development in the Neurobiology of Disease.

Date: June 28, 2006.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Yong Yao, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6149, MSC 9606, Bethesda, MD 20892–9606. 301–443–6102. *yyao@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Developmental HIV Prevention Interventions.

Date: July 7, 2006.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Boulevard, Room 6154, MSC 9609,Bethesda, MD 20892–9606. 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Interventions for Eating Disorders.

Date: July 10, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Boulevard, Room 6154, MSC 9609, Bethesda, MD 20892–9606. 301–443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5481 Filed 6–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurological Sciences and Disorders C, June 22, 2006, 8 a.m. to June 23, 2006, 5 p.m., Latham Hotel, 3000 M Street, NW., Washington, DC 20007 which was published in the **Federal Register** on May 3, 2006, 71 FR 26104.

This meeting was scheduled for June 22–23, 2006 and has been changed to a one day meeting on June 23, 2006; 8 a.m. to 5 p.m. The meeting is closed to the public.

Dated: June 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5482 Filed 6–15–06; 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, June 29, 2006, 8:30 a.m. to June 30, 2006, 5 p.m., Morrison House, 116 S. Alfred Street, Alexandria, VA 22314 which was published in the **Federal Register** on May 31, 2006, 71 FR 30946–30948.

The meeting will be held at One Washington Circle Hotel, One Washington Circle, Washington, DC 20037. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5478 Filed 6–15–06; 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 Host Interactions with Bacterial Pathogens Study Section, June 29, 2006, 8 a.m. to June 30, 2006, 5 p.m. Doubletree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814 which was published in the **Federal Register** on May 31, 2006, 71 FR 30946–30948.

The meeting will be held at the Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5479 Filed 6–15–06; 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, June 26, 2006, 9 a.m. to June 27, 2006, 5 p.m., Wyndham Baltimore, 101 West Fayette Street, Baltimore, MD, 21201 which was published in the **Federal Register** on May 16, 2006, 71 FR 28363–28365.

The meeting will be one day only June 26, 2006. The meeting time and location remain the same. The meeting is closed to the public.

Dated: June 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5480 Filed 6–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal Biology

Date: June 30, 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: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892. (301) 435–1787. *chenp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Bioengineering and Physiology.

Date: July 10, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Pushpa Tandon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7854, Bethesda, MD 20892. 301–435–2397. *tandonp@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.

Date: July 10–11, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

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, Human Complex Genetics.

Date: July 11, 2006.

Time: 10:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7890, Bethesda, MD 20892. (301) 435–1037. *dayc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunity and Pathogenesis in AIDS.

Date: July 13, 2006.

Time: 8 a.m. to 12 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: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892. (301) 435–1165. *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

Date: July 17–18, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Vilen A. Movsesyan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892. (301) 402–7278. *movsesyanv@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Immunology and Pathogenesis Study Section.

Date: July 17–18, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

Contact Person: Abraham P. Bautista, MSC, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892. (301) 435–1506. *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship—Minority and Disability Programs.

Date: July 18, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Mt. Vernon/Executive, Washington, DC 20037.

Contact Person: Abdelouahab Aitouche, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892. (301) 435–2365. *abdelouahaba@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cognitive Systems.

Date: July 18, 2006.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844 , Bethesda, MD 20892. (301) 435–1250. *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Abnormal Trafficking and Transport.

Date: July 18, 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: Joanne T Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7850, Bethesda, MD 20892 (301) 435–1178. *fujiij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR and STTR: Pain.

Date: July 18, 2006.

Time: 2 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: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892. (301) 435–1242. *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Training Fellowships in Molecular and Cellular Mechanisms.

Date: July 18–19, 2006.

Time: 6:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Barbara J. Thomas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2220, MSC 7890, Bethesda, MD 20892. 301–435–0603. *bthomas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Infectious Diseases and Microbiology Fellowships.

Date: July 19–20, 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, Fluid Dynamics of Blood Pumps.
Date: July 19, 2006.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ai-Ping Zou, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892. 301–435–1777. *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology of Transplantation: Member Conflicts.
Date: July 19, 2006.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: 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: Genes, Genomes, and Genetics Integrated Review Group, Ethical, Legal, and Social Implications of Human Genetics Study Section.
Date: July 19–20, 2006.
Time: 5 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Rudy Pozzatti, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852 (301) 402–0838. *pozzattr@mail.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, International and Cooperative Projects–1 Study Section.
Date: July 20, 2006.
Time: 9 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: Manana Sukhareva, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892. 301–496–000. *sukharem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Language and Communication.
Date: July 20, 2006.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: 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, Genetics of Cardiovascular Diseases.
Date: July 21, 2006.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892. 301–435–1777. *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Vision.
Date: July 21, 2006.
Time: 2 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: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892. (301) 435–1242. *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Tumor, Gene Therapy and Immune System.
Date: July 21, 2006.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224. *husains@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: June 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5483 Filed 6–15–06; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Immigration and Customs Enforcement Bureau

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Request for Cancellation of Public Charge Bond, Form I–356; (OMB Control No. 1653–0005).

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 28, 2006 at 71 FR 10045, allowing for a 60-day public comment period. The USICE did not receive any public comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 17, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Room 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control No. 1653–0005. in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Request for Cancellation of Public Charge Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–356. U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The form is used by the USICE to determine if the bond posted on behalf of an alien in the United States should be canceled.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses at 15 minutes (0.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 500 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–372–8377.

Dated: June 12, 2006.

Stephen Tarragon,

Deputy Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6–9427 Filed 6–15–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Immigration and Customs Enforcement Bureau

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review; Baggage and Personal Effects of Detained Aliens; Form I–43; (OMB Control No. 1653–0023).

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 28, 2006 at 71 FR 10045, allowing for a 60-day public comment period. No comments were received during this initial public review and comment period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 17, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Room 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1653–0023 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Baggage and Personal Effects of Detained Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–43. U.S. Immigration and Customs Enforcement (ICE).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The form is used by the arresting officer to ensure that the alien is afforded a reasonable opportunity to collect his or her property. The ICE also uses this form to protect the government from possible fraudulent claims.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 600,000 responses at one minute (.17) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,200 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: June 12, 2006.

Stephen Tarragon,

Deputy Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6–9428 Filed 6–15–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Immigration and Customs Enforcement Bureau

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review; Immigration User Fee (File Number OMB–01); OMB Control Number 1653–0029.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 28, 2006, at 71 FR 10046. The notice allowed for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 17, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1653–0029 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Immigration User Fee.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number (File No. OMB–01). U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for profit: The information requested from commercial air carriers, commercial vessel operators and tour operators is necessary for effective budgeting, financial management, monitoring, and auditing of user fee collections. No forms are required.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25 responses at 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 331 hours this includes 250 annual recordkeeping hours plus 81 annual reporting burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm*.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: June 12, 2006.

Stephen Tarragon,

Deputy Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6–9429 Filed 6–15–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–24]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* June 16, 2006.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 8, 2006.

Mark R. Johnston,

Acting Deputy Assistant, Secretary for Special Needs.

[FR Doc. 06–5380 Filed 6–15–06; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Grand Cote National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for Grand Cote National Wildlife Refuge in Avoyelles Parish, LA

SUMMARY: The Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) for Grand Cote National Wildlife Refuge is available for public review and comment. This Draft CCP/EA was prepared pursuant to the National Wildlife Refuge System Administration Act, as amended, and the National Environmental Policy Act. The Draft CCP/EA describes the Service's proposal for management of the refuge for 15 years.

DATES: Written comments must be received at the postal or electronic addresses listed below no later than July 31, 2006.

ADDRESSES: To provide written comments or to obtain a copy of the Draft CCP/EA, please write to Tina Chouinard, National Resource Planner, Central Louisiana National Wildlife Refuge Complex, 401 Island Road,

Marksville, Louisiana 71351; Telephone: 318/253–4238. Comments may also be submitted via electronic mail to *tina_chouinard@fws.gov*. The Draft CCP/EA will also be available for viewing and downloading online at *http://southeast.fws.gov/planning/*.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a plan for each refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

Background: Grand Cote National Wildlife Refuge is in west-central Avoyelles Parish, Louisiana, about 5 miles west of the city of Marksville and 20 miles southeast of the city of Alexandria. The refuge is part of the Central Louisiana National Wildlife Refuge Complex, which also includes Lake Ophelia and Cat Island National Wildlife Refuges and several fee and easement Farm Service Agency sites. The refuge lies within a physiographic region known as the Mississippi Alluvial Valley. This valley was at one time a 25-million-acre forested wetland complex that extended along both sides of the Mississippi River from Illinois to Louisiana. Although the refuge was part of this very productive bottomland hardwood ecosystem, most of the forest on and around the refuge was cleared in the late 1960s for agricultural production. Since this land was cleared, most of what is now the refuge had been under intensive rice production, so there is an extensive system of man-made levees, irrigation ditches, and water control structures. Due to this infrastructure, the refuge is capable of providing critical shallow-water habitat for migratory waterfowl and shorebirds.

The refuge was established in 1989 to provide wintering habitat for mallards, pintails, blue-winged teal, and wood ducks and production habitat for wood ducks to meet the goals of the North American Waterfowl Management Plan. The refuge is also being managed to provide habitat for threatened and endangered species, a natural diversity of plants and animals, and opportunities for compatible wildlife-dependent recreation.

Significant issues addressed in the draft comprehensive conservation plan and environmental assessment include: waterfowl management, agriculture, cooperative farming, land acquisition, forest fragmentation, visitor services, cultural resources, and refuge access. The Service developed three alternatives for management of the refuge and chose Alternative 2 as the Service's proposed alternative.

Alternative 1 represents no change from current management of the refuge. Under this alternative, 6,075 acres would be protected, maintained, restored, and enhanced for resident wildlife, waterfowl, and threatened and endangered species. Refuge management programs would continue to be developed and implemented with little baseline biological information. All management actions would be directed toward achieving the refuge's primary purposes (*e.g.*, preserving wintering habitat for mallards, pintails, blue-winged teal, and wood duck; providing production habitat for wood ducks; and helping to meet the habitat conservation goals of the North American Waterfowl Management Plan), while contributing to other national, regional, and state goals. Cooperative farming would continue to be used to manage and maintain approximately 2,400 acres of cropland and moist-soil habitats. The current level of wildlife-dependent recreation activities (*e.g.*, hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation) would be maintained.

Alternative 2, the proposed alternative, is considered to be the most effective management action for meeting the purposes of the refuge by adding more staff, equipment, and facilities in order to manage and restore wetland and moist-soil habitats and hydrology in support of migratory and resident waterfowl and other wildlife, especially white-tailed deer and woodcock. The proposed alternative seeks to conduct extensive wildlife population monitoring/surveying in order to assess population status, trends, wildlife habitat associations, and population responses to habitat management. Active habitat management would be implemented through water level manipulations, moist-soil and cropland management, minimal reforestation, and forest management designed to provide a diverse complex of habitats that meets the foraging, resting, and breeding requirements for a variety of species. Cooperative farming and refuge staff would be used to manage and maintain approximately 1,940 acres of existing cropland and moist-soil habitats. Under this alternative, the refuge would continue to seek acquisition of inholdings from all willing sellers within the present acquisition boundary, including 2,500–3,000 acres in the Chatlain Lake area to help better meet waterfowl objectives. The six priority wildlife-dependent public uses would continue to be supported and in some cases they would be expanded throughout the refuge under the proposed alternative. This alternative would also strengthen the close working relationship in existence between the Service, the local community, conservation organizations, the Louisiana Department of Wildlife and Fisheries, and other state and federal agencies.

Alternative 3 would maximize bottomland hardwood forest restoration in support of the area's endemic habitat by adding more staff, equipment, and facilities. Under this alternative, 6,075 acres of refuge lands would be protected, maintained, restored, and enhanced for resident wildlife, waterfowl, neotropical migratory birds, and threatened and endangered species. Some wildlife and plant censuses and inventory activities would be initiated to obtain the biological information needed to implement management programs on the refuge, especially for forest-dependent species. Most management actions would be directed toward creating and managing the bottomland hardwood forest habitat for neotropical migratory birds and other forest-dependent wildlife, while supporting the refuge's primary purposes. Cooperative farming would be eliminated. Agriculture acreage would be reduced to 500 acres; all farming would be conducted by refuge staff. The refuge would maintain 400 acres of moist-soil habitat. Under this alternative, the refuge would continue to seek acquisition of inholdings from willing sellers within the present acquisition boundary; however, the Service would eliminate the Chatlain Lake area from the current acquisition boundary. The six priority wildlife-dependent recreation opportunities would be provided.

After the review and comment period for the Draft CCP/EA, all comments will be analyzed and considered by the Service. All comments received from individuals on the Draft CCP/EA become part of the official public

record. Requests for such comments will be handled in accordance with the Freedom of Information Act and other Service and Departmental policies and procedures.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: March 21, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06–5460 Filed 6–15–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Laramie Plains National Wildlife Refuges, Laramie, WY

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: This notice advises that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and associated environmental documents for the Laramie Plains National Wildlife Refuges (NWRs) in southeast Wyoming, which include Bamforth NWR, Hutton Lake NWR, and Mortenson Lake NWR.

The Service is furnishing this notice in compliance with Service CCP policy to advise other agencies and the public of its intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Written comments must be received by July 17, 2006.

ADDRESSES: Comments and requests for more information regarding the Laramie Plains NWRs should be sent to Toni Griffin, Planning Team Leader, Division of Refuge Planning, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Toni Griffin, 303–236–4378, or Linda Kelly, Chief, Branch of Comprehensive Conservation Planning, at 303–236–8132.

SUPPLEMENTARY INFORMATION: The Service has initiated the CCP for the Laramie Plains NWRs with headquarters in Walden, Colorado.

Each unit of the National Wildlife Refuge System, including these NWRs, has specific purposes for which it was established. Those purposes are used to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on these Refuges. The planning process is a way for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the Refuges' establishing purposes and the mission of the National Wildlife Refuge System.

The Service will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment. The Service is requesting input for issues, concerns, ideas, and suggestions for the future management of the Laramie Plains NWRs in southeast Wyoming. Anyone interested in providing input is invited to respond to the following two questions.

(1) What problems or issues do you want to see addressed in the CCP?

(2) What improvements would you recommend for the Laramie Plains NWRs?

The Service has provided the above questions for your optional use; you are not required to provide information to the Service. The Planning Team developed these questions to facilitate finding out more information about individual issues and ideas concerning these Refuges. Comments received by the Planning Team will be used as part of the planning process; individual comments will not be referenced in our reports or directly responded to.

An opportunity will be given to the public to provide input at an open house to scope issues and concerns (schedule can be obtained from the Planning Team Leaders at the above addresses). Comments may also be submitted anytime during the planning process by writing to the above addresses. All information provided voluntarily by mail, phone, or at public meetings becomes part of the official public record (*i.e.*, names, addresses, letters of comment, input recorded during meetings). If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide informational copies.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and Service policies and procedures for compliance with those regulations. All comments received from individuals on Service Environmental Assessments and Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, NEPA (40 CFR 1506.6(f)), and other Departmental and Service policies and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law.

Dated: May 23, 2006.

James J. Slack,

Deputy Regional Director, Region 6, Denver, CO.

[FR Doc. E6–9448 Filed 6–15–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Pathfinder National Wildlife Refuge, Casper, WY

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: This notice advises that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and associated environmental documents for Pathfinder National Wildlife Refuge (NWR) in central Wyoming. The Service is furnishing this notice in compliance with Service CCP policy to advise other agencies and the public of its intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Written comments must be received by July 17, 2006.

ADDRESSES: Comments and requests for more information regarding the Pathfinder NWR should be sent to Toni Griffin, Planning Team Leader, Division of Refuge Planning, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Toni Griffin at 303–236–4378, or Linda Kelly,

Chief, Branch of Comprehensive Conservation Planning, at 303–236–8132.

SUPPLEMENTARY INFORMATION: The Service has initiated the CCP for the Pathfinder NWR with headquarters in Walden, Colorado.

Each unit of the National Wildlife Refuge System, including this NWR, has specific purposes for which it was established. Those purposes are used to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on the Refuge. The planning process is a way for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the Refuge's establishing purposes and the mission of the National Wildlife Refuge System.

The Service will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment. The Service is requesting input for issues, concerns, ideas, and suggestions for the future management of the Pathfinder NWR in central Wyoming. Anyone interested in providing input is invited to respond to the following two questions.

(1) What problems or issues do you want to see addressed in the CCP?

(2) What improvements would you recommend for Pathfinder NWR?

The Service has provided the above questions for your optional use; you are not required to provide information to the Service. The Planning Team developed these questions to facilitate finding out more information about individual issues and ideas concerning this refuge. Comments received by the Planning Team will be used as part of the planning process; individual comments will not be referenced in our reports or directly responded to. An opportunity will be given to the public to provide input at an open house to scope issues and concerns (schedule can be obtained from the Planning Team Leaders at the above addresses). Comments may also be submitted anytime during the planning process by writing to the above addresses. All information provided voluntarily by mail, phone, or at public meetings becomes part of the official public record (*i.e.*, names, addresses, letters of comment, input recorded during meetings). If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide informational copies.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations. All comments received from individuals on Service Environmental Assessments and Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, NEPA (40 CFR 1506.6(f)), and other Departmental and Service policies and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law.

Dated: May 23, 2006.

James J. Slack,

Deputy Regional Director, Region 6, Denver, CO.

[FR Doc. E6–9445 Filed 6–15–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Liquor Control Ordinance of the Ottawa Tribe of Oklahoma

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Liquor Control Ordinance of the Ottawa Tribe of Oklahoma (Tribe). The Ordinance regulates and controls the possession, sale and consumption of liquor within the tribal lands of the Tribe. The tribal lands are located on trust land and this Ordinance allows for possession and sale of alcoholic beverages within its exterior boundaries. This Ordinance will increase the ability of the tribal government to control the community's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective on June 16, 2006.

FOR FURTHER INFORMATION CONTACT: Charles Head, Tribal Government Services Officer, Eastern Oklahoma Regional Office, 3100 W. Peak Blvd., Muskogee, OK 74402, Telephone: (918) 781–4685, Fax: (918) 781–4649; or Ralph Gonzales, Office of Tribal Services, 1849 C Street, NW., Room 4513–MIB, Washington, DC 20240, Telephone: (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Business Committee of the Ottawa Tribe of Oklahoma (Business Committee) adopted its Liquor Ordinance by Resolution No. 2005–31 on December 15, 2005, which is the first Liquor Ordinance passed by the Tribe. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within tribal lands of the Tribe.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs. I certify that this Liquor Ordinance of the Ottawa Tribe of Oklahoma was duly adopted by the Business Committee on December 15, 2005.

Dated: June 8, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

The Ottawa Tribe of Oklahoma Liquor Ordinance reads as follows:

Liquor Control Ordinance of the Ottawa Tribe of Oklahoma

Section One: Purposes and Public Policy

1.1 The Ottawa Tribal Business Committee, in accordance with Article VI of the Constitution and By-Laws of the Ottawa Tribe of Oklahoma, is authorized to enact resolutions, regulations, and ordinances, and act on behalf of the Ottawa Tribe.

1.2 The Business Committee finds that tribal control and regulation of liquor is necessary to protect the health and welfare of tribal members, to address specific concerns relating to alcohol use on tribal lands, and to achieve maximum economic benefit to the tribe.

1.3 The introduction, possession, and sale of alcohol on tribal lands is a matter of special concern to the Business Committee.

1.4 The Business Committee finds that a complete ban of alcohol on tribal lands is unrealistic and would be ineffective in accomplishing the stated purposes of this Ordinance. However, due to the many problems and potential problems associated with the unregulated or inadequately regulated sale, distribution, and possession of alcohol, the Business Committee recognizes the need for strict regulation and control over liquor transactions on tribal lands.

1.5 Federal law prohibits the introduction, possession, and sale of liquor in Indian Country except when the same is in conformity with the laws of both the State and the Tribe (18 U.S.C. 1161). Therefore, compliance with this Ordinance shall be in addition to, rather than a substitute for, compliance with the laws of the State of Oklahoma.

1.6 This Ordinance governs the sale, purchase, and distribution of alcohol on Tribal lands within the exterior boundaries of the former reservation.

Section Two: Definitions

As used in this Ordinance, the terms below shall have these meanings unless the context clearly requires otherwise:

2.1 *Alcohol.* That substance known as ethyl alcohol, hydrated oxide of ethyl alcohol, ethanol, spirits of wine, or the like, from whatever source or by whatever process produced.

2.2 *Alcoholic Beverage.* Synonymous with the term liquor as defined in Section 1.6.

2.3 *Bar.* Any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as defined here.

2.4 *Beer.* Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

2.5 *Business Committee.* The governing body of the Ottawa Tribe of Oklahoma, as defined in the Tribal Constitution.

2.6 *Liquor.* All fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, solid, semisolid, or other substances which contain more than one-half of one percent of alcohol by volume.

2.7 *Liquor Control Board.* The Ottawa Liquor Control Board as established by Section Three of this Ordinance.

2.8 *Liquor Store.* Any store at which liquor is sold and, for the purpose of this Ordinance, includes stores where only a portion of sales consist of liquor or beer.

2.9 *Malt Liquor.* Beer, strong beer, ale, stout, or porter.

2.10 *Package.* Any container or receptacle used for holding liquor.

2.11 *Public Place.* Federal, State, county, or tribal highways and roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, and theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or generally used by the public and to which the public is permitted to have generally unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

2.12 *Sale.* The exchange, barter, and traffic, including the selling or supplying or distributing by any means whatsoever, of liquor or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

2.13 *Spirits.* Any beverage which contains alcohol obtained by distillation, including all wines exceeding seventeen percent of alcohol by weight.

2.14 *Tribal Court.* Refers to the Ottawa Tribal Court or the Court of Indian Offenses, more specifically designated for purposes of this Ordinance as 25 CFR Court located at the Miami Agency of the Bureau of Indian Affairs in Miami, Oklahoma.

2.15 *Tribal Lands.* Any or all lands over which the Tribe exercises governmental power and that is either held in trust by the United States for the benefit of the Tribe or individual members of the Tribe, or held by the Tribe or individual members of the Tribe subject to restrictions by the United States against alienation.

2.16 *Wine.* Any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk, or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during, or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and the like, not exceeding seventeen percent of alcohol by weight.

Section Three: Ottawa Liquor Control Board

3.1 There is hereby established an Ottawa Liquor Control Board, composed of a Chairperson, Vice-Chairperson, Secretary/Treasurer, and two additional members.

3.2 The Liquor Control Board shall consist of the officers and members of the Ottawa Business Committee.

3.3 Officers and members of the Business Committee shall hold the same positions on the Liquor Control Board as such officers and members hold on the Business Committee. The Principal Chief shall serve as the Liquor Control Board Chairperson; the Second Chief shall serve as the Vice-Chairperson of the Liquor Control Board; and the Secretary/Treasurer of the Business Committee shall serve as Secretary/Treasurer of the Liquor Control Board.

3.4 The Liquor Control Board shall meet on call, but not less than once each quarter of the calendar year, upon public notice of the meeting. The Chairman of the Liquor Control Board shall call meetings of the Liquor Control Board.

3.5 A quorum of the Liquor Control Board shall consist of three members. A quorum must be present in order to transact business.

Section Four: Powers and Duties of the Board

4.1 *Powers and Duties.* In furtherance of this Ordinance, the Liquor Control Board shall have the following powers and duties:

A. Publish and enforce rules and regulations adopted by the Business Committee governing the sale, manufacture, distribution, and possession of alcoholic beverages on tribal lands.

B. Employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Liquor Control Board to perform its functions.

C. Issue licenses permitting the sale or manufacture or distribution of liquor on tribal lands.

D. Hold hearings on violations of this Ordinance or for the revocation of licenses hereunder.

E. Bring suit in Tribal Court or other appropriate court to enforce this Ordinance as necessary.

F. Determine and seek damages for violation of this Ordinance.

G. Make such reports as may be required by the Business Committee.

H. Collect taxes and fees levied or set by the Business Committee and keep accurate records, books, and accounts.

I. Adopt procedures which supplement these regulations and facilitate their enforcement. Such procedures shall include limitations on sales to minors, places where liquor may be consumed, identity of persons not permitted to purchase alcoholic beverages, hours and days when outlets may be open for business, and other appropriate matters and controls.

4.2 *Limitations on Powers.* In the exercise of its powers and duties under this Ordinance, the Liquor Control Board and its members shall not:

A. Accept any gratuity, compensation, or other thing of value from any liquor wholesaler, retailer, or distributor, or from any licensee.

B. Waive the immunity of the Ottawa Tribe of Oklahoma from suit without the express written consent and resolution of the Business Committee.

4.3 *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the Liquor Control Board and/or its staff at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Business Committee and this Ordinance are being complied with.

Section Five: Sales of Liquor

5.1 *License Required.* A person or entity who is licensed by the Ottawa Tribe of Oklahoma may make retail sales of liquor in their facility and the patrons of the facility may consume said liquor within the facility. The introduction and possession of liquor consistent with this Section shall also be allowed. All other purchases and sales of liquor on tribal lands shall be prohibited. Sales of liquor and alcoholic beverages on tribal lands may only be made at businesses that hold an Ottawa Liquor License.

5.2 *Sales for Cash.* All liquor sales on tribal lands shall be on a cash only basis and no credit shall be extended to any person, organization, or entity except that this provision does not prevent the payment for purchases with use of credit cards such as Visa, MasterCard, American Express, and the like.

5.3 *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverages on tribal lands is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage on tribal lands and sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to the payment of damages to the Ottawa Tribe of Oklahoma as set forth herein.

Section Six: Licensing and Application

6.1 *Procedure.* In order to control the proliferation of establishments on tribal lands that sell or serve liquor by the bottle or by the drink, all persons or entities that desire to sell liquor on tribal lands must apply to the Ottawa Liquor Control Board for a license to sell or serve liquor.

6.2 *Application.* Any enrolled member of the Ottawa Tribe of Oklahoma twenty-one (21) years of age or older, or an enrolled member of another Federally recognized tribe twenty-one (21) years of age or older, or other person twenty-one (21) years of age and older, may apply to the Liquor Control Board for a license to sell or serve liquor. Any person or entity applying for a license to sell or serve liquor on tribal lands must fill in the application provided for this purpose by the Ottawa Tribe of Oklahoma and pay such application fee as may be set by the Liquor Control Board. Said application must be filled out completely in order to be considered. A separate application and license will be required for each location where the applicant intends to serve liquor.

6.3 *Licensing Requirements.* The person applying for such license must make a showing once per year and must satisfy the Liquor Control Board that:

A. He/she is a person of good character, having never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented, or malt liquors;

B. He/she has never been convicted of violating any of the gambling laws of this state or of any other state of the United States, or of this or any other Tribe;

C. He/she has not had, preceding the date of his/her application for a license, a felony conviction of any of the laws commonly called "Prohibition Laws;" and

D. He/she has not had any permit or license to sell any intoxicating liquors revoked in any county of this state, or any other state, or of any Tribe.

6.4 *Processing of Application.* The Liquor Control Board shall receive and process applications and related matters. All actions by the Liquor Control Board shall be by majority vote. A quorum of the Liquor Control Board is that number of members set forth in Section 3.5 of this Ordinance. The Liquor Control Board may, by resolution, authorize a staff representative to issue licenses for the sale of liquor and beer products.

6.5 *Issuance of Licenses.* The Liquor Control Board may issue a license if it believes that such issuance is in the best interests of the Ottawa Tribe of Oklahoma. The purpose of this Ordinance is to permit liquor sales and consumption at facilities located on designated tribal lands. Issuance of a license for any other purposes will not be considered to be in the best interest of the Ottawa Tribe of Oklahoma.

6.6 *Period of License.* Each license shall be issued for a period not to exceed one year from the date of issuance.

6.7 *Renewal of License.* A licensee may renew its license if the licensee has complied in full with this Ordinance; provided, however, that the Liquor Control Board may refuse to renew a license if it finds that doing so would not be in the best interests of health and safety of the Ottawa Tribe of Oklahoma.

6.8 *Revocation of License.* The Liquor Control Board may suspend or revoke a license due to one or more violations of this Ordinance upon notice and hearing, at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

6.9 *Hearings.* Within fifteen (15) days after a licensee is mailed written notice of a proposed license suspension or revocation of the license, of the imposition of fines or of other adverse action proposed by the Liquor Control Board under this Ordinance, the licensee may deliver to the Liquor Control Board a written request for a hearing on whether the proposed action should be taken. A hearing on the issues shall be held before a person or persons appointed by the Liquor Control Board and a written decision shall be issued. Such decisions will be considered final unless an appeal is filed with the Tribal Court within fifteen (15) calendar days of the date of mailing the decision to the licensee. The Tribal Court will then conduct a hearing and will issue an order, which is final with no further right of appeal. All proceedings conducted under all sections of this Ordinance shall be in accord with due process of law.

6.10 *Non-Transferability of Licenses.* Licenses issued by the Liquor Control

Board shall not be transferable and may only be utilized by the person or entity in whose name it is issued.

Section Seven: Taxes

7.1 As a condition precedent to the conduct of any operations pursuant to a license issued by the Liquor Control Board, the licensee must obtain from the Ottawa Tribe Tax Commission such license, permits, tax stamps, tags, receipts, or other documents or things evidencing receipt of any license or payment of any tax or fee administered by the Ottawa Tribe Tax Commission or otherwise showing compliance with the tax laws of the Tribe.

7.2 In addition to any other remedies provided in this Ordinance, the Liquor Control Board may suspend or revoke any licenses issued by it upon the failure of the licensee to comply with the obligations imposed upon the licensee by the General Revenue and Taxation Act of the Ottawa Tribe of Oklahoma, or any rule, regulation, or order of the Ottawa Tribe Tax Commission.

Section Eight: Rules, Regulations, and Enforcement

8.1 In any proceeding under this Ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor, or distributing liquor in violation of this Ordinance.

8.2 Any person who shall in any manner sell or offer for sale or distribution or transport, liquor, in violation of this Ordinance, shall be subject to civil damages assessed by the Liquor Control Board.

8.3 Any person within the boundaries of tribal lands who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this Ordinance.

8.4 Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this Section shall be guilty of a violation of this Ordinance.

8.5 Any person who knowingly sells liquor to a person who is obviously intoxicated or appears to be intoxicated shall be guilty of a violation of this Ordinance.

8.6 Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of violating this Ordinance. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this Ordinance.

8.7 No person under the age of twenty-one (21) years shall consume, acquire, or have in his/her possession any liquor or alcoholic beverage. No person shall permit any other person under the age of twenty-one (21) years to consume liquor on his/her premises or any premises under his/her control. Any person violating this prohibition shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

8.8 Any person who shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for the sale of each drink or for each drink provided.

8.9 Any person who transfers in any manner an identification of age to a person under the age of twenty-one (21) years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this Ordinance.

8.10 Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification that falsely purports to show the individual to be over the age of twenty-one (21) years shall be guilty of violating this Ordinance.

8.11 Any person who is convicted or pleads guilty to a violation of this Ordinance shall be liable to pay the Ottawa Tribe of Oklahoma an amount of up to $1,000 per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance.

8.12 When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature, and photograph. Official documentation includes one of the following:

A. Driver's license or identification card issued by any state department of motor vehicles;

B. United States Active Duty Military Identification Card; or

C. Passport.

8.13 The consumption or possession of liquor on premises where such consumption or possession is contrary to the terms of this Ordinance will result in a declaration that such liquor is contraband. Any tribal agent, employee, or officer who is authorized by the Liquor Control Board to enforce this Ordinance shall seize all contraband and preserve it in accordance with provisions established for the preservation of impounded property. Upon being found in violation of this Ordinance, the party owning or in control of the premises where contraband is found shall forfeit all right, title, and interest in the items seized which shall become the property of the Ottawa Tribe of Oklahoma.

Section Nine: Abatement

9.1 Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in an used in maintaining such place, is hereby declared a nuisance.

9.2 The Chairman of the Liquor Control Board, or, if the Chairman fails or refuses to do so, the Liquor Control Board, by a majority vote, shall institute and maintain an action in the Tribal Court in the name of the Ottawa Tribe of Oklahoma to abate and perpetually enjoin any nuisance declared under this Section. In addition to other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of one year or until the owner, lessee, tenant, or occupant thereof shall give bond or sufficient sum from $1,000 to $15,000 depending upon the severity of the offense, past offenses, the risk of future offenses, and any other appropriate criteria, payable to the Tribe and conditioned that liquor will not thereafter be manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other applicable tribal laws.

If any conditions of the bond are violated, the bond may be applied to satisfy any amounts due to the Tribe under this Ordinance.

Section Ten: Severability and Effective Date

10.1 If any provision under this Ordinance is determined by court review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

10.2 This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

10.3 Any and all previous liquor control enactments of the Business Committee which are inconsistent with this Ordinance are hereby rescinded.

Section Eleven: Amendment and Construction

11.1 This Ordinance may only be amended by vote of the Ottawa Business Committee.

11.2 Nothing in this Ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Ottawa Tribe or its Tribal Government other than the due process provision of Section 6.9 which provides that licensees whose licenses have been revoked or suspended may seek review of that decision in Tribal Court.

11.3 The foregoing Liquor Control Ordinance of the Ottawa Tribe of Oklahoma was duly enacted and approved by the Business Committee of the Ottawa Tribe of Oklahoma this 8th day of December 2005.

Charles A. Todd,

Principal Chief.

Bert Kleidon,

Secretary/Treasurer.

[FR Doc. 06–5447 Filed 6–15–06; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–1430–EU; WIES–051607]

Notice of Realty Action: Direct Sale of Public Land in Vilas County, WI

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell a .21 acre parcel of public land in Vilas County, Wisconsin at not less than the fair market value to Ernest Horinek to resolve an unauthorized use of public land.

DATES: Comments regarding the proposed sale must be received by the BLM at the address below not later than July 31, 2006.

ADDRESSES: Send all written comments concerning this proposed sale to the Field Manager, BLM-Eastern States, Milwaukee Field Office, 626 East Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202. Comments received in electronic form such as e-mail or facsimile will not be considered.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman at 414–297–4402 or at the address above.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of 43 CFR part 2710, the following described public land is proposed to be sold pursuant to the authority provided in section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended (43 U.S.C. 1713):

Fourth Principal Meridian

T. 43 N., R. 5 E.,

Sec. 4, lot 17 of Government lot 11.

The area described contains 0.21 acres in Vilas County

The appraised market value for this parcel is $20,000. The proposed sale is consistent with the objectives, goals, and decisions of the Wisconsin Resource Management Plan Amendment (2001) and the land is not required for Federal purposes. The direct sale of this land to Mr. Horinek would resolve an unintentional, unauthorized occupancy of public land managed by the BLM. In accordance with 43 CFR 2710.0–6(c)(3)(iii) and 43 CFR 2711.3–3(a), direct sale procedures are appropriate to resolve an inadvertent unauthorized occupancy of the land and to protect existing equities in the land. The unauthorized occupancy involves encroachment of a cabin on the public land. Mr. Horinek owns the private land south of the subject BLM parcel. In 2002, Mr. Horinek notified this office that a private survey he had commissioned revealed a potential encroachment of his cabin on to the BLM parcel. The encroachment was verified by the Chief Cadastral Surveyor for Eastern States in July of 2002. The sale when completed would add the public land to the Horinek property, protect the improvements, and resolve an inadvertent encroachment. The parcel is the minimum size possible to ensure that all of the improvements are included. The proponent, Mr. Ernest Horinek, will be allowed 30 days from receipt of a written offer to submit a deposit of at least 20 percent of the appraised market value of the parcel, and 180 days thereafter to submit the balance.

On June 16, 2006 the above described land is segregated from appropriation under the public land laws. The segregative effect of this notice shall terminate upon issuance of a patent upon publication in the **Federal Register** of a termination of the segregation or on March 13, 2007, which ever comes first.

The following reservations, rights, and conditions will be included in the patent that may be issued for the above parcel of Federal land:

1. A reservation of all minerals to the United States.

2. All valid and existing rights of record.

Detailed information concerning the proposed land sale, including sale procedures, appraisal, planning and environmental documents, and mineral report is available for review at the BLM–ES, Milwaukee Field Office, 626 East Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202. Normal business hours are 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

The general public and interested parties may submit written comments regarding the proposed sale to the Field Manager at the above address not later than July 31, 2006. Comments received during this process, including respondent's name, address, and other contact information, will be available for public review. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, address, and other contact information (phone number, e-mail address, or fax number, etc.) from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. The BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by an individual in their capacity as an official or representative of a business or organization.

Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

The land will not be offered for sale prior to August 15, 2006.

(Authority: 43 CFR 2711.1–2(a)).

Dated: May 4, 2006.

Michael D. Nedd,

State Director, Eastern States.

[FR Doc. E6–9433 Filed 6–15–06; 8:45 am]

BILLING CODE 4310–PN–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of an Environmental Assessment for Proposed Outer Continental Shelf Oil and Gas Lease Sale 201 in the Central Gulf of Mexico (2007)

AGENCY: Minerals Management Service, Interior.

ACTION: Preparation of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) is issuing this notice to advise the public, pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 et seq., that MMS intends to prepare an environmental assessment (EA) for proposed Outer Continental Shelf (OCS) oil and gas Lease Sale 201 in the Central Gulf of Mexico (GOM) (Lease Sale 201) scheduled for March 2007. The MMS is issuing this notice to facilitate public involvement. The preparation of this EA is an important step in the decision process for Lease Sale 201. The proposal and alternatives for Lease Sale 201 were identified by the MMS Director in January 2002 following the Call for Information and Nominations/Notice of Intent to Prepare an Environmental Impact Statement (EIS) and were analyzed in the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2003–2007; Central Planning Area Sales 185, 190, 194, 198, and 201; Western Planning Area Sales 187, 192, 196, and 200—Final Environmental Impact Statement; Volumes I and II* (Multisale EIS, OCS EIS/EA MMS 2002–052). This EA will reexamine the potential environmental effects of the proposed action (the offering of all available unleased acreage in the GOM Central Planning Area (CPA)) and its alternatives (the proposed action excluding the unleased blocks near biologically sensitive topographic features; the proposed action excluding the unleased blocks within 15 miles of the Baldwin County, Alabama, coast; and no action) based on any new information regarding potential impacts and issues that were not available at the time the Multisale EIS was prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Chew, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, MS 5410, New Orleans, Louisiana 70123–2394. You may also contact Mr. Chew by telephone at (504) 736–2793.

SUPPLEMENTARY INFORMATION: In November 2002, MMS prepared a Multisale EIS that addressed nine proposed Federal actions that offer for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each proposed lease sale and its projected activities are very similar each year for each planning area, a single EIS was prepared for the nine GOM CPA and Western Planning Area (WPA) lease sales scheduled in the *OCS Oil and Gas Leasing Program: 2002–2007* (5-Year Program, OCS EIS/EA MMS 2002–006). Under the 5-Year Program, five annual areawide lease sales are scheduled for the CPA (Lease Sales 185, 190, 194, 198, and 201) and five annual areawide lease sales are scheduled for the WPA (Lease Sales 184, 187, 192, 196, and 200). Lease Sale 184 was not addressed in the Multisale EIS; a separate EA was prepared for that proposal. The Multisale EIS addressed CPA Lease Sales 185, 190, 194, 198, and 201 scheduled for 2003, 2004, 2005, 2006, and 2007, respectively, and WPA Lease Sales 187, 192, 196, and 200 scheduled for 2003, 2004, 2005, and 2006, respectively. Although the Multisale EIS addresses nine proposed lease sales, at the completion of the EIS process, decisions were made only for proposed CPA Lease Sale 185 and proposed WPA Lease Sale 187. In the year prior to each subsequent proposed lease sale, an additional NEPA review (an EA) will be conducted to address any new information relevant to that proposed action. After completion of the EA, MMS will determine whether to prepare a Finding of No New Significant Impact (FONNSI) or a Supplemental EIS. The MMS will then prepare and send Consistency Determinations (CD's) to the affected States to determine whether the lease sale is consistent with their federally-approved State coastal zone management programs. Finally, MMS will solicit comments via the Proposed Notice of Sale (PNOS) from the governors of the affected States on the size, timing, and location of the lease sale. The tentative schedule for the prelease decision process for Lease Sale 201 is as follows: EA/FONNSI or decision to prepare a Supplemental EIS, October 2006; CD's sent to affected States, October 2006; PNOS sent to governors of the affected States, October 2006; Final Notice of Sale published in the **Federal Register**, February 2007; and Lease Sale 201, March 2007.

Public Comments: Interested parties are requested to send within 30 days of this Notice's publication comments regarding any new information or issues that should be addressed in the EA. Comments may be submitted in one of the following three ways:

1. Electronically using MMS's new Public Connect on-line commenting system at *https://ocsconnect.mms.gov*. This is the preferred method for commenting. From the Public Connect "Welcome" screen, search for "CPA Lease Sale 201 EA" or select it from the "Projects Open for Comment" menu.

2. In written form enclosed in an envelope labeled "Comments on CPA Lease Sale 201 EA" and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment (MS 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

3. Electronically to the MMS e-mail address: *environment@mms.gov*.

To obtain single copies of the Multisale EIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view the Multisale EIS or check the list of libraries that have copies of the Multisale EIS on the MMS Web site at *http://www.gomr.mms.gov*.

Dated: April 26, 2006.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. E6–9482 Filed 6–15–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Burr Trail Modifications, Final Environmental Impact Statement, Capitol Reef National Park, Utah

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement for Burr Trail Modifications, Capitol Reef National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of a Final Environmental Impact Statement (FEIS) for Burr Trail Modifications for Capitol Reef National Park, Utah.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for pubic inspection online at *http://parkplanning.nps.gov* and at the following locations.

Office of the Superintendent, Capitol Reef National Park, Park Headquarters, Jct. Hwy 24 & Scenic Drive, Torry, Utah 84775. Telephone: (435) 425–3791.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228. Telephone: (303) 969–2851.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240. Telephone: (202) 208–6743.

FOR FURTHER INFORMATION CONTACT: Contact Al Hendricks, Superintendent, Capitol Reef National Park, at the above address and telephone number.

Dated: April 26, 2006.

Rick M. Frost,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 06–5484 Filed 6–15–06; 8:45 am]

BILLING CODE 4312–DL–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan and Environmental Impact Statement, Flight 93 National Memorial, Pennsylvania

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service announces the availability of the Draft General Management Plan and Environmental Impact Statement (Draft GMP/EIS) for Flight 93 National Memorial, in Somerset County, Pennsylvania. Consistent with National Park Service laws, regulations, and policies, and the mission of Flight 93 National Memorial, the Draft GMP/EIS describes and analyzes two alternatives to guide the management of the national memorial over the next 15 to 20 years. The alternatives incorporate various management prescriptions to ensure protection and enjoyment of the park's resources. Alternative 1 is a no action alternative. Alternative 2 is the National Park Service's preferred alternative. Alternative 2 is based upon the selected design from the Flight 93 National Memorial International Design Competition. The Draft GMP/EIS evaluates potential environmental consequences of implementing the alternatives. Impact topics include cultural and natural resources, transportation, and the socioeconomic environment. This notice also announces that a public meeting will be held to solicit comments on the Draft GMP/EIS during the public review period.

DATES: The Draft GMP/EIS will be available for public review until August 15, 2006. Comments on the Draft GMP/EIS must be received at one of the addresses below during the public review period. The National Park Service will hold a public meeting to solicit comments during the public review period. The public meeting will be held on Thursday, July 20, 2006, at the Shanksville-Stonycreek School in Shanksville, Pennsylvania, from 7 to 9 p.m.

ADDRESSES: Comments on the Draft GMP/EIS may be submitted on the Internet at: *http://www.flight93memorialproject.org.* Comments may also be mailed to: Superintendent, Flight 93 National Memorial, 109 W. Main Street, Suite 104, Somerset, PA 15501. It is the practice of the NPS to make all comments, including names and addresses of respondents who provide that information, available for public review following the conclusion of the NEPA process. Individuals may request that the NPS withhold their name and/or address from public disclosure. If you wish to do this, you must state this prominently at the beginning of your comments. NPS will honor such requests to the extent allowable by law, but you should be aware that NPS may still be required to disclose your name and address pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: The Draft GMP/EIS is available on the Internet at *http://www.flight93memorialproject.org.* Copies are available upon request by writing to: Jeff Reinbold, Flight 93 National Memorial, 109 W. Main Street, Suite 104, Somerset, PA 15501. The Draft GMP/EIS is also at the Flight 93 National Memorial project office at the same address, during regular business hours.

SUPPLEMENTARY INFORMATION: The *Flight 93 National Memorial Act* (Pub. L. 107–226) was enacted on September 24, 2002. The Act authorized "a national memorial to commemorate the passengers and crew of Flight 93 who, on September 11, 2001, courageously gave their lives thereby thwarting a planned attack on our Nation's Capital. * * *" This legislation created the Flight 93 National Memorial and specifically designated the crash site of Flight 93, located in Stonycreek Township, Somerset County, Pennsylvania, as the site to honor the passengers and crew of Flight 93. The Secretary of the Interior is authorized by the Act to administer the Memorial as a unit of the National Park System.

The Act created the Flight 93 Advisory Commission and tasked it with: (1) Advising the Secretary on the boundary of the memorial site, (2) submitting to the Secretary a report containing recommendations for the planning, design, construction, and long-term management of a permanent memorial at the crash site by September 24, 2005; and (3) advising the Secretary in the development of a management plan for the site.

The Commission recommended to the Secretary a boundary for the memorial on July 30, 2004 and the Secretary approved the recommendations on January 14, 2005. The boundary was published in the **Federal Register** in March 2005. The boundary includes 1,355 acres that comprise the crash site, the areas where human remains were found, the debris field, and lands necessary for viewing and accessing the national memorial. Approximately 907 additional acres comprise the perimeter viewshed and would ideally remain in private ownership and be protected through the acquisition of conservation or scenic easements by partners or other governmental agencies.

The Partners agreed that an international competition was the most democratic, inclusive, and transparent way to generate designs for a permanent memorial. The competition began on September 11, 2004 and more than 1,000 design professionals and members of the public submitted design concepts. Five final designs were selected by a jury of professionals, family members and local leaders after extensive public comment and review. The five final designs were refined and after public review and comment, a second jury selected the design that best fulfilled the mission of the national memorial. The selected design was announced to the public on September 7, 2005 and is the basis of the preferred alternative in the Draft GMP/EIS.

Alternative 2, the Preferred Design Alternative, would transform the reclaimed mining site where the plane crashed into a designed memorial landscape. The memorial landscape would enhance the natural topography of the site to focus attention on the crash site as the actual memorial. The agency would also develop a visitor center to

explain the story of Flight 93 and the events of September 11, 2001. Site development would also include infrastructure, access roads, and visitor parking areas.

The Environmental Impact Statement assesses the potential environmental impacts of implementing the alternatives. To support the plan, the National Park Service prepared a cultural landscape inventory and reports on transportation, geotechnical conditions, visitor and economic projections, natural resources, hazardous materials, and visual resources. The National Park Service conducted public scoping of the alternatives, including consultations with local, state, and federal agencies.

After public review of the Draft GMP/EIS, the National Park Service will consider comments, and a Final GMP/EIS, followed by a Record of Decision, will be prepared. The Final GMP/EIS is scheduled for completion in 2006.

Dated: May 11, 2006.

Linda Canzanelli,

Regional Director, Northeast Region, National Park Service.

[FR Doc. 06–5485 Filed 6–15–06; 8:45 am]

BILLING CODE 4312–25–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities; New Information Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of a new information collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Yakima Basin Recreation Survey, Washington. The ICR describes the nature of the information collection and its expected cost burden.

DATES: Your written comments must be received on or before July 17, 2006.

ADDRESSES: You may send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov.* A copy of your comments should also be directed to the Bureau of Reclamation, Attention: 86–68580, PO Box 25007, Denver, CO 80225–0007. You may request copies of the proposed forms by writing to the above address or by contacting Darrell P. Welch at: (303) 445–2711.

FOR FURTHER INFORMATION CONTACT: For further information contact Darrell P. Welch at: (303) 445–2711.

SUPPLEMENTARY INFORMATION:

Title: Yakima Basin Recreation Survey.

Abstract: The Yakima River Basin is located in south central Washington State in the counties of Benton, Franklin, Yakima, and Kittitas. The seven major reservoirs in the Yakima River Basin are Bumping Lake, Clear Lake, Cle Elum, Kachess, Keechelus, Easton, and Rimrock. The five major rivers in the Yakima River Basin are the Yakima, Nachess, Cle Elum, Bumping and Tieton. Reclamation is in the process of preparing a Yakima River Basin Water Storage Feasibility Study and associated Environmental Impact Statement that will address options for supplying additional water storage for the Yakima River Basin. Currently, site-specific recreation-related information is unavailable for the primary reservoirs and rivers. In order to accurately assess the current recreation and recreation-related economic environment within the Yakima River Basin, additional information must be collected from the recreationists who visit the reservoirs and rivers within the basin. Further, the survey information will allow Reclamation to adequately assess the recreation impacts that different options may have on the environment and the local economy.

The required 60-day comment period was initiated by a notice published in the **Federal Register** on February 16, 2006 (71 FR 8310). No comments were received in response to the 60-day comment period.

Frequency: One time survey.

Respondents: Yakima River Basin reservoir and river recreationists come from the cities of Yakima and Ellensburg, Washington, as well as the smaller communities within the basin. A large number of visitors also come from western Washington, in particular the Puget Sound communities of Seattle and Tacoma. A smaller portion of recreationists within the basin are out-of-state visitors.

Estimated Total Number of Respondents: 3,216.

Estimated Number of Responses per Respondent: 1.0.

Estimated Total Number of Annual Responses: 3,216.

Estimated Total Annual Burden on Respondents: 1,072 hours.

Estimate of Burden for Each Form:

Form	Burden estimate per form (in minutes)	Number of respondents	Annual burden on respondents (in hours)
River Survey	20	1,340	447
Reservoir Survey	20	1,876	625
Total		3,216	1,072

Comments.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents.

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. Reclamation will display a valid OMB control number on the forms.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be

submitted to OMB within 30 days in order to assure maximum consideration.

Department of the Interior practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Gerald W. Kelso,

Area Manager, Upper Columbia Area Office, Pacific Northwest Region.

[FR Doc. E6–9452 Filed 6–15–06; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Public Meeting for Reclamation's Managing for Excellence Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Announcement of a public meeting.

SUMMARY: The Bureau of Reclamation is holding a meeting to inform the public about the Managing for Excellence project. This meeting is the first of three meetings to inform the public about the action items, progress, and results of the Managing for Excellence project and to seek broad feedback. Subsequent meetings will likely be held in September and November 2006 in other metropolitan areas of the Western United States.

DATES: July 10, 1 p.m.–5 p.m. and July 11, 2006, 8 a.m.–12 p.m.

ADDRESSES: Luxor Las Vegas, 3900 Las Vegas Boulevard South, Las Vegas, NV 89119. *General Session Room:* Egyptian ABC.

FOR FURTHER INFORMATION CONTACT: Kerry Whitford (303) 445–2949.

SUPPLEMENTARY INFORMATION: The Managing for Excellence Project will identify and address the specific 21st Century challenges Reclamation must meet to fulfill its mission to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. This project will examine Reclamation's core capabilities and the agency's ability to respond to both expected and unforeseeable future needs in an innovative and timely manner. This project will result in essential changes in a number of key areas, which are outlined in, Managing for Excellence—An Action Plan for the 21st Century Bureau of Reclamation. For more information regarding the Project, Action Plan, and specific actions being taken, please visit the Managing for Excellence Web page at *http://www.usbr.gov/excellence.*

Registration

Although you may register the day of the conference between 10 a.m. and 12 p.m., we highly encourage you to register online at *http://www.usbr.gov/excellence*, or by phone at 303–445–2808.

Dated: June 7, 2006.

Trudy Harlow,

Acting Deputy Commissioner for External and Intergovernmental Affairs, Washington Office.

[FR Doc. 06–5461 Filed 6–15–06; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–539]

In the Matter of Certain Tadalafil or Any Salt or Solvate Thereof and Products Containing Same; Notice of Commission Issuance of General Exclusion Order; Decision To Grant Motion To File a Surreply; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and has issued a general exclusion order under section 337(g)(2), 19 U.S.C. 1337(g)(2), and terminated the investigation. The Commission has decided to grant complainant's motion to file a surreply.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3104. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted by the Commission based on a complaint filed by Lilly ICOS LLC ("Lilly") of Wilmington, Delaware, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337. 70 FR 25601 (May 13, 2005). The complainant alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain tadalafil or any salt or solvate thereof, and products containing same by reason of infringement of claims 1–4, 6–8, 12, and 13 of U.S. Patent No. 5,859,006 ("the '006 patent"). The complaint and notice of investigation named ten respondents.

On September 12, 2005, the Commission issued a notice indicating that it had determined not to review an initial determination ("ID") (Order No. 5) finding respondents Santovittorio Holdings Ltd. d/b/a Inhousepharmacy.co.uk of El Dorado, Panama; Stop4Rx of Port-au-Prince, Haiti, Rx Mex-Com, S.A. de C.V. of Colonia Las Brisas, Mexico; and *http://www.Nudewfds.info* of New Orleans, Louisiana; in default. The ID further found that respondent Express Generic had not been properly served with the complaint.

On November 17, 2005, the Commission issued a notice that it had determined not to review an ID (Order No. 9) finding an additional five of the originally named respondents in default. The additional five respondents are Budget Medicines Pty Ltd., of Sydney, Australia; Generic Cialis Pharmacy of Managua, Nicaragua; Cutprice Pills of Scottsdale, Arizona; Allpills.us of Beverly Hills, California; and Pharmacy4u.us of New York, New York.

On October 28, 2005, Lilly filed a motion for summary determination on the issues of the existence of a domestic

industry and violation of section 337 by reason of patent infringement with respect to the nine respondents that were found in default. On November 14, 2005, the Commission investigative attorney ("IA") filed a response in support of Lilly's motion.

On December 6, 2005, the presiding administrative law judge ("ALJ") issued an ID (Order No. 10) granting Lilly's motion for a summary determination of violation of section 337. At the same time the ALJ made his recommendations on remedy and the amount of bond to be imposed during the Presidential period of review provided for in section 337(j), 19 U.S.C. 1337(j). No party petitioned for review of the ID. On January 4, 2006, the Commission determined not to review the ID, thereby allowing it to become the Commission's final determination on violation. 71 FR 1452 (Jan. 9, 2006). With respect to remedy, the ALJ recommended the issuance of a general exclusion order under section 337(g)(2), 19 U.S.C. 1337(g)(2). The ALJ also recommended that the bond permitting importation during the Presidential review period be set at 100 percent of the value of the infringing imported products.

Pursuant to the Commission's notice, Lilly and the IA submitted main briefs on the issues of remedy, the public interest, and bonding on January 17, 2006, with draft general exclusion orders attached. The IA filed a reply submission on January 24, 2006. Lilly filed a motion to file a surreply with surreply attached on February 9, 2006. The Commission has determined to grant Lilly's motion to file a surreply.

Having reviewed the record in this investigation, including the recommended determination of the ALJ and the written submissions of the parties, the Commission has determined that the public interest factors listed in section 337(d)(2) do not preclude issuance of a general exclusion order that prohibits the unlicensed entry for consumption of tadalafil salt or solvate thereof and products containing same that infringe one or more of claims 1–4, 6–8, 12, and 13 of the '006 patent during the term of that patent. The Commission has further determined that the appropriate bond during the period of Presidential review pursuant to section 337(j) should be set at 100 percent of the value of the infringing products. The Commission's general exclusion order was delivered on the date of its issuance to the President and to the United States Trade Representative, pursuant to the Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005).

This action is taken under authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and sections 210.41, 210.49, and 210.50 of the Commission's Rules of Practice and Procedure, 19 CFR 210.41, 210.49, and 210.50.

Issued: June 13, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–9467 Filed 6–15–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA–574]

In the Matter of Certain Equipment for Telecommunications or Data Communications Networks, Including Routers, Switches, and Hubs, and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 15, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Telcordia Technologies, Inc. of Piscataway, New Jersey. An amended complaint was filed on June 5, 2006. The complaint as amended alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain equipment for telecommunications or data communications networks, including routers, switches, and hubs, and components thereof, by reason of infringement of claims 1, 3, and 4 of U.S. Patent No. 4,893,306, claims 1, 3, 5, 8, 11, and 33 of U.S. Patent No. Re. 36,633, and claims 1, 2, 7, and 8 of U.S. Patent No. 4,835,763. The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and permanent cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Steven R. Pedersen, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2781.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on June 9, 2006, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain equipment for telecommunications or data communications networks, including routers, switches, and hubs, or components thereof, by reason of infringement of one or more of claims 1, 3, and 4 of U.S. Patent No. 4,893,306, claims 1, 3, 5, 8, 11, and 33 of U.S. Patent No. Re. 36,633, and claims 1, 2, 7, and 8 of U.S. Patent No. 4,835,763, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Telcordia Technologies, Inc., One Telcordia Drive, Piscataway, New Jersey 08854.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Cisco Systems, Inc., 170 West Tasman Drive, San Jose, California 95134.

Lucent Technologies, Inc., 600 Mountain Avenue, Murray Hill, New Jersey 07974.

Alcatel S.A., 54, rue La Boétie, 75008, Paris, France.

Alcatel USA, Inc., 3400 W. Plano Parkway, Plano, Texas 75075.

PMC–Sierra, Inc., 3975 Freedom Circle, Santa Clara, CA 95054.

(c) The Commission investigative attorney, party to this investigation, is Steven R. Pedersen, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: June 9, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–9416 Filed 6–15–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated January 20, 2006 and published in the **Federal Register** on January 27, 2006 (71 FR 4612), Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedule I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Gamma hydroxybutyric acid (2010).	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Etorphine (except HCl) (9056)	I
Heroin (9200)	I
Pholcodine (9314)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Cerilliant Corporation to import the basic class of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Cerilliant Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substances listed.

Dated: June 7, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–9415 Filed 6–15–06; 8:45 am]

BILLING CODE 4410–09–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Neighborworks® America Annual Meeting of the Board of Directors; Sunshine Act

TIME & DATE: 3 p.m. Tuesday, June 20, 2006.

PLACE: 1325 G Street, NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

FOR FURTHER INFORMATION CONTACT: Jeffrey T. Bryson, General Counsel/Secretary, (202) 220–2372; *jbryson@nw.org.*

Agenda

I. Call to Order
II. Approval of the Minutes
III. Summary Committee Reports
IV. Resolutions of Appreciation
V. Chief Executive Officer's Management Report
VI. Adjournment

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 06–5503 Filed 6–14–06; 10:53 am]

BILLING CODE 7570–02–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

Amergen Energy Company, LLC; Oyster Creek Nuclear Generating Station; Notice of Availability of the Draft Supplement 28 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, and Public Meeting for the License Renewal of Oyster Creek Nuclear Generating Station

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437, regarding the renewal of operating license DPR–16 for an additional 20 years of operation for the Oyster Creek Nuclear Generating Station (OCNGS). OCNGS is located along the western shore of Barnegat Bay between the South Branch of Forked River and Oyster Creek, in Ocean County, New Jersey. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft Supplement 28 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://www.nrc.gov/reading-rm/adams/web-based.html*. The accession number for the draft Supplement 28 to the GEIS is ML061520231. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*. In addition, the Lacey Public Library, located at 10 East Lacey Road, Forked River, NJ 08731, has agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by September 8, 2006. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Room T–6D59, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *OysterCreekEIS@nrc.gov*. All comments received by the Commission, including those made by Federal, State, local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and through ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on July 12, 2006, at the Quality Inn located at 815 Route 37 in Toms River, New Jersey. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may pre-register to attend or present oral comments at the meeting by contacting Dr. Michael Masnik, the NRC Environmental Project Manager at 1–800–368–5642, extension 1191, or by e-mail at *OysterCreekEIS@nrc.gov* no later than July 5, 2006. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual, oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Dr. Masnik's attention no later than June 28, 2006, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

For Further Information Contact: Dr. Michael Masnik, Environmental Branch B, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Dr. Masnik may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 6th day of June, 2006.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E6–9057 Filed 6–15–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Special Provincial Review of Intellectual Property Rights Protection in China: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: In its Special 301 Report issued on April 28, 2006, USTR announced plans to conduct a special provincial review (SPR) of intellectual property rights protection in China. As the first step in this review, USTR requests written comments from the public concerning the locations and issues that should be the focus of the SPR.

DATES: Submissions must be received on or before 5 p.m. on Friday, July 14, 2006.

ADDRESS: All comments should be addressed to Sybia Harrison, Special Assistant to the Section 301 Committee, and sent (i) electronically, to the following e-mail address: *FR0621@ustr.eop.gov*, with "China Special Provincial Review" in the subject line, or (ii) by fax, to (202) 395–9458, with a confirmation copy sent electronically to the e-mail address above.

FOR FURTHER INFORMATION CONTACT: Stanford K. McCoy, Office of Intellectual Property, at (202) 395–4510.

SUPPLEMENTARY INFORMATION: On April 28, 2006, USTR released its annual Special 301 report pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and

Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994). In that report, USTR announced that the United States would conduct a special provincial review in the coming year to examine the adequacy and effectiveness of China's IPR protection and enforcement at the provincial level. The goal of this review is to spotlight strengths, weaknesses, and inconsistencies in and among specific jurisdictions, and to inform next year's Special 301 review of China as a whole.

USTR is now commencing the China SPR by seeking public comments on the locations and issues that should be reviewed. The information received will be used to set initial priorities for the review and ensure that the most important locations and issues receive appropriate attention. Before concluding the review, USTR plans to seek more detailed public comments on the adequacy and effectiveness of IPR protection and enforcement at the provincial level in China.

USTR proposes to focus the SPR on the locations in China that are most economically significant for U.S. right holders, or which merit special attention for other reasons. USTR seeks public comments on the specific provinces and other jurisdictions at the provincial level that should be the focus of the SPR. For purposes of this review, jurisdictions at the provincial level may include, in addition to China's provinces (sheng), the four the municipalities (shi) of Beijing, Chongqing, Shanghai, and Tianjin, as well as China's five autonomous regions (zizhiqu). Persons submitting comments should identify specific provinces, municipalities, and/or autonomous regions and give reasons why they should be reviewed in the SPR.

Within each province, municipality, or autonomous region that is included in the review, USTR proposes to examine the issues and locations of greatest interest to U.S. right holders. USTR therefore requests that, with respect to each province, municipality, and/or autonomous region recommended for inclusion in the SPR, commenters identify with particularity any key locations or issues that merit attention. Key locations could include, for example, particular regions, cities, towns, districts, sub-districts, or markets. Key issues could include, for example, counterfeiting or piracy of particular types of products in a particular location, or factors that affect the ability to enforce particular rights (*e.g.*, positive or negative aspects of local policy, legislation, or resources). Commenters should bear in mind that the goals of the SPR include highlighting strengths, as well as weaknesses and inconsistencies, in and among specific jurisdictions. Strengths could include, for example, taking *ex officio* action on behalf of, and providing fair treatment for, foreign right holders, or local measures that facilitate IPR enforcement. USTR welcomes suggestions for activities, such as visits or meetings, that would contribute to a full examination of the issues and locations of greatest interest to U.S. right holders.

Among other locations to be considered for inclusion in the SPR, USTR seeks comments on possible inclusion of the four "hot spots" identified in the 2006 Special 301 Report: Guangdong Province, Beijing City, Zhejiang Province, and Fujian Province. USTR noted an apparent acute need for authorities in these areas to more effectively establish and sustain proactive, deterrent IPR enforcement. The China section of the 2006 Special 301 Report (available on USTR's Web site at *http://www.ustr.gov*) identifies certain issues and locations of concern in Guangdong, Beijing, Zhejiang, and Fujian.

Finally, USTR encourages interested persons to monitor progress with respect to significant locations and issues at China's provincial level over the remainder of the year. As noted above, USTR plans to seek more detailed public comments before concluding the SPR.

Requirements for Comments: Comments should be brief, and should respond to the requests in this notice.

Comments must be in English. No submissions will be accepted via postal service mail. Documents should be submitted as either WordPerfect, MS Word, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable as Quattro Pro or Excel files. A submitter requesting that information contained in a comment be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. A non-confidential version of the comment must also be provided. For any document containing business confidential information, the file name of the business confidential version should begin with the characters "BC–", and the file name of the public version should begin with the character "P-". The "P–" or "BC–" should be followed by the name of the submitter. Submissions should not include separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

All comments should be addressed to Sybia Harrison, Special Assistant to the Section 301 Committee, and sent (i) electronically, to the following e-mail address: *FR0621@ustr.eop.gov*, with "China Special Provincial Review" in the subject line, or (ii) by fax, to (202) 395–9458, with a confirmation copy sent electronically to the e-mail address above.

Public Inspection of Submissions: Within one business day of receipt, non-confidential submissions will be placed in a public file, open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW., Room 1, Washington, DC. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling Jacqueline Caldwell at (202) 395–6186. The USTR reading room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Victoria Espinel,

Assistant USTR for Intellectual Property.

[FR Doc. E6–9498 Filed 6–15–06; 8:45 am]

BILLING CODE 3190–W6–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request For Collection: Scholarship for Service Program Internet Web Page

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit a request to the Office of Management and Budget (OMB). The OPM is requesting OMB to approve a collection associated with the Scholarship For Service (SFS) Program Internet Web page. Approval of the Web page is necessary to facilitate the timely registration, selection and placement of program-enrolled students in Federal agencies.

The SFS Program was established by the National Science Foundation in accordance with the Federal Cyber Service Training and Education Initiative as described in the President's National Plan for Information Systems Protection. This program seeks to

increase the number of qualified students entering the fields of information assurance and computer security in an effort to respond to the threat to the Federal Government's information technology infrastructure. The program provides capacity building grants to selected 4-year colleges and universities to develop or improve their capacity to train information assurance professionals. It also provides selected 4-year colleges and universities scholarship grants to attract students to the information assurance field. Participating students who receive scholarships from this program are required to serve a 10-week internship during their studies and complete a post-graduation employment commitment equivalent to the length of the scholarship or one year, whichever is longer.

OPM projects that 450 students will graduate from participating institutions over the next three years. These students will need placement in addition to the 180 students needing placement this year. This is a new collection of information. Based on other programs that collect similar information, we estimate the collection of information for registering and creating an online resume to be 45 minutes to 1 hour in length of time to answer questions. We estimate the total number of hours to be 630.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of OPM, 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; 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.

For copies of this proposal, contact Kathy Roberson (210) 805–2423, ext. 506; fax (210) 805–2407 or e-mail to *kathy.roberson@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received within sixty (60) calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: U.S. Office of Personnel Management, ATTN: Kathy Roberson, 8610 Broadway, Rm. 305, San Antonio, TX 78217. E-mail: *kathy.roberson@opm.gov*.

Office of Personnel Management.

Dan G. Blair,

Deputy Director.

[FR Doc. E6–9417 Filed 6–15–06; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Notice of Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 19, 2006:

A Closed Meeting will be held on Monday, June 19, 2006 at 2 p.m. and on Thursday, June 22, 2006 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (4), (5), (7), (8), (9)(B), (10) and 17 CFR 200.402(a)(3), (4), (5), (7), (8), (9)(ii), and (10) permit consideration of the scheduled matters at the Closed Meetings.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meetings in closed session and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Monday, June 19, 2006 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Regulatory matters regarding financial institutions.

The subject matter of the Closed Meeting scheduled for Thursday, June 22, 2006 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Litigation matters; and

Resolution of litigation claims.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: June 14, 2006.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–5506 Filed 6–14–06; 11:19 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53968; File No. SR–Amex–2006–56]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Adoption of an Options Licensing Fee in Connection With Certain Russell Indexes

June 9, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 26, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its Options Fee Schedule by adopting a per contract licensing fee for the orders of specialists, registered options traders ("ROTs"), firms, non-member market makers, and broker-dealers in connection with options transactions on the Russell 2000 Index (symbol: RUT) and shares of the following exchange-traded funds ("ETFs"): (1) Rydex Russell Top 50 (symbol: XLG); (2) iShares Russell 1000 (symbol: IWB); (3) iShares Russell 1000 Growth (symbol:

[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).

IWF); (4) iShares Russell 1000 Value (symbol: IWD); (5) iShares Russell 2000 (symbol: IWM); (6) iShares Russell 2000 Growth (symbol: IWO); (7) iShares Russell 2000 Value (symbol: IWN); and (8) iShares Russell 3000 (symbol: IWV) (collectively, the "Russell ETFs").

The text of the proposed rule change is available on Amex's Web site at *http://www.amex.com*, at the principal office of Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

Amex proposes to adopt a per contract licensing fee for options on the Russell 2000 Index ("RUT") and the Russell ETFs. This fee change will be assessed on members commencing May 26, 2006.

The Exchange has entered into numerous agreements with various index providers for the purpose of trading options on certain indexes and ETFs, such as RUT and Russell ETFs. This requirement to pay an index license fee to a third party is a condition to the listing and trading of these index and ETF options. In many cases, the Exchange is required to pay a significant licensing fee to the index provider that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has established a per contract licensing fee for the orders of specialists, ROTs, firms, non-member market makers and broker-dealers, which is collected on every option transaction in designated products in which such market participant is a party.[5]

The purpose of this proposal is to charge an options licensing fee in connection with options on RUT and Russell ETFs. Specifically, Amex seeks to charge an options licensing fee of $0.10 per contract side for the RUT options and Russell ETF options for specialist, ROT, firm, non-member market maker, and broker-dealer orders executed on the Exchange. In all cases, the fees will be charged only to the Exchange members through whom the orders are placed.

The proposed options licensing fee will allow the Exchange to recoup its costs in connection with the index license fee for the trading of the RUT options and Russell ETF options. The fees will be collected on every order of a specialist, ROT, firm, non-member market maker, and broker-dealer executed on the Exchange. The Exchange believes that the proposal to require payment of a per contract licensing fee in connection with the RUT options and Russell ETF options by those market participants that are the beneficiaries of Exchange index license agreements is justified and consistent with the rules of the Exchange.

The Exchange notes that the Amex, in recent years, has revised a number of fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.[6] Amex believes that the implementation of this proposal is consistent with the reduction and/or elimination of these subsidies. Amex believes that these fees will help to allocate to those market participants engaging in transactions in RUT options and Russell ETF options, a fair share of the related costs of offering such options.

The Exchange asserts that the proposal is equitable as required by Section 6(b)(4) of the Act.[7] In connection with the adoption of an options licensing fee for RUT options and Russell ETF options, the Exchange believes that charging an options licensing fee, where applicable, to all market participant orders except for customer orders is reasonable, given the competitive pressures in the industry. Accordingly, the Exchange seeks, through this proposal, to better align its transaction charges with the cost of providing products.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[8] regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization.

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–Amex–2006–56 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.

[5] *See, e.g.*, Securities Exchange Act Release No. 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005).

[6] *See, e.g.*, Securities Exchange Act Release Nos. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002) and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001).

[7] Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

All submissions should refer to File Number SR–Amex–2006–56. 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–56 and should be submitted on or before July 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–9436 Filed 6–15–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53969; File No. SR–CBOE–2006–53]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Its Marketing Fee Program

June 9, 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 June 2, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE 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 change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its marketing fee program. Below is the text of the proposed rule change. Proposed new language is in *italics*; deleted language is in [brackets].

CHICAGO BOARD OPTIONS EXCHANGE, INC.

FEES SCHEDULE

[MAY 18] *June 2*, 2006

1. No Change	
2. MARKETING FEE (6)(16)	$.65
3.–4. No Change	

FOOTNOTES:

(1)–(5) No Change.

(6) The Marketing Fee will be assessed only on transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs resulting from orders for less than 1,000 contracts (i) from payment accepting firms, or (ii) that have designated a "Preferred Market-Maker" under CBOE Rule 8.13 at the rate of $.65 per contract on all classes of equity options, options on HOLDRs, options on SPDRs, options on DIA, options on NDX, and options on RUT. The fee will not apply to: Market-Maker-to-Market-Maker transactions including transactions resulting from orders from non-member market-makers; transactions resulting from inbound P/A orders or a transaction resulting from the execution of an order against the DPM's account if an order directly related to that order is represented and executed through the Linkage Plan using the DPM's account; transactions resulting from accommodation liquidations (cabinet trades); and transactions resulting from dividend strategies, merger strategies, and short stock interest strategies as defined in footnote 13 of this Fees Schedule. This fee shall not apply to index options and options on ETFs (other than options on SPDRs, options on DIA, options on NDX, and options on RUT). A Preferred Market-Maker will only be given access to the marketing fee funds generated from a Preferred order if the Preferred Market-Maker has an appointment in the class in which the Preferred order is received and executed. If less than 80% of the marketing fee funds are paid out by the DPM/LMM or Preferred Market-Maker in a given month, then the Exchange would refund such surplus at the end of the month on a pro rata basis based upon contributions made by the Market-Makers, RMMs, e-DPMs, DPMs and LMMs. However, if 80% or more of the accumulated funds in a given month are paid out by the DPM/LMM or Preferred Market-Maker, there will not be a rebate for that month and the funds will carry over and will be included in the pool of funds to be used by the DPM/LMM or Preferred Market-Maker the following month. At the end of each quarter, the Exchange would then refund any surplus, if any, on a pro rata basis based upon contributions made by the Market-Makers, RMMs, DPMs, e-DPMs and LMMs. CBOE's marketing fee program as described above will be in effect until June 2, [2006] *2007*.

Remainder of Fees Schedule—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE states that currently, its marketing fee is assessed upon DPMs, LMMs, e-DPMs, RMMs, and Market-Makers at the rate of $.65 per contract on transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs resulting from orders for less than 1,000 contracts (i) from payment accepting firms, or (ii) that have designated a "Preferred Market-Maker" under CBOE Rule 8.13. The Exchange notes that this fee does not apply to: Market-Maker-to-Market-Maker transactions including

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

transactions resulting from orders from non-member market-makers; transactions resulting from inbound P/A orders or a transaction resulting from the execution of an order against the DPM's account if an order directly related to that order is represented and executed through the Linkage Plan using the DPM's account; transactions resulting from accommodation liquidations (cabinet trades); and transactions resulting from dividend strategies, merger strategies, and short stock interest strategies as defined in footnote 13 of the CBOE Fees Schedule. CBOE states that the marketing fee is assessed on all equity option classes and options on HOLDRs, options on SPDRs, options on DIA, options on the Nasdaq-100 (NDX) Index and options on the Russell 2000 (RUT) Index. CBOE states that its marketing fee program currently is in effect until June 2, 2006, which is the date that CBOE's pilot program establishing its Preferred Market-Maker Program was scheduled to expire.

CBOE has extended its Preferred Market-Maker Program until June 2, 2007.[5] In connection with the extension of the Preferred Market-Maker Program, CBOE proposes to extend the marketing fee program until June 2, 2007.

CBOE states that it is not amending its marketing fee program in any other respect.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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 neither solicited nor received comments on the proposal.

[5] *See* Securities Exchange Act Release No. 53922 (June 2, 2006), 71 FR 33017 (June 7, 2006) (SR–CBOE–2006–52).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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–CBOE–2006–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–53 and should be submitted on or before July 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–9435 Filed 6–15–06; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53970; File No. SR–DTC–2006–08]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Mechanism by Which It Will Collect and Pass-Through Fees Owed by Participants to American Depository Receipt Agents for Certain Issues and To Collect a Charge for This Service

June 12, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 28, 2006, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on May 2, 2006, amended [2] the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) [4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

[2] The amendment attached the comment letter from the Securities Operations Division of the Securities Industry Association that DTC had inadvertently omitted. Details of that comment letter are set forth later in this Notice.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b.4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the rule change is to allow for the establishment of a mechanism by which DTC will collect and pass-through fees owed by its participants to American Depositary Receipt ("ADR") agents for certain issues, and to implement a charge for this service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Typically, an ADR agent is authorized under its agreement with the issuer to impose a custody fee on holders of the issue. A common practice for collection of this fee is for the ADR agent to subtract the amount of the fee from the gross dividend payable to the ADR holders. This practice is effectuated by DTC announcing to participants both the gross dividend rate and the net dividend rate after deduction of the ADR custody fee, the ADR agent paying DTC the net dividend, and DTC allocating the net dividend to participants. However, a number of ADR issues do not pay periodic dividends, which prevents the associated fees from being collected through the above-described mechanism.

Pursuant to discussions with industry representatives and in order to facilitate a more efficient ADR fee collection process, DTC is proposing to introduce a mechanism by which it will collect from participants and will pass through to ADR agents custody fees for issues that do not pay periodic dividends as such fees are reported to DTC by the ADR agents. DTC has discussed this proposal with three divisions of the Securities Industry Association ("SIA"), the Corporate Actions Division, Dividends Division, and Securities Operations Divisions ("SOD"). The SOD Regulatory and Clearance Committee prepared and sent to DTC a memorandum on DTC's proposal. The memorandum concluded that DTC should collect such fees through its normal monthly billing process.[6]

In order to cover costs incurred in collecting fees associated with ADR issues that do not pay periodic dividends, DTC will implement a collection charge equal to three percent (3%) of the ADR agent fee amount collected from each participant up to a maximum of $4,000. DTC will not retain a charge a collection fee if its computed collection charge is less than $50. This collection fee will appear in the DTC fee schedule as follows:

Service	Current fee	Proposed fee	Per
Collection of ADR agent fees for issues not paying periodic dividends.	N/A	Scaled fee (3% of ADR agent fee); maximum of $4,000; $0 if computed charge is less than $50.	Per CUSIP, per participant position.

DTC believes the proposed rule change is consistent with section 17A of the Act,[7] as amended, because it updates its fee schedule. As such, it provides for the equitable allocation of fees among its participants and aligns fees for services with the associated cost to deliver the service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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

A written memorandum supporting the proposed rule change was submitted by the Regulatory & Clearance Committee of the Securities Operations Division of the Securities Industry Association. No other written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder because the rule establishes a due, fee, or other charge. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2006–08 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–DTC–2006–08. 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

[5] The Commission has modified the text of the summaries prepared by DTC.

[6] Memorandum from Albert Howell, Chairman, Regulatory & Clearance Committee, Securities Operations Division, Securities Industry Association, to William Hodash, Managing Director, The Depository Trust and Clearing Company (March 7, 2006).

[7] 15 U.S.C. 78q-1.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

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 filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *https://login.dtcc.com/dtcorg/*. 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–DTC–2006–08 and should be submitted on or before July 7, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–9439 Filed 6–15–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53977; File No. SR–NASD–2006–055]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of a Proposed Rule Change To Require Members To Report All Transactions That Must Be Reported to NASD and Are Subject to a Regulatory Transaction Fee to the Nasdaq Market Center and/or the Trade Reporting and Comparison Service

June 12, 2006.

On April 21, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require NASD members to report all transactions that must be reported to NASD and that are subject to a regulatory transaction fee pursuant to Section 3 of Schedule A to the NASD By-Laws ("Section 3") to the Nasdaq Market Center ("NMC") and/or the Trade Reporting and Comparison Service ("TRACS"). The proposed rule change was published for comment in the **Federal Register** on May 8, 2006.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

Currently, NASD obtains funds to pay its Section 31 fees and assessments from its membership, in accordance with Section 3. Further, NASD represents that most of the transactions that are assessed a fee under Section 3 are subject to automated reporting to NMC or TRACS pursuant to NASD trade reporting rules. NASD member firms, however, currently are required to manually self-report covered sales that are odd lots, away-from-the-market sales, and exercises of OTC options.

NASD represents that the current self-reporting process has allowed NASD to meet its obligations under section 31 of the Act.[4] However, there have been instances when some NASD members have filed their self-reporting forms late or amended previous forms in later months to include additional covered sales volume. NASD has now proposed to require automated reporting, to NMC or TRACS, of these additional types of covered sales, so that all covered sales that must be reported for purposes of Section 3 are reported in an automated fashion. NASD also has proposed to establish separate modifiers for reports of covered sales that are odd lots, away-from-the-market sales, and exercises of OTC options. NASD would not print these transactions to the Consolidated Tape.

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following this approval order. The effective date would be at least 90 days following publication of the *Notice to Members* announcing Commission approval to allow firms sufficient time to make any necessary systems changes.

The Commission finds that the proposed rule change is consistent with the requirements of section 15A of the Act,[5] and the rules and regulations thereunder applicable to a national securities association.[6] In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD's rules 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 proposal should improve the efficiency, accuracy, and timeliness of NASD trade reporting by requiring automated reporting of certain types of transactions that currently are manually reported to NASD and is, therefore, reasonable and consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2006–055) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–9438 Filed 6–15–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53967; File No. SR–NYSE–2006–19]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to List and Trade Index-Linked Notes of Barclays Bank PLC Linked to the Performance of the Goldman Sachs Crude Oil Total Return Index™

June 9, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on March 13, 2006, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 27, 2006, NYSE filed Amendment No. 1 to the proposed rule change.[3] On May 26, 2006, NYSE filed Amendment No. 2 to the proposed rule

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53748 (May 2, 2006), 71 FR 26795.

[4] 15 U.S.C. 78ee.

[5] 15 U.S.C. 78*o*–3.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange notes proposed Supplementary Material to NYSE Rule 1301B in SR–NYSE–2006–17, which sets forth guidelines for specialists applicable to this product. The Exchange also makes clarifying and technical change to this proposal in Amendment No. 1.

change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to list and trade Index-Linked Notes (the "Notes") of Barclays Bank PLC ("Barclays") linked to the performance of the Goldman Sachs Crude Oil Total Return Index™ (the "Index"). The Index is based on the spot month WTI Crude Oil futures contract traded on NYMEX; however, because the Index Sponsor (as defined below) may include WTI Crude Oil futures contracts, other than the front-month contract (as defined below) in its calculation, the Index Sponsor designates this calculation to be based on an "Index." The text of the proposed rule change, as amended, is available on the NYSE's Web site (*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 NYSE included statements concerning the purpose of and basis for the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 Securities

Under Section 703.19 ("Other Securities") of the NYSE Listed Company Manual (the "Manual"), the Exchange may approve for listing and trading securities not otherwise covered by the criteria of Sections 1 and 7 of the Manual, provided the issue is suited for auction market trading.[5] The Exchange proposes to list and trade, pursuant to Section 703.19 of the Manual, the Notes, which are linked to the performance of the Index. Barclays intends to issue the Notes under the name "iPath℠ Exchange-Traded Notes."[6]

The Exchange believes that the Notes will conform to the initial listing standards for equity securities under Section 703.19 of the Manual, as Barclays is an affiliate of Barclays PLC,[7] an Exchange listed company in good standing, the Notes will have a minimum life of one year, the minimum public market value of the Notes at the time of issuance will exceed $4 million, there will be at least one million Notes outstanding, and there will be at least 400 holders at the time of issuance. The Notes are a series of medium-term debt securities of Barclays that provide for a cash payment at maturity or upon earlier exchange at the holder's option, based on the performance of the Index subject to the adjustments described below. The principal amount of each Note is expected to be $50. The Notes will trade on the Exchange's equity trading floor, and the Exchange's existing equity trading rules will apply to trading in the Notes. The Notes will not have a minimum principal amount that will be repaid, and, accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. In fact, the value of the Index must increase for the investor to receive at least the $50 principal amount per Note at maturity or upon exchange or redemption. If the value of the Index decreases or does not increase sufficiently to offset the investor fee (described below), the investor will receive less, and possibly significantly less, than the $50 principal amount per Note. In addition, holders of the Notes will not receive any interest payments from the Notes. The Notes are expected to have a term of 10 to 30 years. The Notes are not callable.[8]

Holders who have not previously redeemed their Notes will receive a cash payment at maturity equal to the principal amount of their Notes times the index factor on the Final Valuation Date (as defined below) minus the investor fee on the Final Valuation Date. The "index factor" on any given day will be equal to the closing value of the Index on that day divided by the initial index level. The "initial index level" is the closing value of the Index on the date of issuance of the Notes (the "Trade Date") and the "final index level" is the closing value of the Index on the Final Valuation Date. The investor fee is equal to 0.75% per year times the principal amount of a holder's Notes times the index factor, calculated on a daily basis in the following manner: The investor fee on the Trade Date will equal zero. On each subsequent calendar day until maturity or early redemption, the investor fee will increase by an amount equal to 0.75% times the principal amount of a holder's Notes times the index factor on that day (or, if such day is not a trading day, the index factor on the immediately preceding trading day) divided by 365. The investor fee is the only fee holders will be charged in connection with their ownership of the Notes.

Prior to maturity, holders may, subject to certain restrictions, redeem their Notes on any Redemption Date (defined below) during the term of the Notes provided that they present at least 50,000 Notes for redemption, or they act through a broker or other financial intermediaries (such as a bank or other financial institution not required to register as a broker-dealer to engage in securities transactions) that are willing to bundle their Notes for redemption with other investors' Notes. If a holder chooses to redeem such holder's Notes on a Redemption Date, such holder will receive a cash payment on such date equal to the principal amount of such holder's Notes times the index factor on the applicable Valuation Date minus the investor fee on the applicable Valuation Date. A "Redemption Date" is the third business day following a Valuation Date (other than the Final Valuation Date (defined below)). A "Valuation Date" is each Thursday from the first Thursday after issuance of the Notes until the last Thursday before maturity of the Notes (the "Final Valuation Date") inclusive

[4] In Amendment No. 2, the Exchange inserts in the "Purpose" section of the Form 19b–4: (i) A description of the process by which the West Texas Intermediate ("WTI") crude oil futures contract traded on the NYMEX that is included in the Index changes on a monthly basis to the contract with the closest expiration date; and (ii) a continued listing standard stating that the Exchange will delist the Notes if the Index ceases in whole or in part to be based on the WTI Crude Oil futures contract traded on the NYMEX.

[5] Securities Exchange Act Release No. 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990).

[6] Goldman Sachs & Co. and Barclays have entered into a license agreement granting to Barclays a non-transferable, non-exclusive license to use the Goldman Sachs Commodity Index® or any sub-indices (individually and collectively, the "GSCI®") in connection with the Notes. Goldman, Sachs & Co. and its affiliates and subsidiaries, individually and collectively, are referred to as the "Index Sponsor."

[7] The issuer of the Notes, Barclays, is an affiliate of an Exchange-listed company (Barclays PLC) and not an Exchange-listed company itself. However, Barclays, though an affiliate of Barclays PLC, would exceed the Exchange's earnings and minimum tangible net worth requirements in Section 102 of the Manual. Additionally, the Exchange states that the Notes when combined with the original issue price of all other Note offerings of the issuer that are listed on a national securities exchange (or association) does not exceed 25% of the issuer's net worth. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, and John Carey, Assistant General Counsel, Exchange, on April 11, 2006 ("April 11 Telephone Conference").

[8] *Id.*

(or, if such date is not a trading day,[9] the next succeeding trading day), unless the calculation agent determines that a market disruption event, as described below, occurs or is continuing on that day.[10] In that event, the Valuation Date for the maturity date or corresponding Redemption Date, as the case may be, will be the first following trading day on which the calculation agent determines that a market disruption event does not occur and is not continuing. In no event, however, will a Valuation Date be postponed by more than five trading days.

Any of the following will be a market disruption event: (i) A material limitation, suspension or disruption in the trading of any Index component that results in a failure by the trading facility on which the relevant contract is traded to report a daily contract reference price (*i.e.*, the price of the relevant contract that is used as a reference or benchmark by market participants) [11]; (ii) the daily contract reference price for any Index component is a "limit price," which means that the daily contract reference price for such contract has increased or decreased from the previous day's daily contract reference price by the maximum amount permitted under the applicable rules or procedures of the relevant trading facility; (iii) failure by the Index Sponsor to publish the closing value of the Index or of the applicable trading facility or other price source to announce or publish the daily contract reference price for the Index component; or (iv) any other event, if the calculation agent determines in its sole discretion that the event materially interferes with Barclays' ability or the ability of any of Barclays' affiliates to unwind all or a material portion of a hedge with respect to the Notes that Barclays or Barclays' affiliates have effected or may effect as described herein in connection with the sale of the Notes.[12]

If a Valuation Date is postponed by five trading days, that fifth day will nevertheless be the date on which the value of the Index will be determined by the calculation agent. In such an event, the calculation agent will make a good faith estimate in its sole discretion of the value of the Index.

To redeem their Notes, holders must instruct their broker or other person through whom they hold their Notes to take the following steps:

- Deliver a notice of redemption to Barclays via e-mail by no later than 11:00 a.m. New York time on the business day prior to the applicable Valuation Date. If Barclays receives such notice by the time specified in the preceding sentence, it will respond by sending the holder a confirmation of redemption;
- Deliver the signed confirmation of redemption to Barclays via facsimile in the specified form by 4 p.m. New York time on the same day; Barclays must acknowledge receipt in order for the confirmation to be effective; and
- Transfer such holder's book-entry interest in its Notes to the trustee, the Bank of New York, on Barclays' behalf at or prior to 10 a.m. New York time on the applicable Redemption Date (the third business day following the Valuation Date).[13]

If holders elect to redeem their Notes, Barclays may request that Barclays Capital Inc. (a broker-dealer) purchase the Notes for the cash amount that would otherwise have been payable by Barclays upon redemption. In this case, Barclays will remain obligated to redeem the Notes if Barclays Capital Inc. fails to purchase the Notes. Any Notes purchased by Barclays Capital Inc. may remain outstanding.

If an event of default occurs and the maturity of the Notes is accelerated, Barclays will pay the default amount in respect of the principal of the Notes at maturity. The default amount for the Notes on any day will be an amount, determined by the calculation agent in its sole discretion, equal to the cost of having a qualified financial institution, of the kind and selected as described below, expressly assume all Barclays' payment and other obligations with respect to the Notes as of that day, and as if no default or acceleration had occurred, or to undertake other obligations providing substantially equivalent economic value to the holders of the Notes with respect to the Notes. That cost will equal:

- The lowest amount that a qualified financial institution would charge to effect this assumption or undertaking, plus
- The reasonable expenses, including reasonable attorneys' fees, incurred by the holders of the Notes in preparing any documentation necessary for this assumption or undertaking.[14]

Indicative Value

An intraday "Indicative Value" meant to approximate the intrinsic economic value of the Notes will be calculated and published via the facilities of the Consolidated Tape Association ("CTA") every 15 seconds throughout the NYSE trading day on each day on which the Notes are traded on the Exchange.[15] Additionally, Barclays or an affiliate will calculate and publish the closing Indicative Value of the Notes on each trading day at *www.ipathetn.com*. In connection with the Notes, the term "Indicative Value" refers to the value at a given time based on the following equation:

Indicative Value = Principal Amount per Unit X (Current Index Level / Initial Index Level) – Current Investor Fee

Where:

- Principal Amount per Unit = $50.
- Current Index Level = The most recent published level of the Index as reported by Index Sponsor.

[9] A "trading day" is a day on which (i) the value of the Index is published by the Index Sponsor, (ii) trading is generally conducted on the Exchange, and (iii) trading is generally conducted on the markets on which the futures contracts underlying the GSCI® are traded, in each case as determined by the calculation agent in its sole discretion.

[10] Barclays will serve as the initial calculation agent.

[11] The "daily contract reference price" with respect to each contract expiration and contract is the price of the relevant contract, expressed in U.S. dollars, that is generally used by participants in the related cash or over-the-counter market as a benchmark for transactions related to such contract. The daily contract reference price may, but is not required to, be the price (i) used by such trading facility or related clearing facility to determine the margin obligations (if any) of its members or participants or (ii) referred to generally as the reference, closing or settlement price of the relevant contract. If a trading facility publishes a daily settlement price for a particular contract expiration, such settlement price will generally serve as the daily contract reference price for such contract expiration unless, in the reasonable judgment of the Index Sponsor, in consultation with the Policy Committee, such settlement price does not satisfy the criteria set forth in this definition. The daily contract reference price of a contract may be determined and published either by the relevant trading facility or by one or more third parties.

[12] If a "market disruption event" is of more than a temporary nature, the Exchange will fill a proposed rule change pursuant to Rule 19b–4. Unless approved for continued trading, the Exchange would commence delisting proceedings. *See* "Exchange Filing Obligations" *infra*, Telephone conversation between Florence E. Harmon, Senior Special Counsel, Division, Commission, and John Carey and Michael Cavalier, Assistant General Counsels, Exchange, on April 10, 2006. ("April 10 Telephone Conference").

[13] *Id.*

[14] Additional information about the default provisions of the Notes is provided in the Exchange's Form 19b–4 and Barclays Bank PLC Registration Statement Form F–3 (333–126811), as amended by Amendment No. 1 on September 14, 2005.

[15] The Indicative Value calculation will be provided for reference purposes only. It is not intended as a price or quotation, or as an offer or solicitation for the purchase, sale, redemption or termination of the Notes, nor does it reflect hedging or transaction costs, credit considerations, market liquidity or bid-offer spreads. Published Index levels from the Index Sponsors may occasionally be subject to delay or postponement. Any such delays or postponements will affect the Current Index Level and therefore the Indicative Value of the Notes. Index levels provided by the Index Sponsors will not necessarily reflect the depth and liquidity of the underlying commodities markets. For this reason and others, the actual trading price of the Notes may be different from their Indicative Value.

• Initial Index Level = The Index level on the trade date for the Notes.
• Current Investor Fee = The most recent daily calculation of the investor fee with respect to the Notes, determined as described above (which, during any trading day, will be the investor fee determined on the preceding calendar day).

The Indicative Value will not reflect price changes to the price of an underlying commodity (WTI Crude Oil) between the close of trading of the futures contract at the NYMEX and the close of trading on the NYSE at 4 p.m. ET. The value of the Notes may accordingly be influenced by non-concurrent trading hours between the NYSE and the New York Mercantile Exchange (the "NYMEX"). While the Notes will trade on the NYSE from 9:30 a.m. to 4:15 p.m. ET, WTI Crude Oil futures (the futures contracts underlying the Index) will trade on the NYMEX from 10 a.m. to 2:30 p.m. ET.

While the market for futures trading WTI Crude Oil futures is open, the Indicative Value can be expected to closely approximate the redemption value of the Notes. However, during the NYSE trading hours when the futures contracts have ceased trading, spreads, and resulting premiums or discounts may widen, and therefore, increase the difference between the price of the Notes and their redemption value. The Indicative Value disseminated during the NYSE trading hours should not be viewed as a real time update of the redemption value.

Description of the Index

The Index is a sub-index of the Goldman Sachs Commodity Index® (the "GSCI®") and reflects the excess returns that are potentially available through an unleveraged investment in the contracts comprising the relevant components of the Index (which currently includes only the WTI Crude Oil futures contract traded on the NYMEX), plus the Treasury Bill rate of interest that could be earned on funds committed to the trading of the underlying contracts.[16] The value of the Index, on any given day, reflects (i) the price levels of the contracts included in the Goldman Sachs Crude Oil Total Return Index™ (which represents the value of the Goldman Sachs Crude Oil Total Return Index™); (ii) the "contract daily return," which is the percentage change in the total dollar weight of the Goldman Sachs Crude Oil Total Return Index™ from the previous day to the current day; and (iii) the Treasury Bill rate of interest that could be earned on funds committed to the trading of the underlying contracts.

In addition to the criteria described below, in order to qualify for inclusion in the Index, the contract must be related to WTI Crude Oil. As presently constituted, the only contract used to calculate the Index is the WTI Crude Oil futures contract traded on the NYMEX.[17]

The WTI Crude Oil futures contract included in the Index changes each month because the contract included in the Index at any given time is currently required to be the WTI Crude Oil futures contract traded on the NYMEX with the closest expiration date (the "front-month contract"). The front-month contract expires each month on the third business day prior to the 25th calendar day of the month. The Index incorporates a methodology for rolling into the contract with the next closest expiration date (the "next-month contract") each month. The Index gradually reduces the weighting of the front-month contract and increases the weighting of the next-month contract over a five business day period commencing on the fifth business day of the month, so that on the first day of the roll-over the front-month contract represents 80% and the next-month contract represents 20% of the Index, and on the fifth day of the roll-over period (*i.e.*, the ninth business day of the month) the next-month contract represents 100% of the Index. Over time, this monthly roll-over leads to the inclusion of many different individual WTI Crude Oil futures contracts in the Index. The commodities industry utilizes single-component indices because the purpose of a commodities index is generally to reflect the current market price of the index components by including the front-month futures contract with respect to each component, necessitating a continuous monthly roll-over to a new front-month contract. As the underlying commodity is not static but rather is represented by constantly changing contracts, a single commodity index actually contains a changing series of components and is regarded by commodities industry professionals as a valuable tool in tracking the change in the value of the underlying commodity over time.[18]

The GSCI® is a proprietary index on a production-weighted basket of futures contracts on physical commodities traded on trading facilities in major industrialized countries.[19] The GSCI® is designed to be a measure of the performance over time of the markets for these commodities. The Exchange states that the only commodities represented in the GSCI® are those physical commodities on which active and liquid contracts are traded on trading facilities in major industrialized countries. The commodities represented in the GSCI® are weighted, on a production basis, to reflect their relative significance (in the view of the Index Sponsor, in consultation with the Policy Committee) to the world economy. The fluctuations in the value of the GSCI® are intended generally to correlate with changes in the prices of such physical commodities in global markets. The value of the GSCI® has been normalized such that its hypothetical level on January 2, 1970 was 100. Futures contracts on the GSCI®, and options on such futures contracts, are currently listed for trading on the Chicago Mercantile Exchange.

The contracts to be included in the GSCI® at any given time must satisfy several sets of eligibility criteria established by the Index Sponsor. First, the Index Sponsor identifies those contracts that meet the general criteria for eligibility. Second, the contract volume and weight requirements are applied, and the number of contracts is determined, which serves to reduce the list of eligible contracts. At that point, the list of designated contracts for the relevant period is complete. The composition of the GSCI® is also reviewed on a monthly basis by the Index Sponsor.[20]

[16] The Treasury Bill rate of interest used for purposes of calculating the index on any day is the 91-day auction high rate for U.S. Treasury Bills, as reported on Telerate page 56, or any successor page, on the most recent of the weekly auction dates prior to such day.

[17] If the Index Sponsor includes another commodity, other than WTI as described herein, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act. Unless approved for continued trading, the Exchange would commence delisting proceedings. *See* "Continued Listing Criteria," *infra*. April 10 Telephone Conference.

[18] *See* Amendment No. 2, *supra* note 4.

[19] The Exchange states that futures contracts on physical commodities and commodity indices are traded on regulated futures exchanges. Futures exchanges in the United States are subject to regulation by the Commodity Futures Trading Commission.

[20] The Index Sponsor has (i) implemented and maintains procedures reasonably designed to prevent the use and dissemination by personnel of the Index Sponsor, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Index and (ii) periodically checks the application of such procedures as they relate to such personnel of the Index Sponsor directly responsible for such changes. Telephone conference between Florence Harmon, Senior Special Counsel, Division, Commission, and John Carey, Assistant General Counsel, Exchange on May 18, 2006 ("May 18th Telephone Conference"); telephone conversation between Florence Harmon, Senior Special Counsel,

Continued

Set forth below is a summary of the composition of and the methodology used to calculate the GSCI® as of this date. The methodology for determining the composition and weighting of the GSCI® and for calculating its value is subject to modification in a manner consistent with the purposes of the GSCI®. However, the Exchange would have to file a proposed rule change pursuant to Rule 19b-4,[21] seeking Commission approval to continue trading the Notes. Unless approved for continued listing, the Exchange would commence delisting proceedings.[22]

The Index Sponsor makes the official calculations of the Index (and the GSCI®). While the intraday and closing values of the Index (and the GSCI®) are calculated by Goldman, Sachs & Co., a broker-dealer, a number of factors provide for the independent verification of these intraday and closing values[23] This calculation is performed continuously and is reported on Reuters page GSCI® (or any successor or replacement page) and will be updated on Reuters at least every 15 seconds[24] during business hours on each day on which the offices of the Index Sponsor in New York City are open for business (a "GSCI Business Day").[25] The settlement price for the Index is also reported on Reuters page GSCI® (or any successor or replacement page) on each GSCI Business Day between 4 p.m. and 6 p.m., New York time. The Notes will only trade on the Exchange on days when the Index (and GSCI) are disseminated at least every 15 seconds.[26]

Index Disruptions

The Index is determined, calculated, and maintained solely by the Index Sponsor. If the Index Sponsor discontinues publication of the Index and it or any other person or entity publishes a substitute index that the calculation agent determines is comparable to the Index and approves as a successor index, then the calculation agent will determine the value of the Index on the applicable Valuation Date and the amount payable at maturity or upon redemption by reference to such successor index.[27]

If the calculation agent determines that the publication of the Index is discontinued and that there is no successor index, or that the closing value of the Index is not available because of a market disruption event (as defined below) or for any other reason, on the date on which the value of the Index is required to be determined, or if for any other reason the Index is not available to Barclays or the calculation agent on the relevant date, the calculation agent will determine the amount payable by a computation methodology that the calculation agent determines will as closely as reasonably possible replicate the Index.[28]

If the calculation agent determines that the Index, the Index components, or the method of calculating the Index has been changed at any time in any respect—including any addition, deletion or substitution and any reweighting or rebalancing of Index components, and whether the change is made by the Index Sponsor under its existing policies or following a modification of those policies, is due to the publication of a successor index, is due to events affecting one or more of the Index components, or is due to any other reason—then the calculation agent will be permitted (but not required) to make such adjustments to the Index or method of calculating the Index as it believes are appropriate to ensure that the value of the Index used to determine the amount payable on the maturity date or upon redemption is equitable.[29]

The Exchange states that all determinations and adjustments to be made by the calculation agent with respect to the value of the Index and the amount payable at maturity or upon redemption or otherwise relating to the value of the Index may be made by the calculation agent in its sole discretion.[30]

The Policy Committee

The Index Sponsor has established a Policy Committee to assist it with the operation of the GSCI®. The principal purpose of the Policy Committee is to advise the Index Sponsor with respect to, among other things, the calculation of the GSCI®, the effectiveness of the GSCI® as a measure of commodity futures market performance, and the need for changes in the composition or the methodology of the GSCI®. The Policy Committee acts solely in an advisory and consultative capacity. All decisions with respect to the composition, calculation, and operation of the GSCI® and the Index are made by the Index Sponsor.

The Index Sponsor, Goldman, Sachs & Co., which calculates and maintains the GSCI® and the Index, is a broker-dealer. Therefore, appropriate firewalls must exist around the personnel who have access to information concerning changes and adjustment to an index and the trading personnel of the broker-dealer. Accordingly, the Index Sponsor has represented to the Exchange that it (i) has implemented and maintained procedures reasonably designed to prevent the use and dissemination by personnel of the Index Sponsor, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Index and (ii) periodically checks the application of such procedures as they relate to such personnel of the Index Sponsor directly responsible for such changes. In addition, the Policy Committee members are subject to written policies with respect to material, non-public information.[31]

Division, Commission; John Carey, Assistant General Counsel, Exchange; and Michael Cavalier, Assistant General Counsel, Exchange, on April 14, 2006.

[21] CFR 240.19b–4.

[22] *See* "Continued Listing Criteria," *infra*. April 10 Telephone Conference.

[23] The Index Sponsor calculates the level of the Index intraday and at the end of the day. The intraday calculation is based on feeds of real-time data relating to the underlying commodities and updates intermittently at least every 15 seconds. In the GSCI® market, trades are quoted or settled against the end-of-day value, not against the value at any other particular time of the day. With respect to the end-of-day closing level of the index, the Index Sponsor uses independent feeds from at least two vendors for each of the underlying commodities in the index to verify closing prices and limit moves. A number of commodities market participants independently verify the correctness of the disseminated intraday Index value and closing Index value. Additionally, the closing Index values are audited by a major independent accounting firm. The "rolling" of the front-month contract in the Index is also disclosed. *See surpa*, May 18 Telephone Conference.

[24] Telephone conference between Michou H.M. Nguyen, Special Counsel, Division, Commission, and John Carey, Assistant General Counsel, Exchange on June 8, 2006.

[25] Additionally, this intraday index value of the Index will be updated and disseminated at least every 15 seconds by a major market data vendor during the time the Notes trade on the Exchange. April 13 Telephone Conference. The intraday information with respect to the Index (and GSCI®) reported on Reuters is derived solely from trading prices on the principal trading markets for the various Index components. For example, the Index currently includes contracts traded on NYMEX, which as a trading day that ends prior to the NYSE trading day. During the portion of the New York trading day when NYMEX is closed, the last reported prices for Index Components traded on NYMEX are used to calculate the intraday Index information disseminated on Reuters.

[26] Telephone conference between Michou H.M. Nguyen, Special Counsel, Division, Commission, and John Carey, Assistant General Counsel, Exchange on June 8, 2006.

[27] In such case, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act. Unless approved for continued trading, the Exchange would commence delisting proceedings. *See* "Continued Listing Criteria," *infra*. April 10 Telephone Conference.

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] Telephone conference between Florence Harmon, Senior Special Counsel, Division, Commission, and John Carey, Assistant General Counsel, Exchange on May 18, 2006; telephone conversation between Florence Harmon, Senior

The Policy Committee generally meets in October of each year. Prior to the meeting, the Index Sponsor determines the contracts to be included in the GSCI® for the following calendar year and the weighting factors for each commodity. The Policy Committee's members receive the proposed composition of the GSCI® in advance of the meeting and discuss the composition at the meeting. The Index Sponsor also consults the Policy Committee on any other significant matters with respect to the calculation and operation of the GSCI®. The Policy Committee may, if necessary or practicable, meet at other times during the year as issues arise that warrant its consideration.

The Policy Committee currently consists of eight persons, three of whom are employees of the Index Sponsor or its affiliates and five of whom are not affiliated with the Index Sponsor.[32]

Composition of GSCI

In order to be included in the GSCI®, thus, the Index, a contract must satisfy the following eligibility criteria: [33]

(1) The contract must:

- Be in respect of a physical commodity (rather than a financial commodity);
- Have a specified expiration or term, or provide in some other manner for delivery or settlement at a specified time, or within a specified period, in the future; and
- At any given point in time, be available for trading at least five months prior to its expiration or such other date or time period specified for delivery or settlement.

(2) The commodity must be the subject of a contract that:

- Is denominated in U.S. dollars; and
- Is traded on or through an exchange, facility or other platform (referred to as a "trading facility") that has its principal place of business or operations in a country which is a member of the Organization for Economic Cooperation and Development [34] and:
- Makes price quotations generally available to its members or participants (and, if the Index Sponsor is not such a member or participant, to the Index Sponsor) in a manner and with a frequency that is sufficient to provide reasonably reliable indications of the level of the relevant market at any given point in time;
- Makes reliable trading volume information available to the Index Sponsor with at least the frequency required by the Index Sponsor to make the monthly determinations;
- Accepts bids and offers from multiple participants or price providers; and
- Is accessible by a sufficiently broad range of participants.

(3) The daily contract reference price for the relevant contract generally must have been available on a continuous basis for at least two years prior to the proposed date of inclusion in the GSCI®. In appropriate circumstances, however, the Index Sponsor may determine that a shorter time period is sufficient or that historical daily contract reference prices for such contract may be derived from daily contract reference prices for a similar or related contract. The daily contract reference price may be (but is not required to be) the settlement price or other similar price published by the relevant trading facility for purposes of margining transactions or for other purposes.

(4) At and after the time a contract is included in the GSCI®, the daily contract reference price for such contract must be published between 10 a.m. and 4 p.m., New York time, on each GSCI® Business Day relating to such contract by the trading facility on or through which it is traded and must generally be available to all members of, or participants in, such facility (and, if the Index Sponsor is not such a member or participant, to the Index Sponsor) on the same day from the trading facility or through a recognized third-party data vendor. Such publication must include, at all times, daily contract reference prices for at least one expiration or settlement date that is five months or more from the date the determination is made, as well as for all expiration or settlement dates during such five-month period.

(5) Volume data with respect to such contract must be available for at least the three months immediately preceding the date on which the determination is made.

(6) A contract that is not included in the GSCI® at the time of determination and that is based on a commodity that is not represented in the GSCI® at such time must, in order to be added to the GSCI® at such time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least U.S. $15 billion. The total dollar value traded is the dollar value of the total quantity of the commodity underlying transactions in the relevant contract over the period for which the calculation is made, based on the average of the daily contract reference prices on the last day of each month during the period.

(7) A contract that is already included in the GSCI® at the time of determination and that is the only contract on the relevant commodity included in the GSCI® must, in order to continue to be included in the GSCI® after such time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least U.S. $5 billion and at least U.S. $10 billion during at least one of the three most recent annual periods used in making the determination.

(8) A contract that is not included in the GSCI® at the time of determination and that is based on a commodity on which there are one or more contracts already included in the GSCI® at such time must, in order to be added to the GSCI® at such time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least U.S. $30 billion.

(9) A contract that is already included in the GSCI® at the time of determination and that is based on a commodity on which there are one or more contracts already included in the GSCI® at such time must, in order to continue to be included in the GSCI® after such time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least U.S. $10 billion and at least U.S. $20 billion during at least one of the three most recent annual periods used in making the determination.

(10) A contract that is already included in the GSCI® at the time of determination must, in order to continue to be included after such time, have a reference percentage dollar

Special Counsel, Division, Commission; John Carey, Assistant General Counsel, Exchange; and Michael Cavalier, Assistant General Counsel, Exchange, on April 14, 2006.

[32] The current members of the Policy Committee who are affiliated with the Index Sponsor are Peter O'Hagan, Steven Strongin, and Laurie Ferber, each of whom is a Managing Director of Goldman, Sachs & Co. The current non-affiliated members and their affiliations are: Richard Redding (Chicago Mercantile Exchange), Kenneth A. Froot (finance professor at the Harvard Business School), Dan Kelly (Harvard Management Company), Jelle Beenen (PGGM), and Tham Chiew Kit (GIC). As stated, the Policy Committee are subject to written policies with respect to material, non-public information. Telephone conference between Florence Harmon, Senior Special Counsel, Division, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on April 14, 2006.

[33] WTI crude oil futures traded on NYMEX, the sole component of the Index satisfy the criteria described herein.

[34] 34 The Organization for Economic Cooperation and Development has 30 member countries: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.

weight of at least 0.10%. The reference percentage dollar weight of a contract is determined by multiplying the CPW (defined below) of a contract by the average of its daily contract reference prices on the last day of each month during the relevant period. These amounts are summed for all contracts included in the GSCI® and each contract's percentage of the total is then determined.

(11) A contract that is not included in the GSCI® at the time of determination must, in order to be added to the GSCI® at such time, have a reference percentage dollar weight of at least 1.00%.

(12) In the event that two or more contracts on the same commodity satisfy the eligibility criteria, such contracts will be included in the GSCI® in the order of their respective total quantity traded during the relevant period (determined as the total quantity of the commodity underlying transactions in the relevant contract), with the contract having the highest total quantity traded being included first, provided that no further contracts will be included if such inclusion would result in the portion of the GSCI® attributable to such commodity exceeding a particular level. If additional contracts could be included with respect to several commodities at the same time, that procedure is first applied with respect to the commodity that has the smallest portion of the GSCI® attributable to it at the time of determination. Subject to the other eligibility criteria set forth above, the contract with the highest total quantity traded on such commodity will be included. Before any additional contracts on the same commodity or on any other commodity are included, the portion of the GSCI® attributable to all commodities is recalculated. The selection procedure described above is then repeated with respect to the contracts on the commodity that then has the smallest portion of the GSCI® attributable to it.

The quantity of each of the contracts included in the GSCI® is determined on the basis of a five-year average (referred to as the "world production average") of the production quantity of the underlying commodity as published by the United Nations Statistical Yearbook, the Industrial Commodity Statistics Yearbook, and other official sources. However, if a commodity is primarily a regional commodity, based on its production, use, pricing, transportation or other factors, the Index Sponsor may calculate the weight of such commodity based on regional, rather than world, production data.

The five-year moving average is updated annually for each commodity included in the GSCI®, based on the most recent five-year period (ending approximately two years prior to the date of calculation and moving backwards) for which complete data for all commodities is available. The contract production weights (the "CPW") used in calculating the GSCI® are derived from world or regional production averages, as applicable, of the relevant commodities, and are calculated based on the total quantity traded for the relevant contract and the world or regional production average, as applicable, of the underlying commodity.

However, if the volume of trading in the relevant contract, as a multiple of the production levels of the commodity, is below specified thresholds, the CPW of the contract is reduced until the threshold is satisfied. This is designed to ensure that trading in each such contract is sufficiently liquid relative to the production of the commodity.

In addition, the Index Sponsor performs this calculation on a monthly basis, and, if the multiple of any contract is below the prescribed threshold, the composition of the GSCI® is reevaluated, based on the criteria and weighting procedure described above. This procedure is undertaken to allow the GSCI® to shift from contracts that have lost substantial liquidity into more liquid contracts during the course of a given year. As a result, it is possible that the composition or weighting of the GSCI® will change on one or more of these monthly Valuation Dates. In addition, regardless of whether any changes have occurred during the year, the Index Sponsor reevaluates the composition of the GSCI® at the conclusion of each year, based on the above criteria. Other commodities that satisfy such criteria, if any, will be added to the GSCI®. Commodities included in the GSCI® which no longer satisfy such criteria, if any, will be deleted.

The Index Sponsor also determines whether modifications in the selection criteria or the methodology for determining the composition and weights of and for calculating the GSCI® are necessary or appropriate in order to assure that the GSCI® represents a measure of commodity market performance. The Index Sponsor has the discretion to make any such modifications.[35]

[35] In such case, the Exchange will file a proposed rule change pursuant to Rule 19b–4 under the Act. Unless approved for continued trading, the Exchange would commence delisting proceedings.

GSCI® Contract Expirations

Because the GSCI® is comprised of actively traded contracts with scheduled expirations, it can only be calculated by reference to the prices of contracts for specified expiration, delivery or settlement periods, referred to as "contract expirations." The contract expirations included in the GSCI® for each commodity during a given year are designated by the Index Sponsor, provided that each such contract must be an "active contract." An "active contract" for this purpose is a liquid, actively traded contract expiration, as defined or identified by the relevant trading facility or, if no such definition or identification is provided by the relevant trading facility, as defined by standard custom and practice in the industry. The relative liquidity of the various active contracts is one of the factors that may be taken into consideration in determining which of them the Index Sponsor includes in the Index.

If a trading facility deletes one or more contract expirations, the GSCI® will be calculated during the remainder of the year in which such deletion occurs on the basis of the remaining contract expirations designated by the Index Sponsor. If a trading facility ceases trading in all contract expirations relating to a particular contract, the Index Sponsor may designate a replacement contract on the commodity. The replacement contract must satisfy the eligibility criteria for inclusion in the GSCI®. To the extent practicable, the replacement will be effected during the next monthly review of the composition of the index. If that timing is not practicable, the Index Sponsor will determine the date of the replacement and will consider a number of factors, including the differences between the existing contract and the replacement contract with respect to contractual specifications and contract expirations.

Value of the GSCI®

The value of the GSCI® on any given day is equal to the total dollar weight of the GSCI® divided by a normalizing constant that assures the continuity of the GSCI® over time. The total dollar weight of the GSCI® is the sum of the dollar weight of each Index component. The dollar weight of each such Index component on any given day is equal to:

- The daily contract reference price,
- Multiplied by the appropriate CPWs, and

See "Continued Listing Criteria," *infra*. April 10 Telephone Conference.

• During a roll period, the appropriate "roll weights" (discussed below).

The daily contract reference price used in calculating the dollar weight of each Index component on any given day is the most recent daily contract reference price made available by the relevant trading facility, except that the daily contract reference price for the most recent prior day will be used if the exchange is closed or otherwise fails to publish a daily contract reference price on that day. In addition, if the trading facility fails to make a daily contract reference price available or publishes a daily contract reference price that, in the reasonable judgment of the Index Sponsor, reflects manifest error, the relevant calculation will be delayed until the price is made available or corrected. However, if the price is not made available or corrected by 4 p.m. New York City time, the Index Sponsor, if it deems such action to be appropriate under the circumstances, will determine the appropriate daily contract reference price for the applicable futures contract in its reasonable judgment for purposes of the relevant GSCI® calculation.[36]

Contract Daily Return

The contract daily return on any given day is equal to the sum, for each of the commodities included in the GSCI®, of the applicable daily contract reference price on the relevant contract multiplied by the appropriate CPW and the appropriate "roll weight," divided by the total dollar weight of the GSCI® on the preceding day, minus one.

The "roll weight" of each commodity reflects the fact that the positions in contracts must be liquidated or rolled forward into more distant contract expirations as they approach expiration. If actual positions in the relevant markets were rolled forward, the roll would likely need to take place over a period of days. Since the GSCI® is designed to replicate the performance of actual investments in the underlying contracts, the rolling process incorporated in the GSCI® also takes place over a period of days at the beginning of each month (referred to as the "roll period"). On each day of the roll period, the "roll weights" of the first nearby contract expirations on a particular commodity and the more distant contract expiration into which it is rolled are adjusted, so that the hypothetical position in the contract on the commodity that is included in the GSCI® is gradually shifted from the first nearby contract expiration to the more distant contract expiration.[37]

If on any day during a roll period any of the following conditions exists, the portion of the roll that would have taken place on that day is deferred until the next day on which such conditions do not exist:

• No daily contract reference price is available for a given contract expiration;

• Any such price represents the maximum or minimum price for such contract month, based on exchange price limits (referred to as a "Limit Price");

• The daily contract reference price published by the relevant trading facility reflects manifest error, or such price is not published by 4 p.m., New York City time. In that event, the Index Sponsor may, but is not required to, determine a daily contract reference price and complete the relevant portion of the roll based on such price; provided, that, if the trading facility publishes a price before the opening of trading on the next day, the Index Sponsor will revise the portion of the roll accordingly; or

• Trading in the relevant contract terminates prior to its scheduled closing time.

If any of these conditions exist throughout the roll period, the roll with respect to the affected contract, will be effected in its entirety on the next day on which such conditions no longer exist.

Value of the Index

The Exchange now describes the value of the Index (as opposed to the above description of the GSCI) which the Notes are designed to track. The value of the Index (which is based on the WTI crude oil futures traded on NYMEX) on any GSCI Business Day is equal to the product of (1) the value of the Index on the immediately preceding GSCI Business Day multiplied by (2) one plus the sum of the contract daily return and the Treasury Bill return on the GSCI Business Day on which the calculation is made multiplied by (3) one plus the Treasury Bill return for each non-GSCI Business Day since the immediately preceding GSCI Business Day. The Treasury Bill return is the return on a hypothetical investment in the GSCI® at a rate equal to the interest rate on a specified U.S. Treasury Bill. The initial value of the GSCI® was normalized such that its hypothetical level on January 2, 1970 was 100.

Continued Listing Criteria

The Exchange prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.[38]

The Exchange will delist the Notes:

• If, following the initial twelve month period from the date of commencement of trading of the Notes, the Notes have more than 60 days remaining until maturity and (i) there are fewer than 50 beneficial holders of the Notes for 30 or more consecutive trading days; (ii) if fewer than 50,000 Notes remain issued and outstanding; or (iii) if the market value of all outstanding Notes is less than $1,000,000;

• If the Index value ceases to be calculated or available during the time the Notes trade on the Exchange on at least every 15 second basis through one or more major market data vendors; [39]

• If, during the time the Notes trade on the Exchange, the Indicative Value ceases to be available on a 15 second delayed basis; or

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

• If the Index ceases in whole or in part to be based on the WTI Crude Oil futures contract traded on the NYMEX.[40]

Exchange Filing Obligations

The Exchange will file a proposed rule change pursuant to Rule 19b–4 [41] under the Act, which the Commission must approve, to permit continued trading of the Notes, if:

• The Index Sponsor substantially changes either the Index component

[36] If such actions by the Index Sponsor are implemented on more than a temporary basis, the Exchange will contact the Commission Staff and, as necessary, file a proposed rule change pursuant to Rule 19b–4 seeking Commission approval to continue to trade the Shares. Unless approved for continued trading, the Exchange would commence delisting proceedings. *See* "Continued Listing Criteria," infra. April 10 Telephone Conference.

[37] The CPWs are available in the GSCI® manual on the GSCI® Web site (*www.gs.com/gsci*) and are published on Reuters. The roll weights are not published but can be determined from the rules in the GSCI Manual. May 18 Telephone Conference.

[38] 17 CFR 240.10A–3; *see also* 15 U.S.C. 78a.

[39] The Exchange confirmed that the Index value (along with the GSCI® index value) will be disseminated at least every 15 seconds by one or more major market data vendors during the time the Notes trade on the Exchange. The Exchange also confirmed these indexes have daily settlement values that are widely disclosed. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on April 13, 2006; telephone conference between Michou H.M. Nguyen, Special Counsel, Division, Commission, and John Carey, Assistant General Counsel, Exchange, on June 8, 2006.

[40] *See* Amendment No. 2, *supra* note 4.

[41] 17 CFR 240.19b–4.

selection methodology or the weighting methodology;[42]

• If a new component is added to the Index with whose principal trading market the Exchange does not have a comprehensive surveillance sharing agreement;[43] or

• If a successor or substitute index is used in connection with the Notes. The filing will address, among other things the listing and trading characteristics of the successor or substitute index and the Exchange's surveillance procedures applicable thereto.

• If a "market disruption event" occurs that is of more than a temporary nature.

Trading Rules

The Exchange's existing equity trading rules will apply to trading of the Notes. The Notes will be subject to the equity margin rules of the NYSE.[44]

(1) Trading Halts

The Exchange will cease trading the Notes if there is a halt or disruption in the dissemination of the Index value or the Indicative Value.[45] The Exchange will also cease trading the Notes if a "market disruption event" occurs that is of more than a temporary nature.[46] In the event that the Exchange is open for business on a day that is not a GSCI Business Day, the Exchange will not permit trading of the Notes on that day.

(2) Specialist Trading Obligations

Pursuant to new Supplementary Material .10 to NYSE Rule 1301B,[47] the provisions of NYSE Rule 1300B(b) and NYSE Rule 1301B apply to certain securities listed on the Exchange pursuant to Section 703.19 ("Other Securities") of the Exchange's Manual, including the Notes. Specifically, NYSE Rules 1300B(b) and 1301B will apply to securities listed under Section 703.19 where the price of such securities is based in whole or part on the price of (i) a commodity or commodities, (ii) any futures contracts or other derivatives based on a commodity or commodities; or (iii) any index based on either (a) or (b) above.

As a result of application of NYSE Rule 1300B(b), the specialist in the Notes, the specialist's member organization and other specified persons will be prohibited under paragraph (m) of NYSE Rule 105 Guidelines from acting as market maker or functioning in any capacity involving market-making responsibilities in the Index components, the commodities underlying the Index components, or options, futures or options on futures on the Index, or any other derivatives (collectively, "derivative instruments") based on the Index or based on any Index component or any physical commodity underlying an Index component. If the member organization acting as specialist in the Notes is entitled to an exemption under NYSE Rule 98 from paragraph (m) of NYSE Rule 105 Guidelines, then that member organization could act in a market making capacity in the Index components, the commodities underlying the Index components, or derivative instruments based on the Index or based on any Index component or commodity underlying an Index component, other than as a specialist in the Notes themselves, in another market center.

Under NYSE Rule 1301B(a), the member organization acting as specialist in the Notes (1) will be obligated to conduct all trading in the Notes in its specialist account, (subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange), (2) will be required to file with the Exchange and keep current a list identifying all accounts for trading in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, which the member organization acting as specialist may have or over which it may exercise investment discretion, and (3) will be prohibited from trading in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, in an account in which a member organization acting as specialist, controls trading activities which have not been reported to the Exchange as required by NSYE Rule 1301B.

Under NYSE Rule 1301B(b), the member organization acting as specialist in the Notes will be required to make available to the Exchange such books, records or other information pertaining to transactions by the member organization and other specified persons for its or their own accounts in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, as may be requested by the Exchange. This requirement is in addition to existing obligations under Exchange rules regarding the production of books and records.

Under NYSE Rule 1301B(c), in connection with trading the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, the specialist could not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components.[48]

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes and the Index components. The Exchange will rely upon existing NYSE surveillance procedures governing equities with respect to surveillance of the Notes.

Additionally, the Exchange is a party to an information sharing agreement with the NYMEX, pursuant to which the NYMEX is obligated to provide the Exchange with access to transaction information, including customer identity information with respect to all contracts traded on the NYMEX and the COMEX, a subsidiary of the NYMEX.

The Exchange believes that these procedures are adequate to monitor Exchange trading of the Notes and to detect violations of NYSE rules, consequently deterring manipulation. In this regard, the Exchange has the

[42] This would include inclusion in the Index of instruments traded on an electronic platform, rather than a traditional futures exchange.

[43] The Exchange will contact the Commission staff whenever the Index Sponsor adds a new component to the Index using pricing information from a market with which the Exchange does not have a previously existing information sharing agreement or switches to using pricing information from such a market with respect to an existing component. In such circumstances, the Exchange will discuss with the Commission staff whether a filing under Rule 19b–4 is necessary.

[44] *See* NYSE Rule 431.

[45] In the event the Index value or Indicative Value is no longer calculated or disseminated, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

[46] In the event a "market disruption event" occurs that is of more than a temporary nature, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

[47] *See* Amendment No. 1 to SR–NYSE–2006–17, filed with the Commission on March 24, 2006.

[48] *See* Amendment No. 1, *supra* note 3.

authority under NYSE Rules 476 and 1301B(b) to request the Exchange specialist in the Notes to provide NYSE Regulation with information that the specialist uses in connection with pricing the Notes on the Exchange. including specialist, proprietary or other information regarding securities, commodities, futures, options on futures or other derivative instruments. The Exchange believes it also has authority to request any other information from its members—including floor brokers, specialists, and "upstairs" firms—to fulfill its regulatory obligations.

Suitability

Pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[49] With respect to suitability recommendations and risks, the Exchange will require members, member organizations, and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

Information Memorandum

The Exchange will, prior to trading the Notes, distribute a memorandum to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes. The information memorandum will note to members language in the prospectus used by Barclays in connection with the sale of the Notes regarding prospectus delivery requirements for the Notes. Specifically, in the initial distribution of the Notes,[50] and during any subsequent distribution of the Notes, NYSE members will deliver a prospectus to investors purchasing from such distributors.[51]

The information memorandum will discuss the special characteristics and risks of trading this type of security. Specifically, the information memorandum, among other things, will discuss what the Notes are, how the Notes are redeemed, applicable NYSE rules, dissemination of information regarding the Index value and the Indicative Value, trading information, and applicable suitability rules. The information memorandum will also notify members and member organizations about the procedures for redemptions of Notes and that Notes are not individually redeemable but are redeemable only in aggregations of at least 50,000 Notes. The information memorandum will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act. The information memorandum will also reference the fact that there is no regulated source of last sale information regarding physical commodities and that the SEC has no jurisdiction over the trading of physical commodities such as crude oil or the futures contracts on which the value of the Notes is based.

The memorandum will also discuss other exemptive or no-action relief under the Act provided by the Commission staff.[52]

2. Statutory Basis

The NYSE believes that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5),[53] that an exchange have rules that are 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, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change, as amended, at the end of a 15-day comment period.[54]

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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–19 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–NYSE–2006–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[49] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[50] The Registration Statement reserves the right to do subsequent distributions of these Notes.

[51] April 10 Telephone Conference.

[52] Telephone conversation between Florence E. Harmon, Senior Special Counsel, Division, Commission, and John Carey and Michael Cavalier, Assistant General Counsels, Exchange, on March 29, 2006.

[53] 15 U.S.C. 78f(b)(5).

[54] The NYSE has requested accelerated approval of this proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of the filing thereof, following the conclusion of a 15-day comment period. April 10 Telephone Conference *supra*.

the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–19 and should be submitted on or before July 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[55]

Nancy M. Morris,

Secretary.

[FR Doc. E6–9437 Filed 6–15–06; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10494]

California Disaster #CA–00032

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA–1646–DR), dated June 5, 2006.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: March 29, 2006 through April 16, 2006.

Effective Date: June 5, 2006.

Physical Loan Application Deadline Date: August 4, 2006.

ADDRESSES: Submit completed loan applications to : U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/05/2006, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Alameda, Amador, Calaveras, El Dorado, Lake, Madera, Marin, Merced, Napa, Nevada, Placer, San Joaquin, San Mateo, Santa Cruz, Sonoma, Stanislaus, Tuolumne.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
Businesses And Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10494.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–9431 Filed 6–15–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10496]

Minnesota Disaster #MN–00004

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–1648–DR), dated June 5, 2006.

Incident: Flooding.

Incident Period: March 30, 2006 through May 3, 2006.

Effective Date: June 5, 2006.

Physical Loan Application Deadline Date: August 4, 2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on June 5, 2006, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Becker, Clay, Kittson, Marshall, Norman, Polk, Red Lake, Roseau, Wilkin.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
Businesses And Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10496.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–9430 Filed 6–15–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10493]

North Dakota Disaster #ND–00006

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA–1645–DR), dated June 5, 2006.

Incident: Severe Storms, Flooding, and Ground Saturation.

Incident Period: March 30, 2006 through April 30, 2006.

Effective Date: June 5, 2006.

Physical Loan Application Deadline Date: August 4, 2006.

ADDRESSES: Submit completed loan application to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on June 7, 2006, applications for Private Non-profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

[55] 17 CFR 200.30–3(a)(12).

Primary Counties:
Cass, Cavalier, Grand Forks, Pembina, Ransom, Richland, Rolette, Sargent, Towner, Trail, Walsh, and the Turtle Mountain Band of Chippewa Indian Reservation.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10493.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.

[FR Doc. 06–5450 Filed 6–15–06; 8:45 am]
BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10495]

South Dakota Disaster #SD–00006

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Dakota (FEMA–1647–DR), dated June 5, 2006.

Incident: Severe Winter Storm.

Incident Period: April 18, 2006 through April 20, 2006.

Effective Date: June 5, 2006.

Physical Loan Application Deadline Date: August 4, 2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on June 5, 2006, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:
Bennett, Butte, Harding, Jackson, Meade, Perkins.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
Businesses And Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10495.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.

[FR Doc. E6–9432 Filed 6–15–06; 8:45 am]
BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Business Jet Services, Ltd. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2006–6–13), Dockets OST–2006–23694 and OST–2006–23695.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Business Jet Services, Ltd., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than June 26, 2006.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–2006–23694 and OST–2006–23695 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: Ms. Lauralyn J. Remo, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: June 12, 2006.

Michael W. Reynolds,
Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. E6–9456 Filed 6–15–06; 8:45 am]
BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Second Meeting, Special Committee 208, Aeronautical Mobile Satellite Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 208 Meeting, Aeronautical Mobile Satellite Services.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 208, Aeronautical Mobile Satellite Services.

DATES: The meeting will be held July 17, 2006, from 1:30–5:30 p.m.

ADDRESSES: The meeting will be held at ARINC, Building 6, Conference Center Room 6A3; 2551 Riva Road, Annapolis, Maryland 21401–7435.

Security Instructions: Please e-mail *ldharris@arinc.com* that you plan to attend, so that security arrangements can be made for the meeting. The following information will be needed by ARINC security personnel. Please respond by July 5, 2006. Attendees: (1) Company (2) Make, Model, and Serial Number of Computer; Non-U.S. Citizens: (3) Passport Number and Country of Citizenship (4) Date of Birth.

FOR FURTHER INFORMATION CONTACT: (1) 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 208 meeting. The agenda will include:

- July 17:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks).
- Review of SC–208 Terms of Reference.
- Review the proposed Change 3 to DO–210D.
- Review returned FRAC Comment and Resolve Comments.
- Review additional comments from the attendees.
- Submit Change 3 to the PMC for consideration.

• Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Next Meeting if necessary, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, member 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, on June 7, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–5448 Filed 6–15–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2006–24902]

Preliminary List of Nationally and Exceptionally Significant Features of the Federal Interstate Highway System

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The FHWA is seeking public input on preliminary list of elements to be excluded from exemptions of the Interstate Highway System from consideration as historic property under the provisions of section 106 of the National Historic Preservation Act and section 4(f) of the Department of Transportation Act of 1966.[1] This list is available at *http://www.environment.fhwa.dot.gov/histpres/index.asp*. This notice contains a link to and the process for interested members of the public to comment on the preliminary list of elements to be excluded from the respective exemptions of the Interstate Highway System from consideration as historic property under the authorities cited above. Comments received from the public will be factored into development of a final list of exceptional elements of the Interstate System.

DATES: Comments must be received on or before July 17, 2006.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dms.dot.gov* or fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. 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.). Persons making comments may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or may visit *http://dems.dot.gov*.

FOR FURTHER INFORMATION CONTACT: MaryAnn Naber, HEPE, (202) 366–2060; Federal Highway Administration; 400 7th Street, SW., Washington, DC 20590; Harold Aikens, Office of the Chief Counsel, HCC–30, (202) 366–0791; Federal Highway Administration, 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 and Filing

You may submit or retrieve online through the Document Management system (DMS) at: *http://dmses.dot.gov/submit*. The DMS is available 24-hours each day, 365 days each year. Electronic submission and 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 the Internet to reach the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov/nara*.

I. Background

Section 106 requires that Federal agencies take into account the effect of their actions on historic properties and afford the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on those effects. Historic properties are defined as those either listed on or eligible for inclusion in the National Register of Historic Places (National Register).[2] Section 4(f) mandates that DOT agencies may not use historic sites, among other protected resources, unless there is no prudent and feasible alternative. As the Dwight D. Eisenhower National System of Interstate and Defense Highways (Interstate System) approached the 50th Anniversary, some of its elements were already at least 50 years of age and large sections would soon be achieving that mark at which resources are often evaluated for historic significance. The potential for vast sections of the Interstate System to be considered historic raised the issue of an overwhelming administrative burden for the myriad routine undertakings affecting the Interstate System, even for basic maintenance and improvements. Accordingly, on February 18, 2005, the ACHP adopted the Section 106 Exemption Regarding Effects to the Interstate Highway System.[3] This exemption effectively excludes the majority of the 46,700-mile Interstate System from consideration as a historic property under section 106 of the National Historic Preservation Act (NHPA). In addition, the recently enacted Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) re-authorization legislation (Pub. L. 109–59, August 10, 2005) includes a provision (Section 6007) that exempts the bulk of the Interstate Highway System from consideration as a historic property under section 4(f) of the Department of Transportation Act. With these two exemptions in place, all Federal agencies are no longer required to consider the vast majority of the Interstate Highway System as historic property under section 106 and section 4(f) requirements.

Highways comprising the Interstate Highway System are denoted by the official red, white, and blue, or green

[1] Section 4(f) of the Department of Transportation Act of 1966 was technically repealed in 1983 when it was codified without substantive change at 49 U.S.C. 303. A provision with the same meaning is found at 23 U.S.C. 138 and applies only to FHWA actions. We continue to refer to section 4(f) as such because it would create needless confusion to do otherwise; the policies section 4(f) engendered are widely referred to as "Section 4(f)" matters.

[2] The National Register of Historic Places is the Nation's official list of cultural resources worthy of preservation. Authorized under the National Historic Preservation Act of 1966, the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources. Properties listed in the Register include districts, sites, buildings, structures, and objects that are significant in American history, architecture, engineering, and culture. The National Park Service administers the National Register.

[3] The ACHP's approved exemption was published in the **Federal Register** on March 10, 2005, at 70 FR 11928.

and white in Alaska, Interstate Highway System shield.[4] All facilities within the right-of-way of these highways (e.g., road bed, engineering features, bridges, tunnels, rest stops, interchanges, off-ramps, on-ramps, etc.) are considered to be part of the Interstate Highway System. Other highways (e.g., U.S. routes, State routes, etc.) not designated with the official shield are not part of the Interstate Highway System, and therefore are not eligible for either exemption.

Under Section II of the ACHP's section 106 exemption, certain elements of the Interstate Highway System, such as bridges, tunnels, and rest stops, shall be excluded from the exemption's provisions if they have national and/or exceptional historic significance. Section III of the ACHP's section 106 exemption sets forth the criteria by which the FHWA shall identify these elements in consultation with stakeholders in each State. Section 6007 of SAFETEA–LU (codified at 23 U.S.C. 103(c)(5)) adopts by reference the same process for identifying exclusions to the section 4(f) exemption. Elements identified for exclusion will continue to be subject to the requirements of sections 106 and 4(f). It does not mean that the excluded facilities cannot be modernized, rehabilitated, expanded or replaced after appropriate consideration under the aforementioned statutes.

II. Process

The ACHP's section 106 exemption directed FHWA, at the headquarters level, to work with stakeholders at the State and local levels, to compile a list of excluded elements prior to the 50th Anniversary of the Interstate Highway System on June 29, 2006. The criteria set forth in the language of the respective exemptions were used to guide the process of identifying Interstate Highway System elements that should remain subject to section 106 and 4(f) requirements. Also, to assist in the process, the FHWA commissioned preparation of a historic context report for the Interstate Highway System (Interstate Historic Context Report). This report provides a detailed history of the evolution, development of design standards, and construction of the Interstate Highway System. It explains how the Interstate Highway System is significant within the areas of engineering, transportation, social history, and commerce, and it provides some specific examples of elements that are important within these areas. The draft context report is available at: *http://www.environment.fhwa.dot.gov/histpres/index.asp.*

III. Exclusion Criteria

Individual elements that are excluded from the exemptions may include bridges, tunnels, rest areas, medians, interchanges, ramps, highway segments, culverts, pedestrian overcrossings, lookout sites, visitor centers, retaining walls, signage, lighting, toll booths, and landscaping that are part of the Interstate Highway System. Elements must possess adequate integrity to convey their importance within the appropriate area(s) of significance: Engineering, transportation, social history, or commerce. In addition, per Section III of the ACHP's section 106 exemption, elements must meet at least one of the following criteria:

1. *National Significance.* The element is at least 50 years old and meets the National Register criteria[5] for national significance as defined in 36 CFR 65.4. In particular, the quality of national significance is ascribed to resources that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering, and culture and that possess a high degree of integrity.

2. *Exceptional Significance.* The element is less than 50 years old and meets the National Register criteria consideration for exceptional importance. The first step in evaluating properties of recent significance is to identify the appropriate area(s) of significance: engineering, transportation, social history, or commerce. Then, deliberate and distinct justification for the "exceptional importance" of the resource must be made. The phrase "exceptional importance" may be applied to the element's extraordinary impact on an event or for the quality of its design or because it may be one of very few survivors of a resource type. Standard design elements, by their very nature, are not exceptional.

3. *Listed or Determined Eligible by the Keeper.* The element is listed in the National Register or has previously been determined eligible by the Keeper of the National Register.

4. *State or Local Significance.* At the discretion of the FHWA, elements may be included in the list of excluded elements if they are at least 50 years old, were later incorporated into the Interstate Highway System, and meet the National Register criteria for evaluation as defined in 36 CFR 60.4 at the State or local level of significance.

IV. Methodology

The FHWA identified exceptional elements for the preliminary list by soliciting input and conducting facilitated meetings with key representatives from each State and the District of Columbia. The details of this process are described in the following paragraphs.

Points of contact from the FHWA Division Offices, Departments of Transportation (DOTs), and State Historic Preservation Offices (SHPOs) were identified within each of the 50 States and the District of Columbia. Where possible, contacts also were identified within organizations capable of providing additional information relevant to this process (e.g., facility owners, local, State, or national road-related historical groups).

Guidance materials for applying the criteria detailed above were prepared and distributed to the points of contact identified within each State. These materials included representative examples of property types and individual historic elements. After distributing the guidance materials and appropriate background information to each State's "team" of representatives, FHWA held State-by-State conference calls, inviting pertinent points of contact identified within each State to participate. These calls were facilitated by qualified cultural resource management specialists and were intended to: (a) Ensure that all team members understood the details of the exemptions and the criteria for identifying potentially significant elements; and (b) provide a forum for brainstorming for potential elements within the State that merited consideration for exclusion. In cases where all points of contact were not able to participate in the initial conference call, absent individuals were contacted separately by phone and provided with meeting minutes to keep them apprised of the project and any relevant discussions.

Following the initial round of 51 conference calls, each State team was given several weeks to collaborate and determine whether there was consensus on a list of elements to be excluded from the exemptions. As necessary, the FHWA provided support to conduct limited research on potentially significant elements. Teams were asked to provide the FHWA with standardized information for each of the resources

[4] See Section 2D.11 of the Manual on Uniform Traffic Control Devices (MUTCD) for more information about the design of route signs. The MUTCD is available at the following URL: *http://mutcd.fhwa.dot.gov/pdfs/2003/pdf.index.htm.*

[5] Information on the National Register standards for evaluating the significance of properties and its criteria for listing may be found at the following URL: *http://www.cr.nps.gov/nr/listing.htm.*

identified in their lists including, location (Interstate number and milepost and/or crossing), name of resource, property type, year(s) of construction, level of significance (national, State, or local), and nature of significance for inclusion in the list. In addition, teams were asked to provide brief justifications of significance for each element on the list. As expected by the FHWA, some States were unable to identify any Interstate Highway System elements that strongly convey a particular area of significance at a level of exceptional or national importance.

V. Public Participation

Based on the lists submitted by each State, the FHWA compiled a preliminary national list of elements to be excluded from the exemptions. This draft list is available at the following URL: *http://www.environment.fhwa.dot.gov/histpres/index.asp*. Through public input and stakeholder involvement, the FHWA intends to refine the preliminary list of exceptional Interstate System elements. The draft list will be e-mailed to all stakeholders who participated in the process of identifying historic elements, as well as any additional individuals or organizations identified by the FHWA Division Offices, State DOTs, and SHPOs as having an interest. The FHWA is interested in feedback concerning the following specific aspects of the preliminary list:

- Whether it should include additional elements, which would continue to be considered as historic properties under the provisions of section 106 and section 4(f).
- Whether certain sites should be excluded from the final list based on application of the stated criteria.

Considerable stakeholder input has already been received and taken into consideration in developing this preliminary list. In addition, the section 106 exemption, which was previously published in the **Federal Register** and subject to public comments, requires the FHWA to designate, by June 30, 2006, individual elements on the Interstate System that will continue to be considered under section 106. Accordingly, the FHWA believe that a 30-day comment period for input from the general public at this time is deemed to be adequate. Commenters should submit comments as indicated above under **SUPPLEMENTARY INFORMATION.**

Authority: 23 U.S.C. 103(c)(5)(B); Sec. 6007, Public Law 109–59.

Issued on: June 12, 2006.

J. Richard Capka,

Federal Highway Administrator.

[FR Doc. E6–9454 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than August 15, 2006.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590, or Mr. Victor Angelo, Office of Support Systems, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number_____." Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@dot.gov*, or to Mr. Angelo at *victor.angelo@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Victor Angelo, Office of Support Systems, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: State Safety Participation Regulations and Remedial Actions.

OMB Control Number: 2130–0509.

Abstract: The collection of information is set forth under 49 CFR part 212, and requires qualified state inspectors to provide various reports to FRA for monitoring and enforcement purposes concerning state investigative, inspection, and surveillance activities regarding railroad compliance with Federal railroad safety laws and regulations. Additionally, railroads are required to report to FRA actions taken to remedy certain alleged violations of law.

Form Number(s): FRA F 6180.33/61/67/96/96A/109/110/111/112.

Affected Public: Businesses.

Respondent Universe: States and Railroads.

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per response (hours)	Total annual burden hours	Total annual burden cost
Application For Participation	15 States	15 updates	2.5	38	$1,748
Training Funding Agreement	30 States	30 agreements	1	30	1,380
Inspector Training Reimbursement	30 States	300 vouchers	1	300	12,600
Annual Work Plan	30 States	30 reports	15	450	20,700
Inspection Form (Form FRA F 6180.96)	30 States	18,000 forms	0.25	4,500	189,000
Violation Report—Motive, Power, and Equipment Regulations (Form FRA F 6180.109).	19 States	200 reports	4	800	33,600
Violation Report—Operating Practices Regulations (Form FRA F 6180.67).	13 States	40 reports	4	160	6,720
Violation Report—Hazardous Materials Regulations (Form FRA F 6180.110).	14 States	100 reports	4	400	16,800
Violation Report— Hours of Service Law (F 6180.33).	13 States	21 reports	4	84	3,528
Violation Report—Accident/Incident Reporting Rules (Form FRA F 6180.61).	17 States	10 reports	4	40	1,680
Violation Report—Track Safety Regulations (Form FRA F 6180.111).	17 States	158 reports	4	632	26,544
Violation Report—Signal and Train Control Regulations (Form FRA F 6180.112).	17 States	100 reports	4	400	16,800
Remedial Actions Reports	573 Railroads	5,048 reports	0.25	1,262	80,768
Violation Report Challenge	573 Railroads	1,010 challenges	1	1,010	64,640
Delayed Reports	573 Railroads	505 reports	0.5	253	16,192

Total Responses: 25,567.

Estimated Total Annual Burden: 10,359 hours.

Status: Extension of a currently approved collection.

Title: Certification of Glazing Materials.

OMB Control Number: 2130–0525.

Abstract: The collection of information is set forth under 49 CFR part 223, which requires the certification and permanent marking of glazing materials by the manufacturer. The manufacturer is also responsible for making available test verification data to railroads and FRA upon request.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 5 Manufacturers.

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per response (hours)	Total annual burden hours	Total annual burden cost
223.17—Identification of Equipped Locomotives, Passenger Cars, and Cabooses—Stenciling.	4 Manufacturers	200 stencilings	0.25	50	$1,500
223.17—Appendix A—Requests for Glazing Certification Information.	5 Manufacturers	10 requests	0.25	3	90
—Material Identification: Marked Units of Glazing.	5 Manufacturers	25,000 pieces	0.002	52	1,560
—New Manufacturers: Testing and Verification Data.	5 Manufacturers	1 Test	14	14	

Total Responses: 25,211.

Estimated Total Annual Burden: 119 hours.

Status: Extension of a currently approved collection.

Title: Hours of Service Regulations.

OMB Control Number: 2130–0005.

Abstract: The collection of information is due to the railroad hours of service regulations set forth in 49 CFR part 228 which require railroads to collect the hours of duty for covered employees, and records of train movements. Railroads whose employees have exceeded maximum duty limitations must report the circumstances. Also, a railroad that has developed plans for construction or reconstruction of sleeping quarters (subpart C of 49 CFR part 228) must obtain approval of the Federal Railroad Administration (FRA) by filing a petition conforming to the requirements of sections 228.101, 228.103, and 228.105.

Form Number(s): FRA F 6180.3.

Affected Public: Businesses.

Respondent Universe: 687 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per response (hours)	Total annual burden hours	Total annual burden cost
228.11—Hours of Duty Records	632 railroads	27,375,000 recds.	0.033/0.167	2,962,500	$103,687,500
228.17—Dispatchers of Train Movements	150 Dispatch Offices	54,750 records	6	328,500	11,497,500
228.19—Monthly Reports of Excess Service	300 railroads	1,800 reports	2	3,600	126,000
228.103—Construction of Employee Sleeping Quarters.	632 railroads	1 petition	16	16	560
45 U.S.C. 61–641—Hours of Service Act	15 railroads	12 petitions	10	120	4,200

Total Responses: 27,431,563.

Estimated Total Annual Burden: 3,294,736 hours.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on June 12, 2006.

D.J. Stadlter,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E6–9402 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on April 7, 2006 (71 FR 17945).

DATES: Comments must be submitted on or before July 17, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Victor Angelo, Office of Support Systems, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On April 7, 2006, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 71 FR 17945. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, August 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, August 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, August 29, 1995.

The summaries below describes the nature of the information collection requirements (ICRs) and the expected burden. The proposed requirements are being submitted for clearance by OMB as required by the PRA.

Title: Railroad Signal System Requirements.

OMB Control Number: 2130–0006.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): FRA F 6180.14; FRA F 6180.47.

Abstract: The regulations pertaining to railroad signal systems are contained in 49 CFR parts 233 (Signal System Reporting Requirements), 235 (Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System), and 236 (Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Systems, Devices, and Appliances). Section 233.5 provides that each railroad must report to FRA within 24 hours after learning of an accident or incident arising from the failure of a signal appliance, device, method, or system to function or indicate as required by part 236 of this title that results in a more favorable aspect than intended or other condition hazardous to the movement of a train. Section 233.7 sets forth the specific requirements for reporting signal failures within 15 days in accordance with the instructions printed on Form FRA F 6180.14. Finally, section 233.9 sets forth the specific requirements for the "Signal System Five Year Report." It requires that every five years each railroad must file a signal system status report. The report is to be prepared on a form issued by FRA in accordance with the instructions and definitions provided. Title 49, part 235 of the Code of Federal Regulations, sets forth the specific conditions under which FRA approval of modification or discontinuance of railroad signal systems is required and prescribes the methods available to seek such approval. The application process prescribed under part 235 provides a vehicle enabling FRA to obtain the necessary information to make logical and informed decisions concerning carrier requests to modify or discontinue signaling systems. Section

235.5 requires railroads to apply for FRA approval to discontinue or materially modify railroad signaling systems. Section 235.7 defines material modifications" and identifies those changes that do not require agency approval. Section 235.8 provides that any railroad may petition FRA to seek relief from the requirements under 49 CFR part 236. Sections 235.10, 235.12, and 235.13 describe where the petition must be submitted, what information must be included, the organizational format, and the official authorized to sign the application. Section 235.20 sets forth the process for protesting the granting of a carrier application for signal changes or relief from the rules, standards, and instructions. This section provides the information that must be included in the protest, the address for filing the protest, the item limit for filing the protest, and the requirement that a person requesting a public hearing explain the need for such a forum. Section 236.110 requires that the test results of certain signaling apparatus be recorded and specifically identify the tests required under sections 236.102–109; sections 236.377 to 236.387; sections 236.576, 236.577; and section 236.586–236.589. Section 236.110 further provides that the test results must be recorded on preprinted or computerized forms provided by the carrier and that the forms show the name of the railroad; place and date of the test conducted; equipment tested; tests results; repairs; and the condition of the apparatus. This section also requires that the employee conducting the test must sign the form and that the record be retained at the office of the supervisory official having the proper authority. Results of tests made in compliance with section 236.587 must be retained for 92 days, and results of all other tests must be retained until the next record is filed, but in no case less than one year. Additionally, section 236.587 requires each railroad to make a departure test of cab signal, train stop, or train control devices on locomotives before that locomotive enters the equipped territory. This section further requires that whoever performs the test must certify in writing that the test was properly performed. The certification and test results must be posted in the locomotive cab with a copy of the certification and test results retained at the office of the supervisory official having the proper authority. However, if it is impractical to leave a copy of the certification and test results at the location of the test, the test results must be transmitted to either the dispatcher or one other designated official, who must keep a written record of the test results and the name of the person performing the test. All records prepared under this section are required to be retained for 92 days. Finally, section 236.590 requires the carrier to clean and inspect the pneumatic apparatus of automatic train stop, train control, or cab signal devices on locomotives every 736 days, and to stencil, tag, or otherwise mark the pneumatic apparatus indicating the last cleaning date.

Annual Estimated Burden Hours: 480,988 hours.

Title: Remotely Controlled Switch Operations.

OMB Control Number: 2130–0516.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): None.

Abstract: Title 49, section 218.30 of the Code of Federal Regulations (CFR), ensures that remotely controlled switches are lined to protect workers who are vulnerable to being struck by moving cars as they inspect or service equipment on a particular track or, alternatively, occupy camp cars. FRA believes that production of notification requests promotes safety by minimizing mental lapses of workers who are simultaneously handling several tasks. Sections 218.30 and 218.67 require the operator of remotely controlled switches to maintain a record of each notification requesting blue signal protection for 15 days. Operators of remotely controlled switches use the information as a record documenting blue signal protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

Annual Estimated Burden Hours: 120,153 hours.

Title: Disqualification Proceedings.

OMB Control Number: 2130–0529.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): None.

Abstract: Under 49 U.S.C. 20111(c), FRA is authorized to issue orders disqualifying railroad employees, including supervisors, managers, and other agents, from performing safety-sensitive service in the rail industry for violations of safety rules, regulations, standards, orders, or laws evidencing unfitness. FRA's regulations, 49 CFR part 209, subpart D, implement the statutory provision by requiring (i) a railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of a disqualification order to the individual's new or prospective employing railroad; (ii) a railroad considering employing an individual in a safety-sensitive position to ask the individual's previous employing railroad whether the individual is currently serving under a disqualification order; and (iii) a disqualified individual to inform his new or prospective employer of the disqualification order and provide a copy of the same. Additionally, the regulations prohibit a railroad from employing a person serving under a disqualification order to work in a safety-sensitive position. This information serves to inform a railroad whether an employee or prospective employee is currently disqualified from performing safety-sensitive service based on the issuance of a disqualification order by FRA. Furthermore, it prevents an individual currently serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry.

Annual Estimated Burden Hours: 5 hours.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on June 12, 2006.

D.J. Stadtler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E6–9404 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–24965]

Notice of Receipt of Petition for Decision That Nonconforming 2006 Mercedes Benz Type 463 Short Wheel Base Gelaendewagen Multipurpose Passenger Vehicles Manufactured Before September 1, 2006 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petitions for decision that nonconforming 2006 Mercedes Benz Type 463 Short Wheel Base Gelaendewagen multipurpose passenger vehicles manufactured before September 1, 2006 are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2006 Mercedes Benz Type 463 Short Wheel Base (SWB) Gelaendewagen Multipurpose Passenger Vehicles (MPVs) manufactured before September 1, 2006 that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petitions is July 17, 2006.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(B), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS, and has no substantially similar U.S.-certified counterpart, shall be refused admission into the United States unless NHTSA has decided that the motor vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

J.K. Technologies, L.L.C., of Baltimore, Maryland (J.K.) (Registered Importer 09–006) petitioned NHTSA to decide whether 2006 Mercedes Benz Type 463 SWB Gelaendewagen MPVs manufactured before September 1, 2006 are eligible for importation into the United States. J.K. believes that these vehicles can be made to conform to all applicable FMVSS.

In its petition, J.K. noted that NHTSA has granted import eligibility to the 2004 Mercedes Benz 463 SWB Gelaendewagen MPV (covered by vehicle eligibility number VCP–28), which it claims is identical to the 2006 Mercedes Benz Type 463 SWB Gelaendewagen MPV manufactured before September 1, 2006. Because the 2004 model year vehicles that have been deemed eligible for importation under vehicle eligibility number VCP–28 include both the Cabriolet and the Three Door versions of the Mercedes Benz 463 SWB Gelaendewagen MPV, the agency regards the instant petition as pertaining to those versions as well. In the petition for the 2004 model, the petitioner observed that over a period of ten years, NHTSA has granted import eligibility to a number of Mercedes Benz Gelaendewagen 463 vehicles. These include the 1990–1994 SWB version of the vehicle (assigned vehicle eligibility number VCP–14) and the 1996 through 2001 long wheel base (LWB) version of the vehicle (assigned vehicle eligibility numbers VCP–11, VCP–15, VCP–16, VCP–18, and VCP–21). These eligibility decisions were based on petitions submitted by J.K. and another register importer, Europa International, Inc., of Santa Fe, New Mexico (Registered Importer 91–206), claiming that the vehicles are capable of being altered to comply with all applicable FMVSS. Because those vehicles were not manufactured for importation into and sale in the United States, and were not certified by their original manufacturer (Daimler Benz), as conforming to all applicable FMVSS, they cannot be categorized as "substantially similar" to the 2006 Mercedes Benz Type 463 SWB Gelaendewagen MPV for the purpose of establishing import eligibility under 49 U.S.C. 30141(a)(1)(A). In addition, while there are some similarities between the SWB and LWB versions, NHTSA has decided that the 2002 through 2004 LWB versions of the vehicle that Mercedes Benz has manufactured for importation into and sale in the United States cannot be categorized as substantially similar to the SWB versions for the purpose of establishing import eligibility under section 30141(a)(1)(A). Therefore, J.K.'s petition is being processed pursuant to 49 U.S.C. 30141(a)(1)(B) alone.

J.K. submitted information with its petition intended to demonstrate that 2006 Mercedes Benz Type 463 SWB Gelaendewagen MPVs manufactured before September 1, 2006, as originally manufactured, comply with many applicable FMVSS and are capable of being modified to comply with all other applicable standards to which they were not originally manufactured to conform.

Specifically, the petitioner claims that 2006 Mercedes Benz Type 463 SWB Gelaendewagen MPVs manufactured before September 1, 2006 have safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluid*, 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone*

Intrusion, and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being altered to comply with the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer to read in miles per hour; (c) replacement of the instrument cluster with a U.S.-model component; and (d) reprogramming and initialization of the vehicle control system to integrate the new instrument cluster and activate required warning systems.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model taillamp assemblies; (b) installation of U.S.-model headlamps; and (c) installation of front and rear U.S.-model sidemarker lamps.

Standard No. 110 *Tire selection and Rims for Motor Vehicles With a GVWR of 4,536 Kilograms (10,000 pounds) or Less:* installation of a tire information placard and tire inflation pressure labeling.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the mirror's surface.

Standard No. 114 *Theft Protection:* reprogramming of the vehicle control systems to comply with the standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* reprogramming of the vehicle control systems to comply with the standard.

Standard No. 208 *Occupant Crash Protection:* programming of the vehicle control systems to activate the required seat belt warning system. The petitioner states that the vehicles are equipped with driver's and passenger's air bags and knee bolsters, and with combination lap and shoulder belts that are self-tensioning and that release by means of a single red push button at the front and rear outboard seating positions.

Standard No. 225 *Child Restraint Anchorage Systems:* installation of U.S.-model child seat anchorage components.

Standard No. 301 *Fuel System Integrity:* The petitioner states that the vehicle's fuel system must be modified with U.S.-model parts to meet U.S. Environmental Protection Agency (EPA) requirements.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petitions described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director Office of Vehicle Safety Compliance.

[FR Doc. E6–9399 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: PHMSA–99–6355]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection (2137–0604)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

SUMMARY: This notice requests public participation in the OMB approval process regarding the renewal of an existing PHMSA collection of information. This renewal of information complies with the integrity management rule for hazardous liquid pipelines for operators with more than 500 miles of pipeline. PHMSA is requesting OMB approval for renewal of this information collection under the Paperwork Reduction Act of 1995. With this notice, PHMSA invites the public to submit comments over the next 60 days on ways to minimize the burden associated with the collection of information related to an operator's Integrity Management Program on line segments that could affect High Consequence Areas.

DATES: Comments must be submitted on or before August 15, 2006.

ADDRESSES: Comments should reference Docket No. PHMSA–99–6355 and may be submitted in the following ways:

- DOT Web Site: *http://dms.dot.gov.* To submit comments on the DOT electronic docket site, click "Comment/Submissions," click "Continue," fill in the requested information, click "Continue," enter your comment, then click "Submit."
- Fax: 1–202–493–2251.
- Mail: Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: DOT Docket Management System; 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.
- E-Gov Web Site: *http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions: You should identify the docket number, PHMSA–99–6355, at the beginning of your comments. If you submit your comments by mail, you should submit two copies. If you wish to receive confirmation that PHMSA received your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov,* and may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number.

Note: All comments will be posted without changes or edits to *http://dms.dot.gov* including any personal information provided.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: William Fuentevilla at (202) 366–6199, or by e-mail at *William.Fuentevilla@dot.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department. These

include (1) whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed information collections; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Through the Integrity Management Program (49 CFR 195.452), PHMSA requires operators to develop and follow integrity management programs to assess, evaluate, repair, and validate pipeline segments that could impact high consequence areas in the event of leak or failure. The programs must provide for continual assessment of pipeline segments that could affect populated areas, areas unusually sensitive to environmental damage and commercially navigable waterways. Pipeline operators must keep updated written records associated with their programs and have them available for inspection, and submit relevant notices to PHMSA as specified by the regulation.

As used in this notice, the term "information collection" includes all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information, and conducting telephone calls.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Pipeline Integrity Management in High Consequence Areas (Operators with more than 500 Miles of Hazardous Liquid Pipelines).

Respondents: 71 hazardous liquid pipeline operators with more than 500 miles of pipes.

Estimated Total Annual Burden on Respondents: 57,510 hours.

Issued in Washington, DC on June 9, 2006.

Florence L. Hamn,

Director of Regulations, Office of Pipeline Safety.

[FR Doc. E6–9405 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for modification of special permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (*e.g.*, to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are descried in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for special permits to facilitate processing.

DATES: Comments must be received on or before July 3, 2006.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the application are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of special permits is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 12, 2006.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials, Special Permits & Approvals.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
3121–M		Department of the Army, Ft. Eustis, VA.	49 CFR 172.101 (Column 8(c)); 177.841.	To modify the special permit to authorize the transportation in commerce of dinitrogen tetroxide without an updated emergency response plan.
7887–M		Estes-Cox Corporation, Penrose, CO.	49 CFR 172.101; 175.3	To modify the special permit to allow igniters, Division 1.4S, to be shipped in the same inner and outer packaging as model rocket motors and with non-hazardous materials needed to construct model rockets.
10646–M		Schlumberger, Sugar Land, TX.	49 CFR 173.302	To modify the special permit to authorize design improvements to the bleed valve and construction materials.
11536–M		Boeing, Los Angeles, CA	49 CFR 173.102 Spec. Prov. 101; 173.24(g); 173.62; 173.202; 173.304; 175.3.	To modify the special permit to authorize an additional spacecraft shipping package containing Class 3 and 8, and Division 2.2 materials.
12068–M	3850	Sea Launch, Long Beach, CA.	49 CFR Part 172, Subparts C, D, E and F; 173.62; Part 173, Subparts E, F and G.	To modify the special permit to authorize the transportation in commerce of a launch vehicle containing Division 1.4 and Class 3 hazardous materials, in non-DOT specification packaging.

MODIFICATION SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
13027–M	12451	Hernco Fabrication & Services, Midland, TX.	49 CFR 173.241; 173.242	To modify the special permit to authorize the transportation in commerce of additional Division 3 and 8 hazardous materials in non-DOT specification portable tanks.
13207–M	15068	BEI, Honolulu, HI	49 CFR 173.32(f)(5)	To modify the exemption to authorize the use of additional DOT Specification IM 101 steel portable tanks that do not conform to the filling density requirements for the transportation of a Class 8 material.
13235–M	15238	Airgas-SAFECOR, Cheyenne, WY.	49 CFR 172.203(a); 177.834(h).	To modify the special permit to authorize filling and discharging of a horizontally mounted DOT specification 4L cylinder with liquid oxygen, refrigerated liquid without removal from the vehicle.
14205–M	21733	The Clorox Company, Pleasanton, CA.	49 CFR 173.306(a)(1) and 173.306(a)(3)(v).	To modify the special permit to authorize the transportation in commerce of aerosol products containing Division 2.1 gases.
14282–M		R&R Trucking, Incorporated, Galt, MO.	49 CFR 173.835(g)	To modify the special permit to remove the marking requirements of § 172.203(c).
14327–M	24248	The Colibri Group, Inc., Providence, RI.	49 CFR 173.21, 173.308, 175.33.	To modify the special permit to authorize the transportation in commerce of any approved lighter when packaged in special travel containers and transported in checked luggage by passenger aircraft.

[FR Doc. 06–5464 Filed 6–15–06; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (40 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 17, 2006.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 12, 2006.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials, Special Permits & Approvals.

NEW SPECIAL PERMITS

Appliction No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14334–N		Rohm and Haas Chemicals LLC, Philadelphia, PA.	49 CFR 177.834(i)(1) and (3).	To authorize the use of video cameras and monitors to observe the loading and unloading operations meeting the definition of "loading incidental to movement" or "unloading incidental to movement" as those terms are defined in § 171.8 of the Hazardous Materials Regulations from a remote control station in place of personnel remaining within 25 feet of a cargo tank motor vehicle. (mode 1).
14355–N		Honeywell International Inc., Morristown, NJ.	49 CFR 173.31(b)(3); 173.31(b)(4).	To authorize the transportation in commerce of nine DOT Specification 112 tank cars without head and thermal protection for use in transporting certain Division 2.2 material by extending the date for retrofitting beyond July 1, 2006. (mode 2).

NEW SPECIAL PERMITS

Appliction No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14356–N	.....	Albermarle Corporation, Baton Rouge, LA.	49 CFR 173.181	To authorize the transportation in commerce of Division 4.2 organometallic liquids in non-DOT specification pressure vessels designed and constructed in accordance with the ASME Code (similar to DOT Specification 4BW) when transported by highway and rail. (modes 1, 2).
14358–N	.....	Vi-Jon Laboratories Inc., St. Louis, MO.	49 CFR Parts 171–180	To authorize the transportation of limited quantities of ethyl alcohol solutions, not to exceed 70%, in non-DOT specification packaging consisting of polyethylene inner containers overpacked in strong outside fiberboard boxes with no hazard communication by highway, rail and vessel. (modes 1, 2, 3).

[FR Doc. 06–5465 Filed 6–15–06; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Pipeline Safety: Submission of Public Awareness Programs

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: This document tells certain pipeline operators how to submit their written public awareness programs for review. Regulations issued in 2005 provide details about the content of the programs and establish completion dates. The 2002 amendment to the pipeline safety law requires pipeline operators to submit these programs for review and PHMSA has a clearinghouse approach for reviewing interstate and many intrastate operators. This document ensures operators know where and when to submit their programs.

FOR FURTHER INFORMATION CONTACT: Blaine Keener by phone at (202) 366–0970, or by e-mail at *blaine.keener@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Pipeline Safety Improvement Act of 2002 amended 49 U.S.C. 60116 to require pipeline operators to evaluate and update their existing public education programs and to submit the updated programs to PHMSA or the State pipeline safety agency that regulates the intrastate pipelines in the State. PHMSA issued a final rule on May 19, 2005 (70 FR 28833) delineating what the updated programs, now called public awareness programs, must contain. You can find the final rule in the pipeline safety code at 49 CFR 192.616 and 49 CFR 195.440. The final rule requires most operators to develop public awareness programs by June 20, 2006 and to submit the programs for review upon request. There is an extended compliance time for certain very small petroleum gas and master meter operators. An operator distributing petroleum gas to fewer than 25 customers or distributing gas through a master meter to fewer than 25 customers has until June 20, 2007 to prepare a program. In addition, PHMSA is reconsidering the public awareness requirements applicable to all master meter operators and operators distributing petroleum gas by pipeline as a secondary business. We intend to initiate rulemaking in the near future to extend the date for compliance and provide alternative public awareness programs for these master meter and petroleum gas operators.

This advisory bulletin provides guidance to operators of pipelines (other than operators distributing gas through master meters or distributing petroleum gas by pipeline as an incidental part of business) about submitting public awareness programs for initial review.

PHMSA has decided to have a team review written public awareness programs of interstate operators centrally instead of through the pipeline safety inspection staff located in its five regions. PHMSA has offered, and most State agencies have elected, to have this team review public awareness programs of intrastate operators. The work of the Public Awareness Program Clearinghouse review team is guided by review criteria developed by pipeline safety staff from PHMSA and State pipeline safety agencies. The review team will compare programs with American Petroleum Institute Recommended Practice 1162 (RP 1162), on which the public awareness regulation is based. If the review team finds deviation from the baseline elements, the review team will refer the issue to the applicable PHMSA regional office or State pipeline safety agency. In addition to the baseline elements, RP 1162 contains supplemental program elements to enhance pipeline safety awareness in areas where operators determine increased risk. The review team will document operator use of supplemental elements to identify trends and foster improvements.

There are exceptions to the centralized review process. The State pipeline safety agencies in Connecticut, the District of Columbia, Illinois, Maryland, Montana, South Dakota, Virginia, and Wyoming have decided to conduct independent reviews of the public awareness programs of at least some intrastate operators. Unless otherwise directed by the State pipeline safety agency, an operator described below submits its program to the address provided by October 8, 2006:

A gas distribution operator in Connecticut: Mr. Philip Sher, Supervisor of Technical Analysis, Connecticut Department of Public Utility Control, 10 Franklin Square, New Britain, CT 06051.

A gas distribution pipeline operator in the District of Columbia: Ms. Delvone Nicholson-Meade, Program Manager, Pipeline Safety, District of Columbia Public Service Commission, 1333 H Street, NW., Suite 700 East Tower, Washington, DC 20005.

A gas distribution pipeline operator serving less than 20,000 customers in Illinois: Mr. Rex Evans, Manager, Pipeline Safety, Illinois Commerce Commission, 527 E Capitol Avenue, Springfield, IL 62701.

An intrastate pipeline operator in Maryland: Mr. John Clementson, Assistant Chief Engineer, Maryland Public Service Commission, 6 Saint Paul Street, Baltimore, MD 21202–6806.

An intrastate gas pipeline operator in Montana: Mr. G. Joel Tierney, Utility Engineering Sp./Pipeline Safety Program Manager, Montana Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620–2601.

In South Dakota:

- A gas distribution pipeline operator serving less than 20,000 customers, or
- An intrastate gas transmission pipeline operator:

Mr. Martin Bettmann, Pipeline Safety Program Manager, South Dakota Public Utilities Commission, 500 East Capitol Avenue, Pierre, SD 57501–5070.

In Virginia:

- A privately-owned gas distribution pipeline operator,
- An intrastate gas transmission operators; or
- An intrastate hazardous liquid pipeline operator:

Mr. Massoud Tahamtani, Director, Division of Utility and Railroad Safety, Virginia State Corporation Commission, Tyler Building, P.O. Box 1197, Richmond, VA 23218.

An intrastate gas pipeline operator in Wyoming: Mr. David W. Piroutek, Engineering Supervisor, Wyoming Public Service Commission, 2515 Warren Ave, Suite 300, Cheyenne, WY 82002–0230.

II. Advisory Bulletin ADB–06–02

To: Owners and Operators of Gas and Hazardous Liquid Pipelines Required to Complete Written Public Awareness Programs by June 20, 2006.

Subject: Submission of Public Awareness Programs for Review.

Purpose: The purpose is two-fold:

(1) To inform persons distributing gas through a master meter and persons who distribute petroleum gas by pipeline as an incidental part of their business of PHMSA's intention to modify the requirements for public awareness programs applicable to them; and

(2) To inform other operators, who are required to develop public awareness programs satisfying the requirements of 49 CFR 192.616 or 49 CFR 195.440 by June 20, 2006, how to submit the written programs for review.

Advisory

Operators of Master Meter Systems and Some Petroleum Gas Systems

If you distribute gas through a master meter or if you distribute petroleum gas by pipeline as an incidental part of your primary business, do not submit a written public awareness program to the Public Awareness Program Clearinghouse for review at this time. PHMSA intends to initiate a rulemaking in the near future to change the requirements for public awareness programs applicable to you.

Other Intrastate Operators in Certain States

If you operate an intrastate pipeline (other than a master meter or petroleum gas system described in (1)), you have to develop a public awareness program by June 20, 2006 and submit the written program for review.

The State pipeline safety agencies in Connecticut, the District of Columbia, Illinois, Maryland, Montana, South Dakota, Virginia, and Wyoming have decided to conduct reviews independent of the Public Awareness Program Clearinghouse. Consult the preamble to this advisory for more information about which intrastate operators in these jurisdictions need to submit programs to the State agency. If you are in one of these categories, unless the State pipeline safety agency advises you differently, please submit your written public awareness programs to the addressee for the State agency listed in the preamble by October 8, 2006.

All Other Operators

If you operate:

- An interstate gas pipeline;
- An interstate hazardous liquid pipeline; and
- An intrastate pipeline not filing with a State pipeline safety agency as described above, please submit your written public awareness program to PHMSA's Public Awareness Program Clearinghouse between August 8, 2006 and October 8, 2006.

How to Submit to the Public Awareness Program Clearinghouse

General requirements: In order for PHMSA to accurately identify the pipeline operator submitting a public awareness program, an operator needs to use an Operator Identification Number (Op ID) when submitting its public awareness program. If you do not have one, request it at *http://opsweb.rspa.dot.gov/cfdocs/opsapps/pipes/main.cfm*. In some cases, a single public awareness program may cover several pipelines with different Op IDs. For each pipeline covered by a public awareness program, you need to provide basic information about the pipeline when you submit your written public awareness program:

a. The Op ID and name of the operator.

b. A person to contact, with e-mail and telephone number.

c. The type or types of pipeline covered by the same Op ID.

- Gathering (gas or hazardous liquid)
- Petroleum gas distribution
- Natural gas distribution, municipally-owned
- Natural gas distribution, privately-owned
- Gas distribution, other
- Gas transmission, intrastate
- Gas transmission, interstate
- Hazardous liquid, intrastate
- Hazardous liquid, interstate

d. For each type of intrastate pipeline, the State or States in which the pipeline is located.

e. For each type of interstate pipeline, the PHMSA region or regions in which the pipeline is located.

E-filing: PHMSA strongly encourages operators to submit public awareness programs through the Internet. We are modifying the Online Data Entry System (ODES) to accept public awareness programs. For operators unfamiliar with ODES, the system currently allows an operator to submit various reports required by pipeline safety regulations. In order to ensure the integrity of data submitted to ODES, an operator needs an Op ID and PIN. If you do not have a PIN, you may request it at the Web site above. Using ODES reduces the potential for human error and increases the efficiency of the process.

On August 8, 2006, the Web site above will have a prominent link for submitting public awareness programs. The ODES user enters the Op ID and PIN. The link then transfers the user to the program submittal page. On this page, the ODES user provides basic information about the pipeline to allow the review team of the Public Awareness Program Clearinghouse to properly evaluate the program, communicate with the State pipeline safety agency or PHMSA regional office with inspection responsibility for the pipeline, and generate summary reports. The ODES user may enter multiple Op IDs when a single public awareness program covers pipelines operated by more than one operator.

After entering the basic information, the ODES user uploads the file, or files, comprising the public awareness program. Adobe Acrobat format is preferred, but PHMSA can accept files created in any commercially available word processor or spreadsheet.

Alternative to e-filing: In lieu of e-filing, an operator may mail a computer disk containing its public awareness program, and the basic information about the pipeline described above, to the following address: Public Awareness Program Clearinghouse, PHMSA, 400

7th, Street, SW., Room 2103, Washington, DC 20590.

Finally, an operator may also submit the same information in paper form to the same address.

Issued in Washington, DC on June 9, 2006.

Stacey Gerard,

Acting Assistant Administrator/Chief Safety Officer for Pipeline Safety.

[FR Doc. E6–9400 Filed 6–15–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 12, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 17, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0274.

Type of Review: Extension.

Title: Employment—Reference Inquiry.

Form: IRS 2163(c).

Description: Form 2163(c) is used by the IRS to verify past employment and to question listed and developed reference as to the character and integrity of current and potential IRS employees. The information received is incorporated into a report on which a security determination is based.

Respondents: Individual or households, Business or other for-profit institutions, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government Estimated Total Burden Hours: 4,000 hours.

OMB Number: 1545–0771.

Type of Review: Extension.

Title: EE–63–88 (Final and temporary regulations) Taxation of Fringe benefits and Exclusions from Gross Income for Certain Fringe Benefits; IA–140–86 (Temporary) Fringe Benefits; Listed Property; and REG–209785–95 (Final) Substantiation of Business Expenses.

Description: EE–63–88. This regulation provides guidance on the tax treatment of taxable and nontaxable fringe benefits and general and specific rules for the valuation of taxable fringe benefits in accordance with Code section 61 and 132. The regulation also provides guidance on exclusions from gross income for certain fringe benefits. *IA–140–86.* This regulation provides guidance relating to the requirement that any deduction or credit with respect to business travel, entertainment and gift expenses be substantiated with adequate records in accordance with Code section 275(d). The regulation also provides guidance on the taxation of fringe benefits and clarifies and the types of records that are general necessary to substantiated any deduction or credit for listed property. REG–209785–95 This regulation provides that taxpayers who deduct, or reimburse employees for, business expenses for travel, entertainment, gifts, or listed property and required to maintain certain records, including receipts, for expenses of $75 or more. The regulation amends existing regulation by raising the receipt threshold from $25 to $75.

Respondents: Individuals or households, Business or other for-profit institutions, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Total Burden Hours: 37,922,688 hours.

OMB Number: 1545–1163.

Type of Review: Extension.

Title: Change of Address.

Form: IRS 8822.

Description: Form 8822 is used by taxpayers to notify the Internal Revenue Service that they have changed their home or business address or business location.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Total Burden Hours: 258,334 hours.

OMB Number: 1545–1535.

Type of Review: Extension.

Title: Revenue Procedure 97–19 Timely Mailing Treated as Timely Filing.

Description: Revenue Procedure 97–19 provides the criteria that will be used by the IRS to determine whether a private delivery service qualifies as a designated Private Delivery Service under section 7502 of the Internal Revenue Code.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 3,069 hours.

OMB Number: 1545–1674.

Type of Review: Extension.

Title: Revenue Procedure 2005–16 (Master and Prototype and Volume Submitter Plans) (previously Rev. Proc. 2000–20).

Description: The master and prototype and volume submitter revenue procedure sets forth the procedures for sponsors of master and prototype and volume submitter pension, profit-sharing and annuity plans to request an opinion letter or an advisory letter from the Internal Revenue Service that the form of a master or prototype plan or volume submitter plan meets the requirements of section 401(a) of the Internal Revenue Code. The information requested in §§ 5.11, 8.02, 11.02, 12, 14.05, 15.02, 18 and 24 of the master and prototype revenue procedure is in addition to the information required to be submitted with Forms 4461 (Application for Approval of Master or Prototype Defined Contribution Plan). 4461-A (Application for Approval of Master or Prototype Defined Benefit Plan) and 4461-B (Application for Approval of Master or Prototype of Plan (Mass Submitter Adopting Sponsor). This information is needed in order to enable the Employee Plan function of the Service's Tax Exempt and Government Entities Division to issue an opinion letter or an advisory letter.

Respondents: Individuals or Households, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Estimated Total Burden Hours: 1,058,850 hours.

OMB Number: 1545–2005.

Type of Review: Extension.

Title: Restaurant Tips-Attributed Tip Income Program (ATIP).

Description: The revenue procedure sets forth the requirements for participating in the Attributed Tip Income Program (ATIP). ATIP provides benefits to employers and employees similar to those offered under previous tip reporting agreements without requiring one-on-one meetings with the Service to determine tip rates or eligibility.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 6,100 hours.

OMB Number: 1545–2008.

Type of Review: Extension.

Title: Nonconventional Source Fuel Credit.

Form: IRS 8907.

Description: Form 8907 will be used to claim a credit from the production and sale of fuel created from

nonconventional sources. For tax years ending after 12/31/05 fuel from coke or coke gas quality for the credit, and become part of the general business credit.

Respondents: Individuals or households and Business or other for-profit.

Estimated Total Burden Hours: 278,960 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–9449 Filed 6–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 12, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 17, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0025.

Type of Review: Extension.

Title: Affiliations Schedule.

Form: IRS 851.

Description: Form 851 provides IRS with information to ascertain (1) the names and identification numbers of the numbers of members of the affiliated group included in the consolidated return, (2) taxes paid by each member of the group, and (3) stock ownership; changes in stock ownership and other information to determine that each corporation is a qualified member of the affiliated group as defined in section 1504 of the code.

Respondents: Business or other for-profit; Farms.

Estimated Total Burden Hours: 51,040 hours.

OMB Number: 1545–1014.

Type of Review: Extension.

Title: Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return; Schedule Q (Form 1066) Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.

Form: IRS 1066 and Schedule Q (Form 1066).

Description: Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 758,989 hours.

OMB Number: 1545–1502.

Type of Review: Revision.

Title: Form 5304–SAMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution; Form 5305–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution; and Notice 98–4, Simple IRA Plan Guidance.

Form: IRS 5304–SIMPLE, 5305–SIMPLE, and Notice 98–4.

Description: Forms 5304–SIMPLE and 5035–SIMPLE are used by an employer to permit employees to make salary reduction contributions to a savings incentive match plan (SIMPLE IRA) described in Code section 408(p). These forms are not to be filed with IRS, but to be retained in the employers' records as proof of establishing such a plan, thereby justifying a deduction for contributions made to the SIMPLE IRA. The data is used to verify the deduction. Notice 98–4 provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE Plan, including information regarding the notification and reporting requirements under Code section 408.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated Total Burden Hours: 2,113,000 hours.

OMB Number: 1545–2003.

Type of Review: Extension.

Title: Notice 2006–24, Qualifying Advanced Coal Project Program.

Description: This notice establishes the qualifying advanced coal project program under section 48A of the Internal Revenue Code. The notice provides the time and manner for a taxpayer to apply for an allocation of qualifying advanced coal project credits and, once the taxpayer has received this allocation, the time and manner for the taxpayer to file for a certification of its qualifying advanced coal project.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 4,950 hours.

OMB Number: 1545–2007.

Type of Review: Extension.

Title: Employer's Annual Employment Tax Return.

Form: IRS 944.

Description: The information on Form 944 will be collected to ensure the smallest nonagricultural and non-household employers are paying the correct amount of social security tax, Medicare tax, and withheld federal income tax. Information on line 13 will be used to determine if employers made any required deposits of these taxes.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Estimated Total Burden Hours: 14,212,000 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–9450 Filed 6–15–06; 8:45 am]

BILLING CODE 4810–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Bank Activities and Operations—12 CFR 7."

DATES: You should submit written comments by August 15, 2006.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0204, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0204, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Bank Activities and Operations—12 CFR 7.

OMB Number: 1557–0204.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB approve its revised estimates.

The information collection requirements ensure that national banks conduct their operations in a safe and sound manner and in accordance with applicable Federal banking statutes and regulations. The information is necessary for regulatory and examination purposes.

The information collection requirements in part 7 are as follows:

- 12 CFR 7.1000(d)(1) (National bank ownership of property—Lease financing of public facilities): National bank lease agreements must provide that the lessee will become the owner of the building or facility upon the expiration of the lease.
- 12 CFR 7.1014 (Sale of money orders at nonbanking outlets): A national bank may designate bonded agents to sell the bank's money orders at nonbanking outlets. The responsibility of both the bank and its agent should be defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent.
- 12 CFR 7.2000(b) (Corporate governance procedures—Other sources of guidance): A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.
- 12 CFR 7.2004 (Honorary directors or advisory boards): Any listing of a national bank's honorary or advisory directors must distinguish between them and the bank's board of directors or indicate their advisory status.
- 12 CFR 7.2014(b) (Indemnification of institution-affiliated parties—Administrative proceeding or civil actions not initiated by a Federal agency): A national bank shall designate in its bylaws the body of law selected for making indemnification payments.
- 12 CFR 7.2024(a) Staggered terms for national bank directors—Any national bank may adopt bylaws that provide for the staggering the terms of its directors. National banks shall provide the OCC with copies of any bylaws so amended.
- 12 CFR 7.2024(c) Size of bank board—A national bank seeking to increase the number of its directors must notify the OCC any time the proposed size would exceed 25 directors.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,300.

Estimated Total Annual Responses: 1,300.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 418 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 12, 2006.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E6–9451 Filed 6–15–06; 8:45 am]

BILLING CODE 6810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Computer Matching Program Between the Department of Veterans Affairs (VA) and the Department of Defense (DoD)

AGENCY: Department of Veterans Affairs.

ACTION: Notice of computer matching program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs intends to conduct a recurring computer matching program. This will match personnel records of the Department of Defense with VA records of benefit recipients under the Montgomery GI Bill.

The goal of these matches is to identify the eligibility status of veterans, servicemembers, and reservists who have applied for or who are receiving education benefit payments under the Montgomery GI Bill. The purpose of the match is to enable VA to verify that individuals meet the conditions of military service and eligibility criteria for payment of benefits determined by VA under the Montgomery GI Bill—Active Duty (MGIB) and the Montgomery GI Bill—Selected Reserve (MGIB–SR).

DATES: This match will commence on or about July 17, 2006. At the expiration of 18 months after the commencing date the Departments may renew the agreement for another 12 months.

FOR FURTHER INFORMATION CONTACT: Michael Yunker (225B), Strategy and Legislative Development Team Leader, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7180.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by paragraph 6c of the "Guidelines on the Conduct of Matching Programs" issued by the Office of Management and Budget (OMB) (54 FR 25818), as amended by OMB Circular A–130, 65 FR 77677 (2000). A copy of the notice has been provided to both Houses of Congress and OMB. The matching program is subject to their review.

a. *Names of participating agencies:* Department of Defense and Department of Veterans Affairs.

b. *Purpose of the match:* The purpose of the match is to enable VA to determine whether an applicant is eligible for payment of benefits under the MGIB or the MGIB–SR and to verify continued compliance with the requirements of both programs.

c. *Authority:* The authority to conduct this match is found in 38 U.S.C. 3684A(a)(1).

d. *Categories of records and individuals covered:* The records covered include eligibility records extracted from DOD personnel files and benefit records that VA establishes for all individuals who have applied for and/or are receiving, or have received education benefit payments under the Montgomery GI Bill. These benefit records are contained in a VA system of records identified as 58VA21/22 entitled: Compensation, Pension, Education and Rehabilitation Records—VA, first published in the **Federal Register** at 41 FR 9294 (March 3, 1976), and last amended at 66 FR 47727 (September 13, 2001), with other amendments as cited therein.

e. *Inclusive dates of the matching program:* The match will begin on July 17, 2006 or 40 days after the OMB review period, whichever is later and continue in effect for 18 months.

f. *Address for receipt of public inquiries or comments:* Interested individuals may submit written comments to the Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail to *VAregulations@mail.va.gov.* All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

Approved: May 17, 2006.

R. James Nicholson,

Secretary of Veterans Affairs.

[FR Doc. E6–9413 Filed 6–15–06; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 71, No. 116
Friday, June 16, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1051

[AMS–FRL–7922–5]

RIN 2060–AM35

Test Procedures for Testing Highway and Nonroad Engines and Omnibus Technical Amendments

Correction

In rule document 05–11534 beginning on page 40420 in the issue of Wednesday, July 13, 2005, make the following correction:

§1051.720 [Corrected]

On page 40505, in the third column, in §1051.720 (a)(2), in the eighth line, "(kW) 30 ÷ km/hr" should read "(kW) ÷ 30 km/hr".

[FR Doc. C5–11534 Filed 6–15–06; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
June 16, 2006

Part II

Environmental Protection Agency

40 CFR Parts 9, 122, 123, et al.
National Pollutant Discharge Elimination System; Establishing Requirements for Cooling Water Intake Structures at Phase III Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 124, and 125

[OW–2004–0002, FRL–8181–5]

RIN 2040–AD70

National Pollutant Discharge Elimination System—Final Regulations To Establish Requirements for Cooling Water Intake Structures at Phase III Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 1, 2004, EPA published a proposal that contained several options for the control of cooling water intake structures at existing Phase III facilities and at new offshore oil and gas extraction facilities. This rule establishes categorical section 316(b) requirements for intake structures at new offshore oil and gas extraction facilities that have a design intake flow threshold of greater than 2 million gallons per day and that withdraw at least 25 percent of the water exclusively for cooling purposes. For existing Phase III facilities, EPA determined that uniform national standards are not the most effective way at this time to address cooling water intake structures at these facilities. Instead, EPA believes that it is better to continue to rely upon the existing National Pollutant Discharge Elimination System (NPDES) program, which implements section 316(b) for existing facilities not covered under the Phase II rule on a case-by-case, best professional judgment basis. This final action constitutes Phase III of EPA's section 316(b) regulation development. This rule does not alter the regulatory requirements for facilities subject to the Phase I or Phase II regulations.

DATES: This regulation is effective July 17, 2006. For judicial review purposes, this final rule is promulgated as of 1 p.m. Eastern Daylight Time (EDT) on June 30, 2006 as provided in 40 CFR 23.2.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–OW–2004–0002. All documents in the docket are listed on the *www.regulations.gov web site.* Although listed in the index, some information is not publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Paul Shriner, OW/OST at (202) 566–1076. For additional biological information contact Ashley Allen, OW/OST at (202) 566–1012. The address for the above contacts is: Office of Science and Technology, Engineering Analysis Division (Mailcode 4303T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; fax number: (202) 566–1053; e-mail address: *rule.316b@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Entities Are Regulated By This Action?

This final rule applies to new offshore and coastal oil and gas extraction facilities, which were specifically excluded from the Phase I new facility rule. New offshore and coastal oil and gas extraction facilities with a design intake flow threshold of greater than 2 million gallons per day (MGD) are subject to requirements similar to those under the Phase I rule. A new offshore or coastal oil and gas extraction facility is defined as any building, structure, facility, or installation that (1) meets the definition of a "new facility" in 40 CFR 125.83; (2) is regulated by either the Offshore or Coastal subcategories of the Oil and Gas Extraction Point Source Category Effluent Guidelines in 40 CFR part 435, Subpart A or Subpart D; and (3) commences construction after July 17, 2006. Any offshore or coastal oil and gas extraction facility that does not meet these three criteria is subject to section 316(b) requirements established by the permit writer on a case-by-case basis. Exhibit I–1 provides examples of other industrial facility types potentially interested in this final action.

EXHIBIT I–1.—INDUSTRIAL FACILITY TYPES POTENTIALLY INTERESTED IN THIS FINAL ACTION

Category	Examples of potentially interested entities	Standard industrial classification codes	North American industry codes (NAIC)
Federal, State and local government.	Operators of steam electric generating point source dischargers that employ cooling water intake structures.	4911 and 493	221111, 221112, 221113, 221119, 221121, 221122
Industry	Operators of industrial point source dischargers that employ cooling water intake structures.	See below	See below
	Agricultural production	0133	111991, 11193
	Metal mining	1011	21221
	Oil and gas extraction	1311, 1321	211111, 211112
	Mining and quarrying of nonmetallic minerals	1474	212391
	Food and kindred products	2046, 2061, 2062, 2063, 2075, 2085.	311221, 311311, 311312, 311313, 311222, 311225, 31214
	Tobacco products	2141	312229, 31221
	Textile mill products	2211	31321
	Lumber and wood products, except furniture	2415, 2421, 2436, 2493	321912, 321113, 321918, 321999, 321212, 321219
	Paper and allied products	2611, 2621, 2631, 2676	3221, 322121, 32213, 322121, 322122, 32213, 322291
	Chemical and allied products	28 (except 2895, 2893, 2851, and 2879).	325 (except 325182, 32591, 32551, 32532)

EXHIBIT I–1.—INDUSTRIAL FACILITY TYPES POTENTIALLY INTERESTED IN THIS FINAL ACTION—Continued

Category	Examples of potentially interested entities	Standard industrial classification codes	North American industry codes (NAIC)
	Petroleum refining and related industries	2911, 2999	32411, 324199
	Rubber and miscellaneous plastics	3011, 3069	326211, 31332, 326192, 326299
	Stone, clay, glass, and concrete products	3241	32731
	Primary metal industries	3312, 3313, 3315, 3316, 3317, 3334, 3339, 3353, 3363, 3365, 3366.	324199, 331111, 331112, 331492, 331222, 332618, 331221, 22121, 331312, 331419, 331315, 331521, 331524, 331525
	Fabricated metal products, except machinery and transportation equipment.	3421, 3499	332211, 337215, 332117, 332439, 33251, 332919, 339914, 332999
	Industrial and commercial machinery and computer equipment.	3523, 3531	333111, 332323, 332212, 333922, 22651, 333923, 33312
	Transportation equipment	3724, 3743, 3764	336412, 333911, 33651, 336416
	Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods, watches and clocks.	3861	333315, 325992
	Electric, gas, and sanitary services	4911, 4931, 4939, 4961	221111, 221112, 221113, 221119, 221121, 221122, 22121, 22133
	Educational services	8221	61131
	Engineering, accounting, research, management and related services.	8731	54171

This exhibit is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this action. This exhibit also lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the exhibit could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 125.131 of this rule. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed for technical information in the **FOR FURTHER INFORMATION CONTACT** section.

B. Supporting Documentation

The final regulation is supported by three major documents:

1. Economic and Benefits Analysis for the Final Section 316(b) Phase III Existing Facilities Rule (EPA–821–R–06–001), hereafter referred to as the Economic and Benefits Analysis or EA. This document presents the methodology employed to assess economic impacts of the options we considered for this action and the results of the analysis.

2. Regional Analysis for the Final Section 316(b) Phase III Existing Facilities Rule (EPA–821–R–06–002), hereafter referred to as the Regional Analysis Document. This document examines cooling water intake structure impacts and the environmental benefits of the national categorical regulatory options we considered for this action at the regional level.

3. Technical Development Document for the Final Section 316(b) Phase III Existing Facilities Rule (EPA–821–R–06–003), hereafter referred to as the Technical Development Document. This document presents the technical information that formed the basis for our decisions in this action, including information on the costs and performance of the impingement and entrainment reduction technologies we considered.

Table of Contents

II. Scope and Applicability of the Final Rule

The national categorical requirements in this rule apply to new offshore oil and gas extraction facilities, which were specifically excluded from the Phase I new facility rule. (40 CFR part 125, Subpart I). This rule defines the term "new offshore oil and gas extraction facility" to encompass facilities in both the offshore and the coastal subcategories of EPA's Oil and Gas Extraction Point Source Category for which effluent limitations are established at 40 CFR part 435. Although the term "offshore" denotes only one of these two subcategories for purposes of the effluent guidelines, EPA is using the term "offshore" here to denote facilities in either subcategory because the requirements in this rule are the same for both offshore and coastal facilities and the term "offshore" is commonly understood to include any facilities not located on land. In order to be covered by this rule, these facilities would need to use cooling water intake structures to withdraw water from waters of the U.S. and meet all other applicability criteria, as described in this section.

New offshore oil and gas facilities that meet all of the following criteria are subject to this rule:

- The facility is a point source;
- The facility uses or proposes to use cooling water intake structures,

including a cooling water intake structure operated by one or more independent suppliers (other than a public water system), with a total design intake flow equal to or greater than 2 million gallons per day (MGD) to withdraw cooling water from waters of the United States;

• The facility is expected to use at least 25 percent of water withdrawn exclusively for cooling purposes, based on the new facility's design and measured as a monthly average, during at least one month over the course of a year.

For the purposes of this rule, a new facility is a point source if it has, or is required to have, an NPDES permit. If a new facility is a point source that uses a cooling water intake structure, but does not meet the applicable design intake flow/source waterbody threshold or the 25 percent cooling water use threshold, it would continue to be subject to permit conditions implementing CWA section 316(b) set by the permit director on a case-by-case, best professional judgment basis. Section II.A of the preamble discusses what constitutes a "new" offshore oil and gas extraction facility for purposes of the section 316(b) Phase III rule. Requirements for new offshore oil and gas extraction facilities are specified in 40 CFR Subpart N.

Existing Phase III facilities, including manufacturing facilities, electric power producers with a design intake flow (DIF) less than 50 MGD, and existing offshore oil and gas extraction facilities, are not subject to the national categorical requirements of this final rule. These facilities will continue to be regulated on a case-by-case basis using a permit director's best professional judgment.

Finally, this rule does not establish national categorical requirements for seafood processing vessels or offshore liquefied natural gas import terminals. Those facilities would be subject to permit conditions implementing CWA section 316(b) set by the permit director on a case-by-case, best professional judgment basis where the facility is a point source and uses a cooling water intake structure.

A. What Is a "New" Offshore Oil and Gas Extraction Facility for Purposes of the Section 316(b) Phase III Rule?

For purposes of this rule, new offshore oil and gas extraction facilities are those facilities that (1) are subject to the Offshore or Coastal subcategories of the Oil and Gas Extraction Point Source Category Effluent Guidelines (i.e., 40 CFR part 435 Subpart A (Offshore Subcategory) or 40 CFR part 435 Subpart D (Coastal Subcategory)); (2) commence construction after July 17, 2006; and (3) meet the definition of a "new facility" in 40 CFR 125.83. For a discussion of the definition of new facility, see 66 FR 65256, 65258–59, 65785–87 (December 18, 2001) and 69 FR 41576, 41578–80 (July 9, 2004). New offshore oil and gas extraction facilities were not subject to the Phase I new facility rule.

The determination of whether a facility is "new" or "existing" is focused on the point source discharger—not on the cooling water intake structure. In other words, modifications or additions to the cooling water intake structure (or even the total replacement of an existing cooling water intake structure with a new one) does not convert an otherwise unchanged existing facility into a new facility, regardless of the purpose of such changes. Rather, the determination as to whether a facility is new or existing focuses on the point source itself.

B. What Is "Cooling Water" and What Is a "Cooling Water Intake Structure?"

This rule adopts the same definition of a "cooling water intake structure" that applies to new facilities under the final Phase I rule and existing facilities under the final Phase II rule. Under this final rule, a cooling water intake structure is defined as the total physical structure and any associated constructed waterways used to withdraw cooling water from waters of the United States. Under this definition, the cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to and including the intake pumps. This rule also adopts the definition of "cooling water" used in the Phase I and Phase II rules: water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The definition specifies that the intended use of cooling water is to absorb waste heat rejected from the processes used or auxiliary operations on the facility's premises. As is the case with the Phase I and Phase II rules, only the water used exclusively for cooling purposes is to be counted when determining whether the 25 percent threshold in § 125.131(a)(2) is met.

C. Would My Facility Be Covered if It Is a Point Source Discharger?

This rule applies only to facilities that have an NPDES permit or are required to obtain one. This is the same requirement EPA included in the Phase I and Phase II final rules (see 40 CFR 125.81(a)(1) and 40 CFR 125.91(a)(1), respectively). Requirements for complying with section 316(b) will continue to be applied through NPDES permits.

The Agency recognizes that some facilities that have or are required to have an NPDES permit might not own and operate the intake structure that supplies their facility with cooling water. For example, facilities operated by separate entities might be located on the same, adjacent, or nearby property(ies); one of these facilities might take in cooling water and then transfer it to other facilities prior to discharge of the cooling water to a water of the United States. Section 125.92(c) of this rule addresses such a situation. It provides that use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with one or more independent suppliers of cooling water if the supplier withdraws water from waters of the United States. This provision is intended to prevent new Phase III facilities from circumventing the requirements of this rule by creating arrangements to receive cooling water from an entity that is not itself subject to the requirements of Phase III. EPA expects that a facility that is otherwise subject to the requirements of Phase I and that is an independent supplier to a Phase III facility would still be subject to the requirements of Phase I.

D. When Would a New Offshore Oil and Gas Extraction Facility Be Required To Comply With Any New 316(b) Requirements?

This final rule will become effective July 17, 2006. After that date, new offshore oil and gas extraction Phase III facilities will need to comply when an NPDES permit containing requirements consistent with this rule is issued to the facility (see § 125.132). Under current NPDES program regulations, this will occur when a new NPDES permit is issued or when an existing NPDES permit is issued, reissued, or modified or revoked and reissued.

Most offshore oil and gas extraction facilities are covered by general permits issued by EPA. New offshore oil and gas extraction facilities that meet the applicability criteria for the Phase III rule may obtain permit coverage under these general permits until they expire. When EPA reissues these general permits, EPA will incorporate requirements based on today's rule. Facilities that are new offshore oil and gas extraction facilities, as defined in today's rule, will be subject to those Phase III section 316(b) new facility

requirements should they seek permit coverage under those reissued general permits.

III. Legal Authority, Purpose, and Background of This Final Regulation

A. Legal Authority

This action is issued under the authority of sections 101, 301, 308, 316, 401, 402, 501, and 510 of the Clean Water Act (CWA), 33 U.S.C. 1251, 1311, 1318, 1326, 1341, 1342, 1361, and 1370. Publication of this action fulfills the final obligation of the U.S. Environmental Protection Agency (EPA) under a consent decree in *Riverkeeper, Inc.* v. *Johnson,* No. 93 Civ. 0314, (S.D.N.Y).

B. Purpose of This Regulation

Section 316(b) of the CWA provides that any standard established pursuant to section 301 or 306 of the CWA and applicable to a point source must require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. This rule establishes requirements that apply to new offshore oil and gas extraction facilities that have a design intake flow threshold of greater than 2 MGD. This is the same design intake flow threshold as for new facilities in the Phase I rule. To be covered, a facility would need to use at least 25 percent of the water withdrawn exclusively for cooling purposes and meet other specified criteria in order to be within the scope of the rule (see section II—Scope and Applicability of Final Rule). In this action, EPA is not promulgating any new section 316(b) requirements for existing facilities. Therefore, existing facilities that are not covered by the Phase II rule (Phase II is described in section III.C.5 of this preamble) must continue to meet requirements under Section 316(b) of the CWA determined by the permitting authority on a case-by-case, best professional judgment (BPJ) basis. *See* 40 CFR 125.90(b).

C. Background

1. The Clean Water Act

The Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), 33 U.S.C. 1251 et seq., seeks to "restore and maintain the chemical, physical, and biological integrity of the nation's waters." 33 U.S.C. 1251(a). The CWA establishes a comprehensive regulatory program, key elements of which are (1) a prohibition on the discharge of pollutants from point sources to waters of the United States, except as authorized by the statute; (2) authority for EPA or authorized States or Tribes to issue National Pollutant Discharge Elimination System (NPDES) permits that regulate the discharge of pollutants; and (3) requirements for limitations in NPDES permits based on effluent limitations guidelines and standards and water quality standards.

Section 316(b) addresses the adverse environmental impact caused by the intake of cooling water, not discharges into water. Despite this special focus, the requirements of section 316(b) are closely linked to several of the core elements of the NPDES permit program established under section 402 of the CWA to control discharges of pollutants into navigable waters. For example, while effluent limitations apply to the discharge of pollutants by NPDES-permitted point sources to waters of the United States, section 316(b) applies to facilities subject to NPDES requirements that withdraw water from waters of the United States for cooling and that use a cooling water intake structure to do so.

Section 301 of the CWA prohibits the discharge of any pollutant by any person, except in compliance with specified statutory requirements, including section 402. Section 402 of the CWA provides authority for EPA or an authorized State or Tribe to issue an NPDES permit to any person discharging any pollutant or combination of pollutants from a point source into waters of the United States. Forty-five States and one U.S. territory are currently authorized under section 402(b) to administer the NPDES permitting program. NPDES permits restrict the types and amounts of pollutants, including heat, that may be discharged from various industrial, commercial, and other sources of wastewater. These permits control the discharge of pollutants primarily by requiring dischargers to meet effluent limitations established pursuant to section 301 or section 306. Effluent limitations are based on Federal effluent limitations guidelines and new source performance standards, or in cases where there are no applicable effluent guidelines or standards, on the best professional judgment of the permit writer. Limitations based on these guidelines, standards, or best professional judgment are known as technology-based effluent limits. Where technology-based effluent limits are inadequate to ensure attainment of water quality standards applicable to the receiving water, section 301(b)(1)(C) of the CWA requires permits to include more stringent limits based on applicable water quality standards. NPDES permits also routinely include monitoring and reporting requirements, and other conditions, including conditions to implement the requirements of section 316(b).

Section 510 of the CWA provides that, except as provided in the CWA, nothing in the Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any requirement respecting control or abatement of pollution; except that if a limitation, prohibition or standard of performance is in effect under the CWA, such State or political subdivision may not adopt or enforce any other limitation, prohibition or standard of performance which is less stringent than the limitation, prohibition or standard of performance under the Act. EPA interprets this to reserve for the States authority to implement requirements that are more stringent than the Federal requirements under State law. *PUD No. 1 of Jefferson County* v. *Washington Dep't of Ecology,* 511 U.S. 700, 705 (1994).

Under sections 301, 304, and 306 of the CWA, EPA issues effluent limitations guidelines and new source performance standards for categories of industrial dischargers based on the pollutants of concern discharged by the industry, the degree of control that can be attained using various levels of pollution control technology, consideration of economics, as appropriate to each level of control, and other factors identified in sections 304 and 306 of the CWA. EPA has promulgated regulations setting effluent limitations guidelines and standards under sections 301, 304, and 306 of the CWA for more than 50 industries. See 40 CFR parts 405 through 471. EPA has established effluent limitations guidelines and standards that apply to most of the industry categories that use cooling water intake structures (e.g., steam electric power generation, iron and steel manufacturing, pulp and paper manufacturing, petroleum refining, and chemical manufacturing).

Section 316(b) states that any standard established pursuant to section 301 or section 306 of [the Clean Water] Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

The phrase "best technology available" in CWA section 316(b) is not defined in the statute, but its meaning can be understood in light of similar phrases used elsewhere in the CWA. *See Riverkeeper, Inc.* v. *EPA,* 358 F.3d 174, 186 (2nd Cir. 2004) (noting that the cross-reference in CWA section 316(b) to CWA section 306 "is an invitation to

look to section 306 for guidance in discerning what factors Congress intended the EPA to consider in determining "best technology available" for new sources).

In sections 301 and 306, Congress directed EPA to set effluent discharge standards for new sources based on the "best available demonstrated control technology" and for existing sources based on the "best available technology economically achievable." For new sources, section 306(b)(1)(B) directs EPA to establish "standards of performance." The phrase "standards of performance" under section 306(a)(1) is defined as being the effluent reduction that is "achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives * * * ." This is commonly referred to as "best available demonstrated technology" or "BADT." For existing dischargers, section 301(b)(1)(A) requires the establishment of effluent limitations based on "the application of best practicable control technology currently available." This is commonly referred to as "best practicable technology" or "BPT." Further, section 301(b)(2)(A) directs EPA to establish effluent limitations for certain classes of pollutants "which shall require the application of the best available technology economically achievable." This is commonly referred to as "best available technology" or "BAT." Section 301 specifies that both BPT and BAT limitations must reflect determinations made by EPA under CWA section 304. Under these provisions, the limitations on the discharge of pollutants from point sources are based upon the capabilities of the equipment or "control technologies" available to control those discharges.

The phrases "best available demonstrated technology" and "best available technology"—like "best technology available" in CWA section 316(b)—are not defined in the statute. However, section 304 of the CWA specifies factors to be considered in establishing the best practicable control technology currently available and best available technology.

For best practicable control technology currently available, the CWA directs EPA to consider the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of the equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as [EPA] deems appropriate. (33 U.S.C. 1314(b)(1)(B)).

For "best available technology," the CWA directs EPA to consider the age of equipment and facilities involved, the process employed, the engineering aspects * * * of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impacts (including energy requirements), and such other factors as [EPA] deems appropriate. (33 U.S.C. 1314(b)(2)(B)).

Section 316(b) expressly refers to section 301, and the phrase "best technology available" is very similar to "best available technology" in that section. These facts, coupled with the brevity of section 316(b) itself, prompted EPA to look to section 301 and, ultimately, section 304 for guidance in determining the "best technology available to minimize adverse environmental impact" of cooling water intake structures for Phase III existing facilities.

By the same token, however, there are significant differences between section 316(b) and sections 301 and 304. *See Riverkeeper,* 358 F.3d at 186 ("not every statutory directive contained [in sections 301 and 306] is applicable" to a section 316(b) rulemaking). Section 316(b) requires that cooling water intake structures reflect "the best technology available for minimizing adverse environmental impact." In contrast to the effluent limitations provisions, the object of the "best technology available" is explicitly articulated by reference to the receiving water: To minimize adverse environmental impact in the waters from which cooling water is withdrawn. In other words, EPA must consider the receiving water effects of the candidate technologies.

Because section 316(b) is silent as to the factors EPA should consider in deciding whether a candidate technology minimizes adverse environmental impact, EPA has broad discretion to identify the appropriate criteria. *See Riverkeeper,* 358 F.3d at 187, n.12 (brevity of section 316(b) reflects an intention to delegate significant rulemaking authority to EPA); *see id.* at 195 (appellate courts give EPA "considerable discretion to weigh and balance the various factors" where the statute does not state what weight should be accorded) (citation omitted).

For this Phase III rulemaking, EPA therefore interprets the phrase "best available technology for minimizing adverse environmental impacts" as authorizing EPA to consider the relationship of the costs of the technologies to the benefits associated with them. EPA has previously considered the costs of technologies in relation to the benefits of minimizing adverse environmental impact in establishing section 316(b) limits, which historically have been done on a case-by-case basis. *In Re Public Service Co. of New Hampshire,* 10 ERC 1257 (June 17, 1977); *In Re Public Service Co. of New Hampshire,* 1 EAD 455 (Aug. 4, 1978); *Seacoast Anti-Pollution League* v. *Costle,* 597 F.2d 306 (1st Cir. 1979).

In addition to helping EPA determine the effects of candidate technologies on the receiving water, considering the relationship of costs and benefits also helps EPA determine whether the technologies are economically practicable. EPA has long recognized, with the support of legislative history, that section 316(b) does not require adverse environmental impact to be minimized beyond that which can be achieved at an economically practicable cost. *See* 118 Cong. Rec. 33762 (1972) *reprinted in* 1 Legislative History of the Water Pollution Control Act Amendments of 1972, at 264 (1973) (Statement of Representative Don H. Clausen). EPA therefore may consider costs and benefits in deciding whether any of the technology options for Phase III existing facilities actually do minimize adverse environmental impact—or whether the choice of technologies should be left to BPJ decision-making. When the costs of establishing a national categorical rule substantially outweigh the benefits of such a rule, a national categorical section 316(b) rule may not be economically practicable, and therefore not the "best technology available for minimizing adverse environmental impact."

Nothing in section 316(b) requires EPA to promulgate a regulation to implement the requirements for cooling water intake structures. Section 316(b) of the CWA grants EPA broad authority to establish performance standards for cooling water intake structures based on the "best technology available to minimize adverse environmental impact." Although EPA has chosen under section 316(b) to promulgate national categorical performance standards applicable to certain classes of point sources using cooling water intake structures, see 40 CFR part 125, Subpart I (new facilities), Subpart J (existing power generating facilities), and Subpart N (new offshore oil and gas facilities), the statute does not preclude EPA from determining BTA on a site-specific basis. Indeed, the U.S. Court of

Appeals for the Second Circuit, in upholding virtually the entire 316(b) Phase I rule for new facilities, specifically noted that section 316(b) does not compel EPA to regulate cooling water intake structures using any particular format, e.g. overarching regulation, different regulations for different categories of sources, or individually on a case-by-case basis. *Riverkeeper,* 358 F.3d at 203. In fact, EPA and state permitting authorities have been implementing Section 316(b) on a case-by-case basis for over 25 years (see Section III.C.3 below), and courts have recognized this practice as consistent with the statute. *See Hudson Riverkeeper Fund* v. *Orange & Rockland Utils., Inc.,* 835 F. Supp. 160, 165 (S.D.N.Y. 1993) ("This leaves to the Permit Writer an opportunity to impose conditions on a case-by-case basis, consistent with the statute * * *"). Moreover, in both the Phase I and II rules, EPA uses a case-by-case, BPJ permitting regime for facilities that do not meet the applicability criteria for EPA's national categorical rules. *See* 40 CFR 125.81(a), 125.90(b). In *Riverkeeper,* this provision of the Phase I rule was upheld by the Second Circuit. 358 F.3d at 203 ("[w]e see no textual bar in sections 306 or 316(b) to regulating below-threshold structures on a case-by-case basis.").

2. Consent Decree

This final action fulfills EPA's obligation to comply with the Second Amended Consent Decree, which was filed on November 25, 2002, in the United States District Court, Southern District of New York, in *Riverkeeper, Inc.* v. *Johnson,* No. 93 Civ 0314 (AGS). That case was brought against EPA by a coalition of individuals and environmental groups. The original Consent Decree, filed on October 10, 1995, provided that EPA was to propose regulations implementing section 316(b) by July 2, 1999, and take final action with respect to those regulations by August 13, 2001. Under subsequent interim orders, the Amended Consent Decree filed on November 22, 2000, and the Second Amended Consent Decree, EPA divided the rulemaking into three phases. EPA took final action promulgating a rule governing cooling water intake structures used by new facilities (Phase I) on November 9, 2001 (66 FR 65255, December 18, 2001). EPA took final action promulgating a rule governing cooling water intake structures used by large existing power producers (Phase II) on February 16, 2004 (69 FR 41576, July 9, 2004). The consent decree further requires that EPA propose by November 1, 2004, and take final action on by June 1, 2006 regulations applicable to the following categories: Utility and non-utility power producers not covered by the Phase II regulations, pulp and paper manufacturing, petroleum and coal products manufacturing, chemical and allied products manufacturing, and primary metals manufacturing (Phase III). EPA proposed Phase III regulations on November 1, 2004 (69 FR 68444) and this final action fulfills EPA's obligations for Phase III.

3. What Other EPA Rulemakings and Guidance Address Cooling Water Intake Structures?

In April 1976, EPA published a final rule under section 316(b) that addressed cooling water intake structures. 41 FR 17387 (April 26, 1976), see also the proposed rule at 38 FR 34410 (December 13, 1973). The rule added a new § 401.14 to 40 CFR Chapter I that reiterated the requirements of CWA section 316(b). It also added a new part 402, which included three sections: (1) § 402.10 (Applicability), (2) § 402.11 (Specialized definitions), and (3) § 402.12 (Best technology available for cooling water intake structures). Section 402.10 stated that the provisions of part 402 applied to "cooling water intake structures for point sources for which effluent limitations are established pursuant to section 301 or standards of performance are established pursuant to section 306 of the Act." Section 402.11 defined the terms "cooling water intake structure," "location," "design," "construction," "capacity," and "Development Document." Section 402.12 included the following language:

> The information contained in the Development Document shall be considered in determining whether the location, design, construction, and capacity of a cooling water intake structure of a point source subject to standards established under section 301 or 306 reflect the best technology available for minimizing adverse environmental impact.

In 1977, fifty-eight electric utility companies challenged those regulations, arguing that EPA had failed to comply with the requirements of the Administrative Procedure Act (APA) in promulgating the rule. Specifically, the utilities argued that EPA had neither published the Development Document in the **Federal Register** nor properly incorporated the document into the rule by reference. The United States Court of Appeals for the Fourth Circuit agreed and, without reaching the merits of the regulations themselves, remanded the rule. *Appalachian Power Co.* v. *Train,* 566 F.2d 451 (4th Cir. 1977). EPA later withdrew part 402.44 FR 32956 (June 7, 1979). The regulation at 40 CFR 401.14, which reiterates the statutory requirement, remains in effect.

Since the Fourth Circuit remanded EPA's section 316(b) regulations in 1977, NPDES permit authorities have made decisions implementing section 316(b) on a case-by-case, site-specific basis. EPA published draft guidance addressing section 316(b) implementation in 1977. See *Draft Guidance for Evaluating the Adverse Impact of Cooling Water Intake Structures on the Aquatic Environment: Section 316(b) P.L. 92–500* (U.S. EPA, 1977). This draft guidance described the studies recommended for evaluating the impact of cooling water intake structures on the aquatic environment and recommended a basis for determining the best technology available for minimizing adverse environmental impact. The 1977 section 316(b) draft guidance states, "The environmental-intake interactions in question are highly site-specific and the decision as to best technology available for intake design, location, construction, and capacity must be made on a case-by-case basis." (Section 316(b) Draft Guidance, U.S. EPA, 1977, p. 4). This case-by-case approach was also consistent with the approach described in the 1976 Development Document referenced in the remanded regulation.

The 1977 section 316(b) draft guidance suggested a general process for developing information needed to support section 316(b) decisions and presenting that information to the permitting authority. The process involved the development of a site-specific study of the environmental effects associated with each facility that uses one or more cooling water intake structures, as well as consideration of that study by the permitting authority in determining whether the facility must make any changes for minimizing adverse environmental impact. Where adverse environmental impact is present, the 1977 draft guidance suggested a stepwise approach that considers size, location, capacity, available technology, and other factors.

The draft guidance left the decisions on the appropriate location, design, capacity, and construction of cooling water intake structures to the permitting authority. Under this framework, the Director determined whether appropriate studies have been performed, whether a given facility has minimized adverse environmental impact, and what, if any, technologies may be required.

4. Phase I New Facility Rule

On November 9, 2001, EPA took final action on Phase I regulations governing

cooling water intake structures at new facilities. 66 FR 65255 (December 18, 2001). On December 26, 2002, EPA made minor changes to the Phase I regulations. 67 FR 78947. The final Phase I new facility rule (40 CFR part 125, Subpart I) establishes requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities that withdraw greater than two (2) MGD and use at least twenty-five (25) percent of the water they withdraw solely for cooling purposes.

With the new facility rule, EPA promulgated national minimum requirements for the location, design, capacity, and construction of cooling water intake structures at new facilities. The final new facility rule establishes a reasonable framework that creates certainty for permitting of new facilities, while providing significant flexibility to take site-specific factors into account.

EPA specifically excluded new offshore oil and gas extraction facilities from the Phase I new facility rule, but committed to consider establishing requirements for such facilities in the Phase III rulemaking. 66 FR 65338 (December 18, 2001).

5. Phase II Existing Facility Rule

On February 16, 2004, EPA took final action on regulations governing cooling water intake structures at certain existing power producing facilities. 69 FR 41576 (July 9, 2004). The final Phase II rule applies to existing facilities that are point sources; that, as their primary activity, both generate and transmit electric power or generate electric power for sale to another entity for transmission; that use or propose to use cooling water intake structures with a total design intake flow of 50 MGD or more to withdraw cooling water from waters of the United States; and that use at least 25 percent of the withdrawn water exclusively for cooling purposes.

Under the Phase II rule, EPA established performance standards for the reduction of impingement mortality and entrainment (see 40 CFR 125.94). The performance standards consist of ranges of reductions in impingement mortality and/or entrainment. These performance standards reflect the best technology available for minimizing adverse environmental impacts at facilities covered by the Phase II rule. The type of performance standard applicable to a particular facility (i.e., reductions in impingement mortality only or impingement mortality and entrainment) is based on several factors, including the facility's location (i.e., source waterbody), rate of use (capacity utilization rate), and the proportion of the waterbody withdrawn. The Phase II regulations address more than 90 percent of total cooling water intake flows in the United States.

6. Public Participation

EPA worked extensively with stakeholders from industry, public interest groups, State agencies, and other Federal agencies in the development of this rule. EPA included industry groups, environmental groups, and other government entities in the development, testing, refinement, and completion of the section 316(b) survey, which was used as a primary source of data for Phase III. As discussed in section III of this preamble, the survey, "Information Collection Request, Detailed Industry Questionnaires: Phase II Cooling Water Intake Structures & Watershed Case Study Short Questionnaire," was initiated in 1997, and was used to collect data during 2000.

EPA sponsored a Symposium on Cooling Water Intake Technologies to Protect Aquatic Organisms, on May 6–7, 2003. This symposium brought together professionals from Federal, State, and Tribal regulatory agencies; industry; environmental organizations; engineering consulting firms; science and research organizations; academia; and others concerned with mitigating harm to the aquatic environment by cooling water intake structures. Efficacy and costs of various technologies to mitigate impacts to aquatic organisms from cooling water intake structures, as well as research and other future needs, were discussed.

During the development of this regulation, EPA met several times with trade associations whose members would be subject to Phase III requirements. EPA also conducted Phase III-specific data collection activities, including a study of entrainment at Phase III facilities, contacting Phase III facilities to request biological studies and conducting an industry survey of offshore oil and gas extraction facilities and seafood processing vessels.

In developing requirements for new offshore oil and gas extraction facilities, EPA drew on its experience from the offshore oil and gas, the coastal oil and gas, and the synthetic drilling fluids effluent limitations guidelines, which included extensive public outreach, meetings, public comment periods, industry surveys, and economic analysis and modeling of representative oil and gas operations as detailed in 61 FR 66086–66130 and 66 FR 6849–6919.

Finally, EPA convened a Small Business Advocacy Review (SBAR) panel (in accordance with the Regulatory Flexibility Act section 609(b) as amended by the Small Business Regulatory and Enforcement Fairness Act) to provide information to small entities and receive feedback during the Phase III rulemaking process. EPA hosted a pre-panel outreach meeting for small entities potentially subject to Phase III on January 22, 2004. The SBAR panel held an outreach meeting with small entity representatives (SERs) on March 16, 2004. Based on the information gathered from the participating small entities during these outreach meetings and subsequent correspondence, the SBAR panel produced a final report to the EPA Administrator on April 27, 2004. Results of the final report were considered in the development of the Phase III rule.

These coordination efforts and all of the meetings described in this section, as well as the comments submitted on the Phase I and II section 316(b) rules and EPA's response to these comments, are documented or summarized in the dockets for these three rules. The Administrative Record for this rule includes all materials from the Phase I, Phase II, and Phase III section 316(b) rule dockets.

IV. Environmental Impacts Associated With Cooling Water Intake Structures

EPA has identified a variety of environmental impacts that may be associated with cooling water intake structures at Phase III facilities, depending on conditions at an individual facility's site. These impacts include organism entrainment and impingement, which can contribute to impacts to threatened and endangered species; reductions in ecologically critical aquatic organisms, including important elements of an ecosystem's food chain; diminishment of population compensatory reserves; losses to populations, including reductions of commercial and recreational fisheries; and stresses to overall communities and ecosystems as evidenced by reductions in diversity, changes in species composition, or other changes in ecosystem structure or function. (See discussion at 69 FR 68461–66.)

The withdrawal of water affects a variety of aquatic organisms including phytoplankton (tiny, free-floating photosynthetic organisms suspended in the water column), zooplankton (small aquatic animals, including fish eggs and larvae, which may consume phytoplankton and other zooplankton), macroinvertebrates, shellfish, and fish. Other organisms, including reptiles,

birds, and mammals can also be impinged or entrained.

Impingement takes place when organisms are trapped against a cooling water intake structure, particularly screening materials, by the force of water being drawn through the intake structure. The velocity of the water intake by the structure can remove fish scales or other organism structures, prevent proper gill function, or otherwise physically harm or cause the death of impinged organisms through exhaustion, starvation, asphyxiation, and descaling or other injury. Death from impingement ("impingement mortality") can take place while organisms are impinged on an intake structure or it can take place after organisms have escaped impingement and have returned to a waterbody. An organism can die despite escaping impingement because of injuries it receives during the impingement process.

Entrainment occurs when organisms are drawn through a cooling water intake structure into a facility's cooling system. Organisms that become entrained are typically relatively small aquatic organisms, including many early life stages of fish and shellfish. As entrained organisms pass through a facility's cooling system they can be subject to mechanical, thermal, and/or, chemical stress. Sources of stress include physical impacts in the pumps and condenser tubing, pressure changes caused by diversion of the cooling water into the plant or by the hydraulic effects of the condensers, shear stress, thermal shock in the condenser and discharge tunnel, and chemical toxic effects from cooling system antifouling agents such as chlorine. Similar to impingement mortality, death from entrainment can occur during entrainment or at some time after the entrainment and return of entrained organisms to a waterbody.

Environmental Impacts from New Offshore Oil and Gas Extraction Facility Cooling Water Intake Structures

Offshore oil and gas extraction facilities currently operate off the coasts of California and Alaska and throughout the Gulf of Mexico. Most activity currently takes place in the Gulf of Mexico. EPA expects that most new facility activity will also take place in this region. (See Phase III TDD; DCN [9–0004], Chapter 3.)

While EPA is not aware of any studies that directly examine or document impingement mortality and entrainment by offshore oil and gas extraction facilities, numerous studies show that offshore marine environments provide habitat for a number of species of fish, shellfish, and other aquatic organisms. Many of these species have life stages that are small and planktonic or have limited swimming ability. These life stages are potentially vulnerable to entrainment by cooling water intake structures. Larger life stages are potentially vulnerable to impingement. The introduction of cooling water intake structures into the offshore habitat in which these organisms live creates the potential for impingement and entrainment of these organisms.

The densities of organisms in the immediate vicinity of offshore oil and gas extraction facilities relative to densities in estuaries and other nearshore coastal waters is not well characterized. In the Phase III Notice of Data Availability (NODA) (70 FR 71059), EPA presented an analysis of additional data from the general regions in which existing offshore oil and gas extraction facilities operate and where new facilities might operate in the future in order to better characterize the potential for impingement and entrainment by these facilities.

EPA obtained data on densities of ichthyoplankton (planktonic fish eggs and larvae) in the Gulf of Mexico from the Southeast Area Monitoring and Assessment Program (SEAMAP).[1][2] This long-term sampling program collects information on the density of fish eggs and larvae throughout the Gulf of Mexico. EPA analyzed the SEAMAP data to determine average ichthyoplankton densities in the Gulf of Mexico for the period of time for which sampling data was available (1982–2003). Actual conditions at any one location and at any one point in time may vary from the calculated averages.

EPA's analysis of the SEAMAP data indicates that ichthyoplankton occur throughout the Gulf of Mexico. On average, densities are highest at sampling stations in the shallower regions of the Gulf of Mexico and lowest at sampling stations in the deepest regions. The overall range of average larval fish densities was calculated to be 25–450+organisms/100m[3] The wide range of ichthyoplankton densities seen in the offshore Gulf of Mexico region falls within the range of larval fish densities documented in freshwater and coastal water bodies in various coastal and inland regions of the United States.[4] Over 600 different fish taxa were identified in the SEAMAP samples, including species of commercial and recreational utility.

In the area surrounding existing offshore oil and gas extraction facilities off the California coast, the California Cooperative Oceanic Fisheries Investigations (CalCOFI) program has gathered data on densities of ichthyoplankton and other organisms. According to the CalCOFI and other research programs, a number of fish and shellfish species, including species of commercial and recreational value, are known to live and spawn in this region. EPA does not know of similarly extensive sampling programs for the Alaska offshore region. However, a number of fish and shellfish species, including species of commercial and recreational value, are known from various research programs to live and spawn in the offshore regions of Alaska where oil and gas extraction activities currently take place or may take place in the future.[5] The eggs and larvae of many species found in the offshore regions of California and Alaska are planktonic and could therefore be vulnerable to entrainment by a facility's cooling water intake structure operating in these regions. Larger life stages (e.g., juveniles and adults) could be vulnerable to impingement.

The densities of organisms in the immediate vicinity of offshore oil and gas extraction facilities may differ from those suggested by analysis of SEAMAP and other collections of data that characterize typical organism densities in marine waters. Offshore oil and gas extraction facilities have been shown to attract and concentrate aquatic organisms in the immediate vicinity of the underwater portions of their structures. A variety of species of pelagic fish have been found to gather around the underwater portions of

[1] Adam Rettig and Blaine Snyder, Tetra Tech, Inc. Memorandum to Ashley Allen, EPA. A summary of ichthyoplankton presence and abundance in the Gulf of Mexico, as part of an assessment of the potential for entrainment by offshore oil and gas facilities. 2005. DCN 8–5220. Document ID OW–2004–0002–951.

[2] Adam Rettig and Blaine Snyder, Tetra Tech, Inc. Memorandum to Ashley Allen, EPA. A Summary of Fish Egg Presence and Abundance in the Gulf of Mexico, as Part of an Assessment of the Potential for Entrainment by Offshore Oil and Gas Facilities. DCN 9–5200.

[3] Average larval fish densities are greater than 450 organisms/100 m3 at sampling stations in waters less than 50 meters deep. Average larval fish densities gradually decrease to 100 organisms/100 m3 as sampling station depth-at-location increases to 150 meters. At stations in waters greater than 150 meters deep, larval fish densities are relatively uniform and fall between 25 organisms/100 m3 and 100 organisms/100 m3. See Document ID OW–2004–0002–951.

[4] A. L. Allen (EPA). Memorandum to EPA Docket OW–2004–0002. Summary of Information on Ichthyoplankton Densities in Various Aquatic Ecosystems in the United States. DCN 8–5240.

[5] A.L. Allen (EPA). Memorandum to EPA Docket OW–2004–0002. Summary of Information on Fish Species that Live and Spawn off the Coasts of Alaska and California in the Vicinity of Offshore Oil and Gas Production Areas. DCN 8–5260.

offshore oil and gas extraction facilities within short time periods after the facilities' appearance in the water column. If a facility remains in one place for a sufficient length of time, some aquatic organism species take up residence directly upon the underwater structure and form reef-like communities. The increased number of organisms living near the underwater portion of facilities where cooling water intake structures are located increases the potential for impingement mortality and entrainment of those organisms. The extent to which the increased numbers of aquatic organisms represents an overall increase in organism populations, rather than a concentration of organisms from surrounding areas, is not known. (For additional information, see DCN 7–0013.)

EPA believes the data it has gathered on organisms that inhabit offshore environments indicate the potential for their entrainment and impingement by cooling water intake structures associated with new offshore oil and gas extraction facilities. Given this potential for impingement and entrainment, EPA believes that these new facilities have the potential to create multiple types of undesirable and unacceptable impacts.

V. Description of the Rule

In this rule, EPA is promulgating requirements for new offshore and coastal oil and gas extraction facilities that are designed to withdraw at least 2 MGD. New offshore oil and gas extraction facilities were specifically excluded from the scope of the Phase I new facility rule so that EPA could gather additional data on these facilities (see 66 FR 65311). This final action also announces EPA's decision not to promulgate a national rule for existing Phase III facilities.

A. Final Rule for New Offshore Oil and Gas Extraction Facilities

This rule establishes national requirements for new offshore and coastal oil and gas extraction facilities that have a design intake flow of 2 MGD or greater and that withdraw at least 25 percent of the water exclusively for cooling purposes and meet other applicability criteria (see § 125.131). This rule imposes requirements for the reduction of impingement mortality on all facilities subject to the rule; a subset of these facilities must comply with requirements for the reduction of entrainment. Specifically, fixed[6] facilities without sea chests are required to comply with entrainment standards. EPA has established a two-track approach to offer maximum flexibility. Fixed facilities may choose to comply under Track I or Track II, but non-fixed facilities must comply under Track I. Track I establishes uniform requirements based on facility type (i.e., fixed or non-fixed) and, for fixed facilities the types of intake structures used (i.e., sea chest or non-sea chest). Under Track I, facilities are required to design their cooling water intake structures to meet a through-screen velocity of 0.5 feet per second or less. If they are a fixed facility and are located in estuaries or tidal rivers, they would also be required to meet proportional flow requirements. All facilities would need to implement technologies and/or operational measures for minimizing impingement if the permitting authority determines that there are protected species or critical habitat for those species, or species of impingement concern within the hydrologic zone of influence of the cooling water intake structure, or (based on available information, including information from fishery management agencies) that the proposed facility, after meeting the technology-based performance requirements, would still contribute unacceptable stress to protected species or critical habitat of those species, or species of concern. Fixed facilities that do not employ sea chests (openings in the hull of a vessel for withdrawing cooling water) are required to use fish protection technologies and/or operational measures to minimize entrainment.

As with other new facilities covered by the Phase I rule, fixed facilities could comply under Track II, which allows the facility to employ alternative technologies that the facility demonstrates provide comparable performance to meeting the 0.5 ft/s velocity standard, and for fixed facilities without sea chests, the requirement to minimize entrainment. EPA did not extend this provision to mobile facilities, as EPA does not believe that there were alternatives to the low-velocity standard for mobile facilities. Further, a Track II demonstration generally requires consideration of site-specific factors. Since mobile facilities are designed to operate at multiple locations over their use life, it is generally not possible for them to provide in advance the information that would be necessary for a Track II demonstration.

As described in § 125.135, facilities have the opportunity to conduct a cost-cost test and provide data to show that compliance with the requirements of § 125.134 would result in compliance costs wholly out of proportion to those EPA considered in establishing the requirements, or would result in significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on energy markets. In this case, alternative requirements may be imposed in the permit. See the Phase I final preamble for a more detailed explanation of this cost-cost test at 66 FR 65322, which is different than the cost-cost test for Phase II facilities.

These final requirements for new offshore oil and gas extraction facilities are essentially unchanged from the Phase III proposal. In response to comments, however, EPA is not promulgating national entrainment controls for fixed facilities with sea chests or mobile facilities in this final rule. EPA's data suggest that the only physical technology controls for entrainment at facilities with sea chests and non-fixed (i.e., mobile) facilities would entail installation of equipment projecting beyond the hull of the vessel or facility. Such controls may not be practical or feasible since the configuration may alter fluid dynamics and impede safe seaworthy travel, even for new facilities that could avoid the challenges of retrofitting control technologies.

EPA also proposed national categorical requirements for Phase III existing facilities that use or propose to use a cooling water intake structure to withdraw cooling water from waters of the United States and that are point sources and use at least 25 percent of the water withdrawn exclusively for cooling purposes. As proposed, Phase III would have included either existing facilities on all waterbody types that had a design intake flow of 50 MGD or greater, existing facilities on all waterbody types that has a design intake flow of 200 MGD or greater, or those existing facilities with a design intake flow of 100 MGD or greater which were located on sensitive waterbodies (i.e., estuaries, tidal rivers, coastal waters, or the Great Lakes). Facilities not meeting these applicability criteria would have continued to be subject to 316(b) requirements set by the Director on a case-by-case basis. EPA also proposed the option of not promulgating national categorical requirements for existing

[6] A fixed facility is defined as a bottom founded offshore oil and gas extraction facility permanently attached to the seabed or subsoil of the outer continental shelf (e.g., platforms, guyed towers, articulated gravity platforms) or a buoyant facility securely and substantially moored so that it cannot be moved without a special effort (e.g., tension leg platforms, permanently moored semi-submersibles) and which is not intended to be moved during the production life of the well.

facilities potentially covered by Phase III in which case all Phase III existing facilities would have continued to be subject to 316(b) requirements set by the Director on a case-by-case basis.

For existing Phase III facilities meeting the selected threshold, the proposed rule would have established national performance standards for the reduction of impingement mortality and in some cases entrainment at land-based Phase III existing facilities (i.e., non-offshore facilities). The performance standards applicable to a particular facility (i.e., reductions in impingement only or impingement and entrainment) were based on several factors, including the facility's location (i.e., source waterbody) and the proportion of the waterbody withdrawn. Under the proposed rule, the performance standards could have been met, in whole or in part, by using design and construction technologies, operational measures, or restoration measures.

EPA rejected the proposed requirements for existing Phase III facilities for the reasons set forth in Section VI.B below. This section discusses EPA's reasoning in detail as applied to the lead option (the 50 MGD option). EPA's reasons for rejecting the 100 MGD and 200 MGD option were similar. In particular, the cost-benefit ratios were still unacceptable and there would have been even fewer facilities that would ultimately have been regulated by the rule and even smaller incremental environmental improvements that the regulation would have realized when compared to the significant environmental gains attributed to the Phase II rule.

B. Existing Facilities With Cooling Water Intake Structures

For existing Phase III facilities, EPA determined that uniform national technology-based standards are not the most effective way to address their cooling water intake structures because the monetized costs of such standards would have been wholly disproportionate to their monetized use benefits. Accordingly, EPA believes that it is better at this time to utilize the existing National Pollutant Discharge Elimination System (NPDES) program for existing Phase III facilities, which provides that any NPDES permitted facility not subject to the national categorical requirements in Phase I, Phase II, or Phase III of EPA's 316(b) regulation development is subject to section 316(b) requirements set by the Director on a case-by-case best professional judgment basis. Examples of such facilities include existing power generators with a design intake flow of less than 50 MGD, and new seafood processing vessels, and existing manufacturers.

These requirements must ensure that the location, design, construction and capacity of any cooling water intake structure reflect the best technology available for minimizing adverse environmental impact. Because the factors that EPA considered in evaluating candidate options for a national categorical determination of BTA vary considerably from site to site, including technology costs and feasibility, potential for adverse environmental impacts, and relationship of costs to benefits, EPA believes that for Phase III facilities a BPJ-based site specific approach is the best way to ensure that each Phase III existing facility adopts BTA appropriate to its site. The basis for this determination is further discussed in Section VI.B. below.

This rule does not alter the regulatory requirements for facilities subject to the Phase I or Phase II regulations.

VI. Basis for the Final Rule Decision

This section discusses EPA's basis for final requirements applicable to new offshore oil and gas extraction facilities and EPA's decision to continue to rely on case-by-case, best professional judgment permit conditions implementing CWA section 316(b) at existing Phase III facilities.

A. Why Is EPA Promulgating National Requirements for New Offshore and Coastal Oil and Gas Extraction Facilities?

After EPA proposed the Phase I rule for new facilities (65 FR 49060, August 10, 2000), the Agency received adverse comment from operators of offshore and coastal (collectively "offshore") drilling facilities concerning the limited information about their cooling water intakes, associated impingement mortality and entrainment, costs of technologies, or achievability of the controls proposed by EPA for new facilities. On May 25, 2001, EPA published a Notice of Data Availability (NODA) for Phase I that, in part, sought additional data and information about mobile offshore and coastal drilling facilities (see 66 FR 28857). EPA was not able to fully consider this additional information in time to address new offshore oil and gas facilities in the final Phase I rule. Accordingly, in the Phase I final rule, EPA committed to "propose and take final action on regulations for new offshore oil and gas extraction facilities, as defined at 40 CFR 435.10 and 40 CFR 435.40, in the Phase III section 316(b) rule." See 66 FR 65256. This regulation fulfills that commitment and establishes national requirements for new offshore oil and gas extraction facilities that meet the applicability requirements in § 125.131.

Requirements for new offshore oil and gas extraction facilities are specified in a new Subpart N of Part 125. New onshore oil and gas extraction facilities are currently regulated by section 316(b) Phase I requirements if these facilities meet the applicability criteria of the 316(b) Phase I regulations. As described in more detail below, the requirements for the offshore facilities are similar to some, but not all, of the requirements contained in the Phase I rule applicable to other new facilities. For example, the Phase I requirement to reduce intake flow commensurate with a closed-cycle, recirculating cooling system does not apply to these offshore facilities.

This rule distinguishes between new offshore oil and gas facilities that are "fixed," and those that are not fixed. For "fixed" facilities, the rule further distinguishes between those with sea chests and those without. Under this rule, new offshore oil and gas extraction facilities that meet the applicability criteria in § 125.131 and that employ sea chests as cooling water intake structures and are fixed facilities would have to comply with the requirements in § 125.134(b)(1)(ii). These requirements address intake flow velocity, percentage of the source waterbody withdrawn (if applicable), specific impact concerns (e.g., threatened or endangered species, critical habitat, migratory or sport or commercial species), required information submission, monitoring, and recordkeeping. Under this rule, new offshore oil and gas extraction facilities that meet the applicability criteria in § 125.131, that do not employ sea chests as cooling water intake structures, and that are fixed facilities would have to comply with the requirements in § 125.134(b)(1)(i). The one additional requirement for these facilities is § 125.134(b)(5), which requires the selection and implementation of design and construction technologies or operational measures to minimize entrainment of entrainable life stages of fish or shellfish. Fixed facilities, whether they employ sea chests or not, can also choose to comply through Track II, which allows a site-specific demonstration that alternative requirements would produce comparable levels of impingement mortality and entrainment reduction.

New offshore oil and gas facilities that are not fixed facilities would have to comply with the regulations at § 125.134(b)(1)(iii), which address intake flow velocity, specific impact

concerns (e.g., threatened or endangered species, critical habitat, migratory or sport or commercial species), required information submission, monitoring, and recordkeeping. Track II is not available to non-fixed (mobile) facilities because non-fixed facilities, which are expected to operate at multiple locations, would not be able to perform a site-specific demonstration. For this same reason, EPA has dropped some of the other site-dependent requirements for non-fixed facilities (e.g., provision of source waterbody flow information).

EPA has limited information on specific environmental impacts associated with the use of cooling water intake structures at new offshore oil and gas extraction facilities but believes the potential for such impacts is sufficient to warrant including requirements for new offshore oil and gas extraction facilities in this rule (see section IV for more detailed discussion). SEAMAP data for the Gulf of Mexico identified over 600 different fish taxa and indicate that ichthyoplankton occurs throughout the Gulf of Mexico, with densities highest (e.g., average densities greater than 450 organisms/100 m^3) at sampling stations in the shallower regions (less than 50 meters deep) of the Gulf, and lower in deeper waters. (70 FR 71,059–71,060). Most offshore oil and gas facilities, if they employ cooling water intake structures, operate them in near-surface (e.g., 20–100 feet deep) waters, rather than in deeper waters. (TDD, Chap. 3, Sec. III). As stated earlier in this preamble, offshore oil and gas extraction facilities have been shown to attract and concentrate aquatic organisms in the immediate vicinity of the underwater portions of their structures. Data also indicate the presence of aquatic organisms identified off the California and Alaska coasts, both additional areas of offshore oil and gas production. In addition, although such technologies are not generally in use at all existing offshore oil and gas extraction facilities, technologies are in use and are available to new facilities in this subcategory to meet the requirements as described below.

Some offshore oil and gas extraction facilities employ an underwater compartment within the facility or vessel hull or pontoon through which sea water is drawn in or discharged, often called a "sea chest." A passive screen (strainer) is often set along the flush line of the sea chest. Pumps draw seawater from open pipes in the sea chest cavity for a variety of purposes (e.g., cooling water, fire water, and ballast water). These intakes are normally the only source of cooling water for the facility; therefore, it is crucial to the operation of these facilities that the intake structures be kept clean and clear of fish, jellyfish, plastic bags, and other debris. To accomplish this, these intake structures can be, and have been, designed for low intake velocity (i.e., less than 0.5 feet per second) and/or include fish protection equipment. See the Technical Development Document for details.

As outlined in Alaska's oil and gas leasing requirements, oil and gas extraction facilities in Alaskan State waters are currently subject to an impingement control velocity limit of 0.1 feet per second (i.e., more stringent than EPA's design requirement of 0.5 feet per second in this rule). These State regulations suggest that impingement controls that would meet the velocity requirements of this rule are demonstrated as available for offshore oil and gas extraction facilities in Alaskan or similar waters.

However, facilities using sea chests may have few, if any, opportunities to meet the entrainment control requirements applicable to facilities subject to the Phase I rule. A 2003 literature survey by Mineral Management Services (DCN 7–0012) identified no evidence of entrainment controls successfully fitted to offshore oil and gas extraction vessels with sea chests such as drill ships, jack-ups, MODUs, and barges. EPA's data suggests that the only physical technology controls available for reducing entrainment at facilities with sea chests would entail installation of equipment projecting beyond the hull of the vessel. This outward projection has been shown to create problems with respect to fluid dynamics, vessel shapes and safe seaworthy profile. Therefore, EPA does not believe entrainment controls are feasible at such facilities, even for new facilities that could avoid the challenges of retrofitting control technologies.

EPA also considered whether all new offshore vessels could be constructed without employing sea chests. A technology must prove to be practicable to be a viable alternative to current technology. In this case, a viable alternative to a sea chest is any alternative configuration/technology successfully implemented at existing facilities, including those in other manufacturing industries, with similar seawater intake structures. EPA data suggest the only demonstrated design for drill ships and semi-submersible MODUs is to use sea chests because they allow the vessel to maintain appropriate fluid dynamics, overall optimal vessel shape, and a safe seaworthy profile. Therefore, EPA has concluded that building new offshore oil and gas facilities without sea chests has not been shown to be practicable for the category as a whole.

In contrast to facilities with sea chests, fixed offshore oil and gas extraction facilities with intake structures other than sea chests can feasibly install both impingement and entrainment controls. For example, technologies to reduce impingement mortality and entrainment of marine life at a caisson intake structure[7] include passive intake screens or velocity caps. Other technologies such as acoustic barriers, electro barriers, or intake relocation may also be used to reduce impingement and entrainment at intake structures. Air sparges and copper nickel alloys can also be used to control biofouling. EPA has concluded that these are all "available" technologies for these facilities and therefore justify impingement and entrainment requirements.

In summary, EPA is establishing requirements that are similar to some—but not all—of the Phase I provisions. The differences in requirements between this rule and the Phase I rule reflect the differences in technology availability between offshore oil and gas extraction facilities and those facilities covered in the Phase I rule.

Impingement and entrainment requirements for new offshore oil and gas facilities are not based on closed-cycle recirculating cooling because available information indicates that it is not feasible for all new offshore oil and gas extraction facilities to employ closed-cycle recirculating cooling systems. The rest of the requirements are similar to those in Phase I (e.g., velocity information and design and construction technology plan for Track I facilities, comprehensive demonstration study for Track II facilities).

B. Why Is EPA Implementing CWA Section 316(b) at Existing Phase III Facilities Through Case-By-Case, Best Professional Judgment Permit Conditions?

After considering available data, analyses and comments, EPA has decided not to promulgate a national categorical rule today for Phase III existing facilities. This means that section 316(b) requirements for Phase III existing facilities will continue to be

[7] A caisson intake (a steel pipe attached to a fixed structure that extends from an operating area down some distance into the water) is used to provide a protective shroud around another process pipe or pump that is lowered into the caisson from the operating area.

imposed on a case-by-case, best professional judgment basis.

EPA bases this decision on its judgment that the monetized costs associated with the primary option under consideration are wholly disproportionate to the monetized environmental benefits to be derived from that option. EPA has long considered the wholly disproportionate cost test to be appropriate for section 316(b) decision-making for existing facilities. Here, EPA is using the wholly disproportionate cost test to determine whether the national categorical rule options proposed by EPA are the best way to minimize adverse environmental impact. As the Administrator observed in In Re Public Service Company of New Hampshire when reviewing contested 316(b) requirements for an existing facility, costs may be considered "in determining the degree of minimization to be required." 10 ERC 1257, 1261 (June 10, 1977). Otherwise, the Administrator noted, "the effect would be to require cooling towers at every place that could afford to install them, regardless of whether or not any significant degree of entrainment or entrapment was anticipated. I do not believe that it is reasonable to interpret Section 316(b) as requiring use of technology whose cost is wholly disproportionate to the environmental benefit to be gained." *Id.*

The primary option EPA considered in today's final action was a rule that would have regulated Phase III existing facilities with a design intake flow of 50 MGD or greater. EPA also solicited comment on variations that would have narrowed the scope of the proposed rule. As discussed in more detail in section X of this preamble, EPA estimated that the total pre-tax costs of the 50 MGD option would be $38.3 to $39 million and the monetized benefits for commercial and recreational uses would be $1.8 to $2.3 million ($2004, 7 percent and 3 percent discount rates). This yields a cost to benefit ratio ranging from a low of 17 to 1 to a high of 22 to 1. EPA has concluded that the costs associated with the 50 MGD option are wholly disproportionate to the anticipated monetized benefits; therefore, EPA has concluded that this regulatory option does not constitute the "best technology available for minimizing adverse environmental impacts."

Making a decision on the grounds that the costs here are wholly disproportionate to the benefits is also consistent with Executive Order 12866, entitled "Regulatory Planning and Review" (Oct. 1993). That Executive Order directs agencies to "assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." E.O. 12866, Sec. 1(b)(6). This Executive Order has been in effect for over a decade under two Presidents, representing each major political party, and is now widely accepted as reflecting general principles of sound government regulation. It does not supersede any of the decision factors specified in the Clean Water Act and, in fact, says explicitly that it applies only "to the extent permitted by law and where applicable," E.O. 12866, Sec. 1(b). EPA believes that in this case the directive of the Executive Order is fully consistent with the requirements of the Clean Water Act.

EPA considered non-use benefits as well as monetized use benefits in reaching its final decision. Non-use benefits may arise from reduced impacts to ecological resources that the public considers important. These include reduced impacts to species without direct commercial or recreational fishing value, such as forage fish, which play a role in the functioning of an aquatic ecosystem. In this rulemaking, EPA fully considered all benefits, but was able to assign a monetized value only to benefits associated with commercial and recreational uses. Non-use benefits can generally only be monetized when two steps have been completed: (1) Environmental impacts are quantified; and (2) a monetary value is available to be assigned to those impacts. EPA was unable to assign a monetary value that fully captured the value of avoiding the environmental impacts that EPA had identified because the necessary information was not available. EPA did attempt in the Phase III rule to monetize the loss of forage fish indirectly through its impact on reducing commercial and recreational harvests, and found these impacts to be generally small. However, this approach does not capture the value that society may place on these fish for their own sake. Therefore, EPA considered non-use benefits qualitatively. Doing so is consistent with accepted practices of benefits assessment and with EPA's past practice of fully evaluating benefits for purposes of section 316(b).

Ultimately, in reaching today's decision, EPA took into account the uncertainty inherent in qualitative benefits assessment, the size of the ratio of monetized costs to monetized benefits, qualitative information about the likely ecosystem impacts of cooling water withdrawals from Phase III existing facilities, and other policy concerns outlined in this preamble. When fully considering these non-monetized benefits in light of all of these factors, EPA determined that they were not likely to be of sufficient magnitude to alter EPA's decision to continue to use a case-by-case, best professional judgment approach for Phase III existing facilities. In the context of this rulemaking, EPA believes that a case-by-case approach is a reasonable way of identifying, for a particular Phase III existing facility, the best technology available for minimizing adverse environmental impact. This approach allows the permit writer to assess site-specific information regarding the impacts of the facility's cooling water impact structure and to decide how best to minimize them.

In reaching today's decision, EPA has taken note that the vast majority of environmental benefits from regulating cooling water intake structures have already been realized by the Phase II rule. As a result of the Phase II rule, approximately 90 percent of the total volume of cooling water withdrawn nationally is already subject to national categorical requirements. The 543 facilities covered by the Phase II rule withdraw on average more than 214 billion gallons of cooling water every day from the nation's waters and, in the process, more than 3.4 billion fish and shellfish were killed annually by impingement and entrainment prior to rule implementation. Compliance with the rule will reduce this loss by 1.4 billion fish and shellfish. 69 FR at 41586 & 41656–57. The 146 existing facilities that would have been covered by the broadest of the Phase III proposed options (the 50 MGD proposal), in contrast, withdraw 31 billion gallons of cooling water every day and kill about 265 million fish and shellfish annually. The proposed rule would have reduced this loss by about 98 million fish and shellfish. Had EPA codified national categorical rules for those facilities, EPA thus would have saved only an additional 7 percent of the fish and shellfish from impingement and entrainment while expanding the universe subject to national categorical regulations by 27 percent. Also illuminating is the fact that, of the 146 Phase III existing facilities, only ten have intake structures designed to take in more than 500 MGD. In contrast, 257 Phase II facilities use cooling water intake structures designed to take in more than 500 MGD. This information indicates that the majority of large-flow facilities and cooling water intake flows

are already regulated by the Phase II rule. Most of the reductions in fish impinged and entrained at existing facilities, and therefore most of the benefits, are also already obtained through implementation of the Phase II regulations. The other options EPA considered—involving 200 MGD and 100 MGD facilities—involved even less flow and fewer regulated facilities than the 50 MGD option.

A comparison of the cost-benefit ratio for Phase II to the cost-benefit ratio for the primary Phase III option supports EPA's decision here. The ratio of costs to monetized benefits for the Phase II 50MGD rule was approximately 5 to 1. In contrast, the ratio of monetized costs to monetized benefits for the proposed Phase III 50 MGD rule ranges from 17 to 1 to 22 to 1. Moreover, due to the ten-fold greater impingement and entrainment losses at Phase II facilities, EPA was not able to determine for Phase II, as it has for Phase III, that non-quantified benefits, including non-use benefits, would not be sufficient to justify the costs. In light of the much smaller aggregate quantity of water withdrawals associated with Phase III and likely correspondingly smaller non-use benefits, EPA has determined that, at this time, a national categorical rule is not a reasonable approach for minimizing adverse environmental impacts for Phase III existing facilities.

Instead, EPA will continue to rely on case-by-case decision-making to regulate cooling water intake structures at Phase III existing facilities. In some situations, as was the case when EPA's Region 1 established section 316(b) requirements for the Brayton Point power station, a site-specific inquiry can produce performance standards that are more stringent than the categorical rules would have established. In other situations, the permit writer may determine that fewer controls need to be imposed. In both cases, however, the permitting authority is in a good position to perform the careful balancing contemplated by section 316(b) in order to select the best technology available for minimizing adverse environmental impact.

In reaching today's decision, EPA has given special consideration to the fact that existing manufacturers were the rule's primary focus. According to the study published by the U.S. Department of Commerce entitled "Manufacturing in America: A Comprehensive Strategy to Address the Challenges to U.S. Manufacturers" (Jan. 2004), manufacturers have "focused on reducing costs to improve productivity and ensure their competitiveness." Id. at 33. At the same time, some manufacturers have found these efforts "eroded by costs they cannot control—costs that result in part from government policy." Id. at 33. A study by the U.S. Office of Management and Budget (OMB) found that regulatory costs in 1997 comprised 3.7 percent of gross domestic product (GDP) ("Report to Congress on the Costs and Benefits of Federal Regulations," September 1997). These costs have risen significantly over time and U.S. manufacturers face considerably higher compliance costs than do many of the U.S.'s trading partners. Since U.S. manufacturers compete with other firms from both developed and developing countries in a global economy, any additional regulatory costs should be carefully evaluated in order to ensure U.S. firms' continued competitiveness in the global marketplace. In a second report entitled "Regulatory Reform of the U.S. Manufacturing Sector" (2005), OMB stated that "[s]treamlining regulation is a key plank in the President's economic program." Id. at 1. This report suggests that any unnecessary regulatory burdens, especially on small and medium-sized manufacturers, should be removed. To address these concerns for U.S. manufacturers, benefits justifying costs is of paramount importance.

Today's decision, while based on statutory factors in the Clean Water Act, does also address the concerns in these reports. As proposed, the Phase III rule would have required most facilities to submit a number of highly detailed studies and reports to the permit writer, with additional studies required for facilities seeking alternative standards based on site-specific considerations. Today's final action for Phase III adopts a more flexible approach under which the permit writer can tailor the data and information request more specifically to the location, technology constraints, and potential adverse environmental impacts of a particular facility. Today's decision provides manufacturing facilities the opportunity to provide information to the permit writer relating to the site specific environmental impacts attributable to their cooling water intake structures and the technological feasibility and economic burdens associated with various levels of control. This tailored regulatory approach not only meets the Clean Water Act requirement to adopt the best technology available to minimize adverse environmental impacts, but it also advances EPA's policy of avoiding imposing unnecessary burdens on manufacturers.

Continuing a regime of BPJ decision-making for Phase III existing facilities does not mean that EPA is merely preserving the status quo. To the contrary, EPA believes that the rulemaking record contains important factual data that can help permit writers when reissuing NPDES permits for the Phase III existing facilities. The numeric performance standards that EPA had proposed, for example, reflect EPA's judgment regarding the level of reduction in impingement mortality and entrainment that available technologies can achieve. Similarly, the regulatory support documents describe a variety of control devices, analyze their effectiveness and present their costs. The record also contains information regarding environmental impacts associated with cooling water intake structures. EPA expects permit writers and permittees to fully consider this information and other useful guidance contained in the record as they develop site-specific section 316(b) requirements.

For the foregoing reasons, EPA has decided, based on its assessment of costs and benefits in this rulemaking, to continue to rely on permit writers' use of their best professional judgment to establish the statutorily mandated section 316(b) requirements on a case-by-case basis for existing Phase III facilities.

VII. Response to Major Comments on the Proposed Rule and Notice of Data Availability (NODA)

Fifty-one organizations and individuals submitted comments on a range of issues in the proposed rule. An additional six comments were received on the NODA. Detailed responses to all comments, including those summarized here, can be found in the Response to Comments document in the official public docket.

A. Offshore Oil and Gas Extraction Facilities

Commenters raised many issues concerning the regulation of offshore oil and gas extraction facilities. One commenter requested that EPA exclude mobile offshore drilling units (MODUs) from the rule. A few commenters also claimed that EPA did not demonstrate a need to regulate offshore oil and gas extraction facilities. Another commenter asserted that new offshore oil and gas extraction facilities should be included under the new facility definition promulgated under Phase I.

One commenter suggested that EPA exempt offshore oil and gas extraction facilities employing sea chests in order to facilitate international movement of MODUs. This commenter and others also requested that EPA establish a higher minimum flow threshold (of at

least 25 MGD) for offshore oil and gas units in shallow waters, and exempt units in unproductive deep waters (over 100 meters deep).

One commenter added that the ichthyoplankton density data (SEAMAP data) provided in the NODA supports the assertion that location alone should be used to regulate requirements for offshore oil and gas extraction facilities and supports the exemption of units in unproductive waters offshore. The commenter stated that the SEAMAP data shows that these waters have significantly reduced levels of biological life. Several commenters expressed concern that intake technologies from other industries may not be appropriate for offshore oil and gas extraction facilities.

As presented in the NODA, EPA collected biological data from the Gulf of Mexico and other locations demonstrating that there is a potential for adverse environmental impacts due to the operation of cooling water intake structures at new offshore oil and gas extraction facilities. While the data did show spatial and temporal variations, as well as variability at different depths, the range of ichthyoplankton densities found were within the same range seen in coastal and inland waterbodies addressed by the Phase I final rule. As discussed in section IX, there is no economic barrier for new offshore oil and gas facilities to meet the performance standards as proposed. Based in part on these results, EPA is addressing new offshore oil and gas extraction facilities in this final rule. EPA proposed to set a regulatory threshold of 2 MGD for new offshore oil and gas facilities. EPA has not identified nor have commenters provided a basis for selecting an alternative regulatory threshold. Therefore, consistent with the Phase I rule, new offshore oil and gas extraction facilities with a design intake flow greater than 2 MGD are subject to this rule.

EPA recognizes the inherent differences in the design and operation of land-based and offshore facilities (as well as the differences between the several types of offshore facilities) and has adopted a regulatory approach that allows new offshore oil and gas extraction facilities ample flexibility in complying with the rule. EPA's record shows the technologies evaluated for use by new facilities are already in use at some existing offshore facilities. Furthermore, EPA does not have any (and commenters did not provide) data to suggest that MODUs with sea chests would be inhibited from international movement by the proposed requirements. Commenters did not submit any information that would lead EPA to believe that the intake technologies already used and demonstrated at existing facilities are inadequate or inappropriate for use at new offshore facilities. However, EPA recognizes that differences in types of offshore facilities may limit the technologies available, and is therefore requiring different performance standards for these classes of facilities. For this reason, new offshore oil and gas extraction facilities are subject to a new Subpart N rather than being included under the new facility definition promulgated under Phase I. As discussed in section II.A of this preamble, new offshore oil and gas extraction facilities are defined based on three criteria, one of which is that the facility meets the definition of a "new facility" in 40 CFR 125.83.

B. Applicability to Phase III Existing Facilities/Costs & Benefits

Numerous commenters argued that Phase III facilities should be regulated on a case-by-case basis, citing the proposed rule's high cost, low benefits, and a lack of Phase III data indicating environmental harm. Commenters questioned the need for and benefit of promulgating national standards covering existing manufacturing facilities and small electric utility plants that comprise smaller cooling water flows.

Many commenters expressed concern over the high costs relative to the monetized benefits of all three regulatory approaches presented in the proposed rule and indicated that EPA should thus withdraw the proposed rule.

As discussed in section VI of this preamble, EPA has decided not to promulgate national categorical requirements for Phase III existing facilities based in part on a consideration of relative costs and benefits. Section 316(b) requirements for these facilities will continue to be developed by permit writers using their best professional judgment.

C. Environmental Impacts Associated With Cooling Water Intake Structures

Many commenters asserted that there is no demonstrated need for national requirements at Phase III facilities since Phase III facilities have much smaller flows than Phase II facilities. These commenters also stated that most of the environmental impact data cited in the Phase III proposed rule is from Phase II power generator facilities and is not relevant to Phase III facilities. One commenter stated that EPA did not define adverse environmental impact. Another commenter argued that any measure of impingement or entrainment constitutes adverse environmental impact.

Another commenter stated that the low number of 316(b) studies conducted at Phase III facilities indicates that these facilities are not causing a problem. Other commenters maintained that actual national impacts due to cooling water intake structures are vastly underestimated due to poor data collection methodologies utilized when the majority of the studies were performed and because studies conducted on impinged and entrained organisms overlooked the vast majority of affected species.

As discussed in section IV of this preamble, EPA collected impingement mortality and entrainment data from multiple existing facilities including many Phase III facilities, and believes that the data is sufficient to demonstrate the potential for adverse environmental impacts by Phase III facilities (see also Regional Analysis Document). Consistent with discussions presented in the Phase I and Phase II rules, EPA believes that it is reasonable to interpret adverse environmental impact as the loss of aquatic organisms due to impingement mortality and entrainment. Commenters did not suggest alternative interpretations of adverse environmental impact. For additional discussion, see section IV of this preamble.

EPA believes that the studies collected from existing facilities and utilized in its analysis of impingement and entrainment impacts are sufficient to estimate and generally characterize the potential for national level impacts for the purposes of this action. The Regional Analysis document discusses a number of issues associated with the quality of the data in these studies. It is difficult to predict the effects of these study limitations on the impacts estimates, specifically whether they have led to an overestimate or underestimate of impacts. EPA acknowledges that the studies often measure impacts to only some of the fish and shellfish species impacted by cooling water intake structures and typically do not measure impacts to other marine organisms such as phytoplankton or invertebrates. However, EPA fully considered these impacts in its assessment of potential non-monetized benefits. For the reasons discussed above, including the much smaller withdraws associated with Phase III facilities relative to Phase II, EPA has determined that for these facilities impacts were not likely to be of sufficient magnitude to change its

decision to rely on the existing site-specific regulatory framework for Phase III facilities. EPA believes the site-specific approach is particularly suited to addressing these non-quantified impacts because the nature and magnitude of such impacts is itself highly site-specific.

VIII. Implementation

Final section 316(b) requirements for new offshore oil and gas extraction facilities will be implemented through the NPDES permit program. This final rule establishes implementation requirements for new offshore oil and gas extraction facilities that are generally similar to the Phase I requirements. This regulation establishes application requirements under 40 CFR 122.21 and § 125.136, monitoring requirements under § 125.137, and record keeping and reporting requirements under § 125.138. The regulations also require the Director to review application materials submitted by each regulated facility and include monitoring and record keeping requirements in the permit (§ 125.139).

A. When Does the Final Rule Become Effective?

This rule becomes effective July 17, 2006. Under this final rule, new offshore oil and gas extraction facilities will need to comply with the Subpart N requirements when an NPDES permit containing requirements consistent with Subpart N is issued to the facility.

B. What Information Will I Be Required To Submit to the Director When I Apply for My NPDES Permit?

General Information

This final rule modifies regulations at § 122.21 to require new offshore oil and gas extraction facilities to prepare and submit some of the same information required for new Phase I and existing Phase II facilities. New offshore oil and gas extraction facilities may be required to submit the Source Water Baseline Biological Characterization Data depending on whether they are fixed or non-fixed facilities. Non-fixed facilities are exempt from the requirement. Specific data requirements for the Source Water Baseline Biological Characterization Data are described later in this section. Studies to be submitted by new offshore oil and gas extraction facilities are described below. Under EPA's NPDES regulations new facilities must apply for their NPDES permit at least 180 days prior to commencement of operation. Under this final rule, new offshore oil and gas extraction facilities must submit the specified information with their application for permit issuance.

1. Source Water Physical Data (§ 122.21(r)(2))

Under the requirements at § 122.21(r)(2), new offshore oil and gas extraction facilities are required to provide the source water physical data specified at § 122.21(r)(2) in their application for a permit. EPA believes these data are necessary to characterize the facility and evaluate the type of waterbody and species potentially affected by the cooling water intake structure. EPA intends for the Director to use this information to evaluate the appropriateness of the design and construction technologies and/or operational measures proposed by the applicant.

The applicant is required to submit the following specific data: (1) A narrative description and scale drawings showing the physical configuration of all source waterbodies used by the facility, including areal dimensions, depths, salinity and temperature regimes, and other documentation; (2) an identification and characterization of the source waterbody's hydrological and geomorphological features, as well as the methods used to conduct any physical studies to determine the intake's zone of influence and the results of such studies; and (3) locational maps. For new non-fixed (mobile) offshore oil and gas extraction facilities, this provision requires only some of the location information and not the source water physical data required for new fixed offshore oil and gas extraction facilities.

EPA recognizes that mobile facilities may not always know where they will be operating during the permit term, and the requirement in (r)(2)(iv) is not meant to restrict them only to locations identified in the permit application. However, EPA expects that permit applicants will provide, based on available information, their best estimate as to where they will be operating during the permit term, at whatever level of detail they can.

2. Cooling Water Intake Structure Data (§ 122.21(r)(3))

New offshore oil and gas extraction facilities are required to submit the cooling water intake structure data specified at § 122.21(r)(3) to characterize the cooling water intake structure and evaluate the potential for impingement and entrainment of aquatic organisms. Note that § 122.21(r)(3)(ii)—latitude and longitude of each intake structure—is not applicable to non-fixed (mobile) offshore oil and gas extraction facilities. Information on the design of the intake structure and its location in the water column allows the permit writer to evaluate which species or life stages are potentially subject to impingement mortality and entrainment. A diagram of the facility's water balance is used to identify the proportion of intake water used for cooling, make-up, and process water. The water balance diagram also provides a picture of the total flow in and out of the facility, allowing the permit writer to evaluate the suitability of proposed design and construction technologies and/or operational measures.

The applicant is required to submit the following specific data: (1) A narrative description of the configuration of each of its cooling water intake structures and where they are located in the waterbody and in the water column; (2) latitude and longitude in degrees, minutes, and seconds for each of its cooling water intake structures (not applicable to new non-fixed (mobile) offshore oil and gas extraction facilities); (3) a narrative description of the operation of each of the cooling water intake structures, including design intake flows, daily hours of operation, number of days of the year in operation, and seasonal operation schedules, if applicable; (4) a flow distribution and water balance diagram that includes all sources of water to the facility, recirculating flows, and discharges; and (5) engineering drawings of the cooling water intake structure.

The applicability criterion in § 125.131(a)(3) is based on total design intake flow. Total design intake flow must be specified by the applicant with the information required above. A facility may permanently decrease its total design intake flow (e.g., by removing an intake structure or installing intake pumps with a lower maximum capacity) and request that the permitting authority consider the facility's new total design intake flow to determine the applicability of the 316(b) Phase III Rule at the time of permitting. Note that for a facility that has a variable speed pump, the total design flow is the maximum intake capacity for the cooling water intake structure.

Specific Requirements

Under this final rule, new offshore oil and gas extraction facilities are required to submit the application requirements consistent with § 122.21(r)(2) (except (r)(2)(iv)), (3), and (4) and § 125.136 of Subpart N if they are fixed facilities and choose to comply with the Track I or II requirements in § 125.134(b) or (c). A fixed facility is defined as a bottom

founded offshore oil and gas extraction facility permanently attached to the seabed or subsoil of the outer continental shelf (e.g., platforms, guyed towers, articulated gravity platforms) or a buoyant facility securely and substantially moored so that it cannot be moved without a special effort (e.g., tension leg platforms, permanently moored semi-submersibles) and which is not intended to be moved during the production life of the well. This definition does not include MODUs (e.g., drill ships, temporarily moored semi-submersibles, jack-ups, submersibles, tender-assisted rigs, and drill barges). The Track I and Track II application requirements are generally consistent with the Phase I requirements for new facilities (66 FR 65256). Under Track I, this includes velocity information, source waterbody flow information, and a design and construction technology plan. Track II requirements include source waterbody flow information and Track II comprehensive demonstration study (including source water biological study, evaluation of potential cooling water intake structure effects, and verification monitoring plan). These requirements are detailed later in this section.

As described in § 125.135, new offshore oil and gas extraction facilities have the opportunity to conduct a cost-cost test and provide data to assist the permit writer in determining if compliance with the Subpart N requirements would result in compliance costs wholly out of proportion to those EPA considered in establishing the requirement, or would result in significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on energy markets. In this case, alternative requirements may be imposed in the permit. See the Phase I final preamble for a more detailed explanation of this cost-cost test which is different than the cost-cost test for Phase II facilities (66 FR 65256).

In this final rule, fixed facilities with sea chests and all non-fixed (or "mobile") facilities are not required to comply with standards for entrainment. Fixed facilities with sea chests may choose either Track I or Track II to comply with impingement mortality performance standards. Non-fixed facilities must comply with the Track I 0.5 feet per second through-screen design intake flow velocity performance standard for impingement mortality. In addition, the Director must consider whether more stringent conditions are reasonably necessary to comply with any provision of federal or state law, including compliance with applicable water quality standards. Thus, the Director may determine that additional design and construction technologies to minimize impingement mortality are necessary where there are either protected species or critical habitat for these species or other species of impingement concern within the hydrologic zone of influence of the cooling water intake structure, or based on other information from fishery management services or agencies. The new mobile facility, when applying to operate under a general permit, must identify where it expects to be operating. EPA expects the Director to consult with the fishery management agencies, consider their data as well as any other relevant data, and decide whether to propose additional requirements based on any concerns the Director identifies (see § 125.134(b)(4)). For example, Region 10 has established a general permit for Cook Inlet that established a 0.1 feet per second through-screen design intake flow velocity performance standard. However, non-fixed facilities are not required to submit the source water baseline biological characterization data and some aspects of the source water physical data. Requirements for non-fixed facilities are described later in this section.

1. For New Offshore Oil and Gas Extraction Fixed Facilities, What Information Is Required To Be Collected for the NPDES Application?

Source Water Baseline Biological Characterization Data (§ 122.21(r)(4))

Under this final rule, Track I and Track II new offshore oil and gas extraction fixed facilities are required to submit source water baseline biological characterization data, just as other new facilities were required to do under Phase I. The data will be used to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structure. The data must include existing data (if available) supplemented with new field studies as necessary. Detailed data requirements are at § 122.21(r)(4). EPA recognizes that many offshore oil and gas extraction facilities are regulated under NPDES general permits and that regional studies are typically conducted as part of the general permit requirements. EPA expects that some new offshore oil and gas extraction fixed facilities may choose to jointly conduct a regional study to collect the source water baseline biological characterization data. The biological conditions characterized by a regional study should reflect the conditions found at each individual cooling water intake structure. EPA anticipates the regional studies would be conducted once each permit cycle. Under this final rule, the regional study would also include annual monitoring requirements.

Velocity Information (Track I)

The final rule requires that new offshore oil and gas extraction fixed facilities submit velocity information consistent with § 125.136(b)(2). The information will be used to demonstrate to the Director that the facility is complying with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 feet per second at the cooling water intake structure. The following information must be submitted: (1) a narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and (2) design calculations showing that the velocity requirement would be met at minimum ambient source water surface elevations (based on best professional judgment using available hydrological data) and maximum head loss across the screens or other device or, if the facility uses devices other than a surface intake screen, at the point of entry to the device.

Source Waterbody Flow Information (Track I and II)

The final rule also requires that new offshore oil and gas extraction fixed facilities located in an estuary or tidal river to submit source waterbody flow information in accordance with § 125.136(b)(2) or (c)(1). The information will be used to demonstrate to the Director that a new coastal facility's cooling water intake structure meets the proportional flow requirements at § 125.134(b)(3) or (c)(2). These requirements include specific provisions for fixed facilities located on estuaries or tidal rivers to provide greater protection for these sensitive waters. Specifically, the final rule requires that the total design intake flow over one tidal cycle of ebb and flow must be no greater than one (1) percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level. See the final Phase I rule for the basis for this design intake flow limitation. Calculations and guidance on determining the tidal excursion is found

in the preamble to the final Phase I rule at section VII.B.1.d.

Design and Construction Technology Plan (Track I)

The final regulation requires that new offshore oil and gas extraction fixed facilities submit a design and construction technology plan consistent with Subpart N requirements at § 125.136(b)(3). The design and construction technology plan must demonstrate that the facility has selected and will implement the design and construction technologies necessary to minimize impingement mortality and/or entrainment in accordance with § 125.134(b)(4) and/or (5). The design and construction technology plan requires delineation of the hydrologic zone of influence for the cooling water intake structure; a description of the technologies implemented (or to be implemented) at the facility; the basis for the selection of that technology; the expected performance of the technology, and design calculations, drawings and estimates to support the technology description and performance. The Agency recognizes that the selection of a specific technology or a group of technologies depends on the individual facility and waterbody conditions.

Track II Comprehensive Demonstration Study (Track II)

If a fixed facility chooses to comply under the Track II approach, the facility must perform and submit the results of a Comprehensive Demonstration Study (Study). This information will be used to characterize the source water baseline in the vicinity of the cooling water intake structure(s); characterize operation of the cooling water intake(s); and to confirm that the technology(ies) proposed and/or implemented at the cooling water intake structure reduce the impacts to fish and shellfish to levels comparable to those the facility would achieve were it to implement the applicable requirements in § 125.134(b)(2) and, for facilities without sea chests, in § 125.134(b)(5). To meet the "comparable level" requirement, the facility must demonstrate that it has reduced both impingement mortality and entrainment of all life stages of fish and shellfish to 90 percent or greater of the reduction that would be achieved through the applicable requirements in § 125.134(b)(2) and, for facilities without sea chests, in § 125.134(b)(5).

Similar to the Proposal for Information Collection required in Phase II, the facility must develop and submit a plan to the Director containing a proposal for how information will be collected to support the study. The plan must include:

- A description of the proposed and/or implemented technology(ies) to be evaluated in the Study;
- A list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed Study. If the facility proposes to rely on existing source waterbody data, the data must be no more than 5 years old, and the facility must demonstrate that the existing data are sufficient to develop a scientifically valid estimate of potential impingement mortality and entrainment impacts, and provide documentation showing that the data were collected using appropriate quality assurance/quality control procedures;
- Any public participation or consultation with Federal or State agencies undertaken in developing the plan; and
- A sampling plan for data that will be collected using actual field studies in the source waterbody. The sampling plan must document all methods and quality assurance procedures for sampling and data analysis. The sampling and data analysis methods proposed must be appropriate for a quantitative survey and based on consideration of methods used in other studies performed in the source waterbody. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure and at least 100 meters beyond); taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods.

The facility must submit documentation of the results of the Study to the Director. Documentation of the results of the Study includes: Source Water Biological Study, an evaluation of potential cooling water intake structure effects, and a verification monitoring plan as described below.

Source Water Biological Study

The Source Water Biological Study is similar to, but will generally be more comprehensive than, the Source Water Baseline Biological Characterization Study which is required for both Tracks I and II. The Source Water Biological Study must include:

(1) A taxonomic identification and characterization of aquatic biological resources including: a summary of historical and contemporary aquatic biological resources; determination and description of the target populations of concern (those species of fish and shellfish and all life stages that are most susceptible to impingement and entrainment); and a description of the abundance and temporal/spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily activities (e.g., spawning, feeding and water column migration) of all life stages of fish and shellfish found in the vicinity of the cooling water intake structure;

(2) An identification of all threatened or endangered species that might be susceptible to impingement and entrainment by the proposed cooling water intake structure(s); and

(3) A description of additional chemical, water quality, and other anthropogenic stresses on the source waterbody.

Evaluation of Potential Cooling Water Intake Structure Effects

This evaluation must include:

(1) Calculations of the reduction in impingement mortality and, if applicable, entrainment of all life stages of fish and shellfish that would need to be achieved by the technologies selected to meet requirements under Track II. To do this, the facility must determine the reduction in impingement mortality and entrainment that would be achieved by implementing the requirements of § 125.134(b)(2) and, for facilities without sea chests, § 125.134(b)(5).

(2) An engineering estimate of efficacy for the proposed and/or implemented technologies used to minimize impingement mortality and, if applicable, entrainment of all life stages of fish and shellfish and maximize survival of impinged life stages of fish and shellfish. The facility must demonstrate that the technologies reduce impingement mortality and, if applicable, entrainment of all life stages of fish and shellfish to a comparable level to that which would be achieved if the facility were to implement the requirements in § 125.134(b)(2) and, for facilities without sea chests, § 125.134(b)(5). The efficacy projection must include a site-specific evaluation of technology suitability for reducing impingement mortality and entrainment based on the results of the Source Water Biological Study. Efficacy estimates may be determined based on case studies that have been conducted in the vicinity of the cooling water intake structure and/or site-specific technology prototype studies.

Verification Monitoring Plan

Under Track II, a fixed facility must include a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or implemented technologies, and/or operational measures. The verification study must begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the facility is reducing the level of impingement mortality and entrainment to the level required for Track II compliance. The plan must describe the frequency of monitoring and the parameters to be monitored. The Director will use the verification monitoring to confirm that the facility is meeting the level of impingement mortality and entrainment reduction required in § 125.134(c), and that the operation of the technology has been optimized.

2. As an Owner or Operator of a New Offshore Oil and Gas Extraction Fixed Facility, What Monitoring Is Required?

Monitoring requirements for new offshore oil and gas extraction fixed facilities vary based on whether the facility selects Track I or Track II and whether it has a sea chest. For fixed facilities pursuing Track I that have sea chests, no monitoring is required. For fixed facilities pursuing Track I that do not have sea chests, only entrainment monitoring is required. Under Track II, fixed facilities with sea chests are required to conduct impingement mortality monitoring; fixed facilities without sea chests must conduct monitoring for both impingement mortality and entrainment.

Under this final rule, monitoring must characterize the impingement and, if applicable, entrainment rates of commercial, recreational, and forage base fish and shellfish species identified in either the Source Water Baseline Biological Characterization data required by 40 CFR 122.21(r)(4) (for Track I) or the Comprehensive Demonstration Study required by § 125.136(c)(2 (for Track II). The monitoring methods used must be consistent with those used for the Source Water Baseline Biological Characterization data required in 40 CFR 122.21(r)(4) or the Comprehensive Demonstration Study required by § 125.136(c)(2). For Track II, monitoring must be conducted in accordance with the Verification Monitoring Plan.

The fixed facility must follow the monitoring frequencies identified below for at least two (2) years after the initial permit issuance. After that time, the Director may approve a request for less frequent sampling in the remaining years of the permit term and when the permit is reissued, if supporting data show that less frequent monitoring would still allow for the detection of any variations in the species and numbers of individuals that are impinged or entrained.

Impingement sampling. The facility must collect samples to monitor impingement rates (simple enumeration) for each species over a 24-hour period and no less than once per month when the cooling water intake structure is in operation.

Entrainment sampling. If the fixed facility does not use a sea chest, it must collect samples to monitor entrainment rates (simple enumeration) for each species over a 24-hour period and no less than biweekly during the primary period of reproduction, larval recruitment, and peak abundance identified during the Source Water Baseline Biological Characterization required by 40 CFR 122.21(r)(4) or the Comprehensive Demonstration Study required in § 125.136(c)(2). Samples must be collected only when the cooling water intake structure is in operation.

Velocity monitoring. All new offshore oil and gas extraction facilities must conduct velocity monitoring. Velocity monitoring consists of a demonstration requirement based on the new facilities' proposed design, and a compliance monitoring requirement that verifies the velocity limitation is being met.

Facilities must submit design specifications for the impingement control system to the Director. Impingement control systems must be designed to prevent flow velocities from exceeding 0.5 feet per second. The facility must demonstrate the 0.5 feet per second velocity limit will be met by submitting (1) a narrative description of the technology used to meet the velocity requirement, and (2) a design calculation that uses head loss to show the design flow through the screen will meet the velocity requirement.

After start-up, if the facility uses a surface intake screen system, it must monitor head loss across the screens and correlate the measured value with the design intake velocity. The head loss across the intake screen must be measured at the minimum ambient source water surface elevation (using best professional judgment based on available hydrological data). The maximum head loss across the screen for each cooling water intake structure will be used to determine compliance with the velocity requirement in § 125.134(b)(2). If the facility uses devices other than surface intake screens, it must monitor velocity at the point of entry through the device. Head loss or velocity must be monitored during initial facility startup, and thereafter, at the frequency specified in the NPDES permit, but no less than once per quarter.

Facilities must monitor and record flow data through the cooling water intake structure continuously in order to verify that flows do not exceed the maximum design flow for the system, therefore causing flow velocities to exceed 0.5 ft/sec. As a minimum, facilities must summarize and provide flow data to the Director on an annual basis in order to verify that flow rates through cooling water intake structure did not exceed design capacity. Flow data can be collected and submitted to the Director either electronically or by hard copy.

Visual or remote inspections. The facility must conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. Visual inspections must be conducted at least weekly to ensure that any design and construction technologies required in § 125.134(b)(4), (b)(5), (c), and/or (d) are maintained and operated to ensure that they will continue to function as designed. Alternatively, the facility must inspect via remote monitoring devices to ensure that the impingement and entrainment technologies are functioning as designed.

3. What Recordkeeping and Reporting Is Required for New Offshore Oil and Gas Extraction Fixed Facilities?

Owners and operators of new offshore oil and gas extraction fixed facilities must keep records of all the data used to complete the permit application and show compliance with the requirements, any supplemental information developed under § 125.136, and any compliance monitoring data submitted under § 125.137, for a period of at least three years from the date of permit issuance. The Director may require that these records be kept for a longer period.

Additionally, this final rule requires that new offshore oil and gas extraction fixed facilities submit the following in a yearly status report:

- Biological monitoring records for each cooling water intake structure as required by § 125.137(a);
- Velocity and head loss monitoring records for each cooling water intake structure as required by § 125.137(b); and
- Records of visual or remote inspections as required in § 125.137(c).

4. For New Non-fixed (Mobile) Offshore Oil and Gas Extraction Facilities, What Information Is Required To Be Collected for the NPDES Application?

Velocity Information (Track I)

This final rule at § 125.136(b)(1) requires that new nonfixed (mobile) offshore oil and gas extraction facilities submit velocity information. The information will be used to demonstrate to the Director that the facility is complying with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 feet per second at the cooling water intake structure. The following information must be submitted: (1) a narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and (2) design calculations showing that the velocity requirement would be met at minimum ambient source water surface elevations (based on best professional judgment using available hydrological data) and maximum head loss across the screens or other device.

Design and Construction Technology Plan (Track I)

When the Director determines that additional design and construction technologies to minimize impingement mortality of fish and shellfish are necessary, pursuant to § 125.134(b)(4), new nonfixed (mobile) offshore oil and gas extraction facilities must submit a design and construction technology plan. As set forth in § 125.136(b)(3), the design and construction technology plan must demonstrate that the facility has selected and will implement the design and construction technologies necessary to minimize impingement mortality in accordance with § 125.134(b)(4). The design and construction technology plan requires delineation of the hydrologic zone of influence for the cooling water intake structure; a description of the technologies implemented (or to be implemented) at the facility; the basis for the selection of that technology; the expected performance of the technology, and design calculations, drawings and estimates to support the technology description and performance. The Agency recognizes that the selection of a specific technology or a group of technologies depends on the individual facility and waterbody conditions.

5. As an Owner or Operator of a New Non-fixed (Mobile) Offshore Oil and Gas Extraction Facility, What Monitoring Is Required?

Biological monitoring. Under this final rule, new non-fixed (mobile) offshore oil and gas extraction facilities are not required to conduct biological monitoring unless specified by the Director.

Velocity monitoring. If the mobile facility uses a surface intake screen system, it must monitor head loss across the screens and correlate the measured value with the design intake velocity. The head loss across the intake screen must be measured at the minimum ambient source water surface elevation (using best professional judgment based on available hydrological data). The maximum head loss across the screen for each cooling water intake structure will be used to determine compliance with the velocity requirement in § 25.134(b)(2). If the facility uses devices other than surface intake screens, it must monitor velocity at the point of entry through the device. Head loss or velocity must be monitored during initial facility startup, and thereafter, at the frequency specified in the NPDES permit, but no less than once per quarter.

Visual or remote inspections. The facility must conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. Visual inspections must be conducted at least weekly to ensure that any design and construction technologies required in § 125.134(b)(4), (b)(5), (c), and/or (d) are maintained and operated to ensure that they will continue to function as designed. Alternatively, the facility must inspect via remote monitoring devices to ensure that the impingement technologies are functioning as designed.

6. What Recordkeeping and Reporting Is Required for New Non-Fixed (Mobile) Offshore Oil and Gas Extraction Facilities?

Owners and operators of new mobile offshore oil and gas extraction facilities must keep records of all the data used to complete the permit application and show compliance with the requirements, any supplemental information developed under § 125.136, and any compliance monitoring data submitted under § 125.137, for a period of at least three years from the date of permit issuance. The Director may require that these records be kept for a longer period.

Additionally, this final rule requires that new mobile offshore oil and gas extraction facilities submit the following in a yearly status report:

- Velocity and head loss monitoring records for each cooling water intake structure as required by § 125.137(b); and
- Records of visual or remote inspections as required in § 125.137(c).

C. Are Permits for New Offshore Oil and Gas Extraction Facilities Subject to Requirements Under Other Federal Statutes?

EPA's NPDES permitting regulations at 40 CFR 122.49 contain a list of federal laws that might apply to NPDES permits issued by EPA. These include the Wild and Scenic Rivers Act, 16 U.S.C. 1273 et seq.; the National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq.; the Endangered Species Act, 16 U.S.C. 1531 et seq.; the Coastal Zone Management Act, 16 U.S.C. 1451 et seq.; and the National Environmental Policy Act, 42 U.S.C. 4321 et seq. See 40 CFR 122.49 for a brief description of each of these laws. In addition, the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq., relating to essential fish habitat might be relevant. Nothing in this final rulemaking authorizes activities that are not in compliance with these or other applicable Federal laws.

IX. Economic Impact Analysis

This section summarizes EPA's analysis of total social cost and economic impacts for the 316(b) Phase III final regulation for new offshore oil and gas extraction facilities and the regulatory options that were considered for promulgation of a final regulation for existing facilities. EPA's assessment of costs and economic impacts can be found in the Economics and Benefits Analysis.

A. New Offshore Oil and Gas Extraction Facilities

This rule establishes requirements for new offshore oil and gas extraction facilities that are point sources, employ a cooling water intake structure, are designed to withdraw 2 MGD or more from waters of the United States, and use at least 25 percent of the water withdrawn exclusively for cooling purposes. Oil and gas extraction facilities ("Oil and Gas Facilities") are facilities primarily engaged in oil and gas production and drilling activities. This analysis includes oil and gas production platforms/structures and MODUs. EPA estimates that 21 new oil and gas extraction platforms and 103 new MODUs would be subject to the national requirements of the rule, assuming a 20-year period of construction from 2007 (the assumed effective date of the rule) to 2026. Each newly-constructed facility is assumed to operate for 30 years, extending the

entire analysis period to 49 years (2007 to 2055).

Two types of cost analysis are presented. The social cost analysis includes before tax compliance costs to facilities and implementation costs to EPA. In this analysis, costs are discounted to 2007, assuming it would take a facility about 6 months to begin incurring costs. If the start date is actually later than 2007, social costs will be slightly reduced from those estimated here in present value terms. For the second type of cost analysis, industry after-tax compliance costs, costs are discounted for each individual facility to the year of compliance (the year the vessel is launched or the platform/structure come on line, which ranges from 2007 to 2026). The present value calculated for each facility is used in the economic impact analysis. These costs are subsequently discounted to 2004 and are then totaled to produce an aggregate present value of compliance costs. For both approaches annualized costs are then calculated by annualizing at a 3 percent (social costs) or 7 percent discount rate (social costs and industry compliance costs) over 30 years. All dollar values presented in this preamble are in $2004 (average or mid-year).

1. General Approach for Costing Impingement and Entrainment Equipment for Offshore Oil and Gas Extraction Facilities

EPA's general approach to estimate compliance costs associated with the use of impingement and entrainment controls for offshore oil and gas facilities was to first identify the different types of cooling water intake structures (e.g., simple pipes, caissons, sea chests) being employed by the various types of offshore oil and gas extraction facilities (e.g., jackups, platforms, MODUs, drill ships). EPA then identified available impingement and entrainment control technologies (e.g., cylindrical wedgewire systems, flat panel wedgewire screens) for the different configurations of offshore oil and gas extraction facilities and cooling water intake structures. EPA estimated both capital and annual operating costs for each technology option for the different configurations of offshore oil and gas extraction facilities and cooling water intake structures.

In order to estimate the related economic impacts associated with this rule, EPA used the available impingement and entrainment control technologies with superior reliability and performance and ease of operation. For example, EPA considered technologies such as airburst cleaning systems, which ensure that the through-screen intake velocities are relatively constant and as low as possible, and cooling water intake structures constructed with copper-nickel alloy components for biofouling control where necessary. While EPA recognized that operators complying with this rule may choose alternate impingement and entrainment control technologies than those upon which EPA based its economic analysis, EPA chose this method of estimating costs because EPA judged those compliance technologies to be the best technologies available, and accordingly used these technologies as the basis for the requirements in this rule

Using this methodology, EPA estimated compliance costs for the various configurations of offshore oil and gas extraction facilities and cooling water intake structures using the following:

- Stainless steel wedge wire screens with and without air sparging;
- Copper-nickel wedge wire screens with and without air sparging;
- Stainless steel velocity caps;
- Copper-nickel alloy velocity caps;
- Flat panel wedge wire screens over sea chests; and
- Horizontal flow diverters associated with sea chests.

EPA's detailed methodology for estimating these compliance costs is outlined in the Technical Development Document and the record supporting the final rule.

2. Social Cost for New Oil and Gas Extraction Facilities

The total annualized social cost of this rule for new Oil and Gas facilities is estimated at $3.8 million using a 3 percent discount rate, and $3.2 million using a 7 percent discount rate. The largest component of social cost is the pre-tax cost of regulatory compliance incurred by complying facilities; these costs include one-time technology costs of complying with the rule, annual O&M costs, and permitting costs (initial permit costs, annual monitoring costs, and permit reissuance costs). Social cost also includes implementation costs incurred by the Federal government. EPA expects that the final regulation will be implemented under general permits.[8]

EPA estimates that direct compliance costs will be $3.4 million and $2.8 million, using a 3 percent and 7 percent discount rate, respectively. The estimated Federal government cost for administering the rule for new facilities is comparatively minor in relation to the estimated direct cost of regulatory compliance. Federal administrative costs are estimated to be $0.4 million and $0.3 million per year under the 3 percent and 7 percent discount rates, respectively. EPA did not estimate costs to States for administering the new rule because the waters in which the regulated facilities would be located generally lie outside the States' jurisdiction. Specifically, facilities more than 3 miles off the coast are in federal waters. In the case of Alaska which does not have NPDES program authority, EPA Region 10 is expected to write NPDES permits for facilities in Alaskan waters. EPA does not expect any new facilities to locate in California because no new platforms have been constructed there since 1994, and a moratorium on lease sales extends to the year 2012.

3. Economic Impacts for New Oil and Gas Extraction Facilities

The following two subsections present economic impacts for MODUs and production platforms/structures, respectively. Certain aspects of the methodology differ between the two segments. Oil and gas production operations involve production of a finite resource, which limits the potential life of a production platform. Thus, the analysis for production platforms/structures must account for the production and resulting exhaustion of the finite oil and gas resource. Key considerations in the platforms analysis are: (1) When does production terminate? and (2) would the year of termination change due to regulation? The economic life of a MODU is not limited by such considerations and the analysis for MODUs is accordingly simpler. The Economic and Benefits Analysis and the rulemaking record contain additional data and details on the methodology and assumptions used in these analyses.

a. Mobile Offshore Drilling Units (MODUs)

EPA projects that 80 new jackups, 20 new semi-submersibles, and three new drill ships will be constructed over the 20 years for which new facility additions are analyzed. The economic impact analysis for these new MODUs is conducted at two levels: the vessel level and the firm level. EPA conducted two vessel-level analyses and one firm-level analysis:

- The first vessel-level analysis is a closure analysis, which assesses

[8] Because individual permits are typically not issued to offshore oil and gas extraction facilities, costs for pre-permitting and re-permitting studies are assumed to be shared among groups of new facilities expected to be covered by the general permits (see DCN 7–4036 for detailed information on how permitting costs are assumed to be shared under the general permits).

changes in vessel cash flow and net income. Because the financial condition of new vessels is unknown, EPA used financial information from representative existing vessels, collected in EPA's 316(b) survey of MODUs ([DCN 7–0008 and DCN 7–0018), to represent the financial characteristics of new facilities. The financial information from these representative vessels is used for a general assessment of how well these vessels would perform financially under the requirements of the final regulation. This analysis is used as an alternative assessment of the potential for a barrier to entry.

• The second vessel-level analysis is a barrier-to-entry analysis for new facilities. This analysis computes the present value of estimated initial permitting costs, which are assumed to be incurred over five years prior to the incorporation of section 316(b) permit requirements in the applicable general permits (see DCN 7–4036) and are discounted to the year of compliance (the year the vessel is assumed to be launched). The one-time capital costs of compliance (assumed to be incurred in the year of compliance) are then added to this figure. These summed compliance costs are then compared to the baseline construction costs for each type of MODU. Neither recurring costs of compliance (e.g., repermitting costs or recurring capital costs of intake controls) nor recurring baseline costs (e.g., O&M, refitting costs) are considered in this analysis. The analysis compares baseline start-up costs and incremental start-up costs associated with the final rule.

• The firm-level analysis is a cost-to-revenue test which compares the annualized compliance costs for representative new vessels to the revenue of firms likely to construct MODUs, assuming each of these firms builds a share of the 103 new MODUs expected to be constructed over the 20-year construction time frame. This analysis was conducted on a pre-tax and after-tax basis.

i. Vessel-Level Closure Analysis

To estimate potential closures (or more precisely, decisions not to proceed with constructing and placing a vessel into service) as a result of this rule for new MODUs, EPA used two models. The first model is a net income model, which computes the estimated present value of baseline after-tax net income (i.e., without compliance costs) for representative MODUs (based on survey data from existing MODUs) over a 30-year operating period for each new facility. Consistent with generally accepted methods of business value analysis, EPA would have preferred to use the present value of after-tax cash flow instead of net income as the basis for this analysis. However, because it could not reliably estimate all of the elements of cash flow, EPA instead used the present value of net income for its closure test. In particular, EPA was unable to estimate the ongoing capital outlays (apart from those resulting from regulatory compliance) that MODUs would need to make as part of their ordinary business operations. In performing the analysis in this way, EPA essentially used the facility's reported depreciation and amortization—which, being non-cash items, are normally excluded from cash flow accounting—as an approximation of ongoing capital outlays. How use of reported depreciation and amortization, instead of a reliable estimate of capital outlays, affects the findings from this analysis cannot be precisely known. For some businesses—in particular those with relatively strong financial performance—depreciation and amortization may be less than ongoing capital outlays; for these businesses, the analysis will tend to overstate business value and understate the potential effect of compliance outlays on financial performance and business value. On the other hand, for some businesses—in particular those with relatively weak financial performance—depreciation and amortization may exceed ongoing capital outlays; for these businesses, the analysis will tend to understate business value and overstate the potential effect of compliance outlays on financial performance and business value. The second model used by EPA is an after-tax cost calculation model, which estimates the present value of after-tax compliance costs using engineering and permitting cost inputs. Comparing the results of these two models shows the potential effect of costs on vessel net income.

EPA estimated after-tax net income using data provided by surveyed operators of existing MODUs (EPA received economic surveys for three semi-submersibles, three jackups, and two drill ships). EPA was only able to undertake financial analysis for those MODUs with a positive net income for the three years of financial information provided in the survey (2000 to 2002). EPA assumed that any MODU whose net income is negative over the three years is unlikely to be a viable operation in the baseline and cannot be analyzed with respect to compliance costs.

EPA used the net income over the three years of survey data to create a moving cycle of net income over the period of analysis. Among the years of data collected (2000 to 2002), 2002 was generally a poor year of financial condition for the industry as a whole. EPA was thus able to represent industry financials in both good and bad years. The three-year cycle simulates the effect of volatility in oil and gas prices and other business conditions (e.g., rig utilization rates) over each facility's 30-year operating period. Future operating periods are likely to include major swings in the prices of oil and gas, the driving force behind the level of operations, rig pricing, and, thus, financial performance of the newly constructed vessels. EPA assumed that net income will be flat, on a three-year average basis, over the 30 years of analysis and thus did not apply any factors to increase or decrease net income over the years of analysis. The net income figures from the survey, therefore, repeat every three years for 30 years. EPA then computed the present value of that stream of net income and compared it to the present value of after-tax compliance costs for the final regulation.

EPA used the estimated compliance cost elements—capital, O&M, and permitting costs—for each new MODU to calculate the present value of the after-tax cost of compliance with this final requirements. Each compliance-related cost was accounted for in the year it is assumed to be incurred. Tax effects of compliance outlays were based on the owner company's marginal tax rate as determined from the firm's average taxable earnings over the three years of survey data (converted to a mid-year 2003 basis). EPA calculated depreciation for the compliance capital outlay using the modified accelerated cost recovery system (MACRS) and included it in the pre-tax compliance cost stream. The compliance cost stream was then reduced by the amount of avoided tax liability, based on the estimated marginal tax rate, to yield the after-tax compliance cost stream (for more information on these calculations, see DCN 7–4016). The final result of these calculations is the present value of after-tax compliance costs.

The present value of after-tax compliance costs was then subtracted from the present value of baseline net income for the vessel. If the present value of net income remained positive after accounting for compliance costs, EPA assumed that the MODU would operate post-compliance. If the present value of net income became negative, EPA assumed that the new MODU would not be a financially viable project and was counted as a potential "regulatory closure."

The analysis is based on the assumption that costs cannot be passed through to customers. EPA bases this assumption on the fact that new MODUs will be competing with existing MODUs, which will not incur compliance costs. Based on EPA's assumption that finances for new MODUs will look like those for existing MODUs, this analysis found that no new MODUs would be a regulatory closure as a result of the incremental compliance costs associated with the final rule.

ii. Vessel-Level Barrier-to-Entry Analysis

The barrier-to-entry analysis compares the present value of compliance costs (including the present value of initial permitting costs discounted to the compliance year and first-time capital/installation costs, excluding recurring costs), to the costs of constructing a new MODU. If compliance costs comprised a small fraction of construction costs, EPA assumed that compliance costs would have no effect on the decision to build a new MODU.

EPA developed incremental compliance costs for new MODUs using estimated initial permitting costs and technology cost estimates. The initial permitting costs are based on each new MODU's share of regional permitting costs (EPA expects that facilities in a particular geographic region would collect data from representative facilities in that region) and individual administrative start-up and permit application costs. The technology costs are based on the weighted average cost of installing controls at existing MODUs, by type of MODU, for all existing MODUs with technical data. The estimated present value of the initial permitting cost stream, plus the first-time capital/installation costs of compliance costs, sum to approximately $130,000 for semi-submersibles, $269,000 for jackups, and $261,000 for drill ships. According to Rigzone (2006), the cost of new MODUs averages $285 million for semi-submersibles, $130 million for jackups, and $385 million for drill ships (DCN 9–4002). The present value of initial permitting costs plus one-time capital/installation compliance costs is therefore estimated to range from 0.03 percent to 0.21 percent of construction costs for the three types of MODU. Because total up-front costs represent a very small fraction of total costs of construction (and even of contingency costs, which typically range from 10 percent to 20 percent of capital costs), EPA believes that these costs would not have a material effect on decisions to build new MODUs.

iii. Firm-Level Cost-to-Revenue Analysis

EPA's research showed that firms likeliest to build MODUs with a design intake flow of 2 MGD or more are those that currently own such MODUs. EPA identified nine firms that either already own jackups, semi-submersibles, or drill ships that would be subject to the requirements for new facilities if newly constructed, or that are currently in the process of building such MODUs. Most of these firms are among the largest firms in the industry. EPA estimates that these nine firms would own the 103 new MODUs subject to the final national requirements for new facilities. To determine the potential impact of the final rule on the nine firms determined likely to build new MODUs subject to regulation, EPA used a cost-to-revenue test, which compares the annualized pre-tax and after-tax costs of compliance (calculated for representative new MODUs), with 2004 revenue reported by these firms. Because nearly all of the firms (other than foreign-owned) are publicly owned, EPA relied on revenue data compiled from corporate 10K reports (see Chapter C2 of the EA). EPA then assigned a number of MODUs potentially subject to regulation to each of the firms and used the average per-MODU compliance costs multiplied by the number of these MODUs to calculate the total compliance costs that might be faced by these firms.

Estimated total annual pre-tax compliance costs are approximately $15,300 for a semi-submersible, $33,800 for a jackup, and $39,100 for a drill ship. Estimated after-tax costs are approximately $10,000, $22,000, and $25,400, respectively, based on a 35 percent marginal corporate tax rate assumption, which is the highest marginal corporate tax rate applicable (all potentially affected entities are large or very large corporations whose earnings generally would put them in this tax bracket). These annualized costs are very small compared to the revenue a MODU might receive for drilling even one exploratory well in deepwater. Exploratory wells cost at least $30 million to drill, a large portion of which is paid to MODU operators (DCN 7–4017). Compliance costs are also small compared to the typical day rates (daily charges) paid to MODUs while drilling wells. These rates can range up to $180,000 per day (DCN 9–4001). Because EPA assumed that the majority of rigs to be constructed will be jackups, EPA used the compliance cost of a jackup rig to represent the cost of compliance with this rule in order to judge impacts on firms. Seven firms are each assumed to build 9 jackups over the time frame of the analysis (approximately one MODU every other year). The two additional firms, GlobalSantaFe and Transocean, are the dominant firms in the industry. These two firms are each assumed to build 18 jackups, plus one drill ship and two drill ships, respectively, over the time frame of the analysis for a total of 19 or 21 MODUs in total. For the comparison of annualized costs of compliance with annual revenue, EPA assumed that all of a firm's new rigs would be constructed in one year. If this assumption has any effect, it would increase the likelihood of finding economic impacts. With no firm-level impacts found under this scenario, then there will also be no impacts under other more likely scenarios in which costs are incurred over several years.

Using these assumptions, EPA estimates that the annualized pre-tax costs per firm range from $0.3 to $0.7 million, and the after-tax costs range from $0.2 to $0.4 million. The pre-tax cost-to-revenue ratio ranges from 0.01 percent to 0.2 percent, while the after-tax ratios range from 0.01 percent to 0.1 percent. Given that the highest estimated ratio is 0.2 percent, EPA concludes that firm-level impacts would not pose a barrier to entry.

b. Oil and Gas Production Platforms

EPA projects that 20 deepwater platforms and one Alaska platform will be constructed over the 20 years over which new facility additions are analyzed. The economic impact analysis for these new platforms is conducted at two levels: the platform level and the firm level. EPA conducted two platform-level analyses and one firm-level analysis:

- The first platform-level analysis assesses the potential effects of compliance costs on platform operation. Two effects of the final rule are considered: (1) A reduction in the expected economic value of the platform, driven by all costs of compliance, which could prevent oil and gas resources from being brought into production, and (2) earlier production shut-in, driven by the increase in O&M costs. The baseline operating and financial profile for this analysis is based on data from existing platforms whose cooling water intake rates would cause them to be subject to the final rule if they were being newly constructed after rule promulgation. These existing platforms serve as a baseline model of the operating and financial conditions of new platforms that would be regulated under the rule.

Estimated compliance costs are added to the baseline cost profile in the analysis of the impact of compliance costs on platform operations.

- The second platform-level analysis is a barrier-to-entry analysis for new facilities. This analysis compares the present value of estimated initial permitting costs plus the one-time capital costs of compliance (excluding any recurring costs) to the construction costs for each type of platform.
- The firm-level analysis is a cost-to-revenue test, which compares the annualized compliance costs for representative new platforms to the revenue of firms likely to construct new platforms/structures. This analysis assumes that each firm likely to build a deepwater platform/structure subject to regulation would bring two platforms/structures on line over the time frame of the analysis; and that only one firm will build an Alaska platform during the analysis period. To reflect the possibility that two structures could be built in one year by one firm, those firms assumed to bring two deepwater structures on line are assigned the annualized costs of compliance for two platforms in one year for comparison against one year's revenue. This analysis was conducted on a pre-tax and after-tax basis. If the assumption of two platforms built in one year has any effect, it would increase the likelihood of finding economic impacts. With no firm-level impacts found under this scenario, then there will also be no impacts under other, possibly more likely, scenarios in which costs are incurred over several years.

i. Platform-Level Production/Shut-In Analysis

Compliance costs resulting from the final regulation may affect a platform's financial performance and related operating decisions in two ways. First, increased costs from regulatory compliance will reduce the expected economic value of an oil and gas production project, and may prevent an otherwise financially viable project from being undertaken. Second, even if a project overall remains financially viable, increased operating costs may lead to an earlier production shut-in than would occur in the baseline. Details of the analysis of these effects are provided below.

For the analysis of these effects, EPA constructed a general platform analysis model, which simulates the operations and economics of oil and gas development and production. The platform model analyzes production over a period extending as long as 30 years. Pre-tax costs (including costs incurred in pre-production years, O&M, monitoring costs, and repermitting costs) are input into the model in the year in which they occur, until the model shows the platform is uneconomical to operate. To determine the shut-in year, projected net revenue is compared to operating costs in each production year. Net revenue is based on an assumed price of oil, current and projected production of oil and gas, well production decline rates, and severance and royalty rates. Operating costs are based on a calculated cost per barrel of oil equivalent (BOE) produced. The model simulates operations for the lesser of 30 years or to the year when operating costs exceed production revenue, at which point the operator is assumed to terminate production. The model calculates the lifetime of the project, total production, and the net present value of the operation (net income of the operation over the life of the project in terms of today's dollars). A comparison of the baseline model outputs to the post-compliance model outputs yields any losses of production and project duration and the net present value of the operation. If the net present value of the operation is positive in the baseline but negative post-compliance, the project is considered nonviable post-compliance. It is assumed the platform would not be built.

The model uses as baseline data, financial information from representative existing platforms, collected in EPA's 316(b) survey of production platforms to represent the financial characteristics of future platforms that would be subject to this final regulation. EPA received an economic survey from only one deepwater platform with cooling water intake rates meeting the final regulatory criteria. EPA used data from this survey and from other sources of publicly available information, such as the Minerals Management Service, to develop a model new deepwater oil and gas production platform. EPA also received a survey from a platform in Alaska but did not include it in the analysis because the surveyed platform is a very old structure and at the end of its productive life. EPA believed that it would not be representative of new platforms being built after the Phase III rule is finalized. The Alaska platform is therefore analyzed only in the barrier to entry analysis.

Analysis of Project Viability

As noted above, any increase in costs, whether operating, capital, or permitting, will reduce the expected economic value of an oil and gas project, as represented by the present value of project net income, and may cause an otherwise economic oil and gas production project to never be undertaken. In this case, the entire economic value of the project and its otherwise recoverable oil and gas production are assumed to be lost. (EPA notes that this loss need not be permanent but may only be delayed until higher product prices, or reduced development and production costs allow the project to become financially viable.) For this potential impact, EPA analyzed whether the reduction in value from all regulatory compliance outlays would be sufficient to cause the expected discounted net income of an otherwise economically viable oil and gas production project to be negative at the outset. In this case, the operator is assumed not to proceed with development and production. If the platform has a positive net present value under baseline conditions but a negative net present value in the post-compliance scenario, EPA notes an impact on the platform and estimates the lost production resulting from the costs of regulatory compliance.

Analysis of Production Shut-In Effects

Although a project overall remains financially viable, the increased operating costs from regulatory compliance may lead to an earlier production shut-in than would occur in the baseline. Apart from the financial impact, an earlier shut-in will also lead to reduced production of otherwise economically recoverable oil and gas. For this analysis, projected net revenue is compared to operating costs at each year for the model project.[9] Net revenue (after subtracting royalties and severance, which are payments to the lease owner and a State, if relevant) is based on an assumed price of oil, current and projected production of oil and gas, well production decline rates, and severance and royalty rates. Operating costs are based on a calculated cost per barrel of oil equivalent (BOE) produced. The model simulates operations for the lesser of 30 years or to the year when operating costs exceed production revenue, at which point the operator is assumed to terminate production. A comparison of total production and total project lifetime in the baseline vs. post-compliance shows any differences in

[9] Following engineering review of surveyed deepwater platforms/structures, only one was determined to have a total design cooling water intake structure intake flow rate meeting the proposed 316(b) thresholds for regulation of oil and gas facilities, had the structure been newly constructed, so only one model of deepwater structures was developed.

these variables following the imposition of compliance costs.

This analysis found no impacts on deepwater oil and gas development or production as a result of the incremental compliance costs associated with this rule, for the one platform that was analyzed. Impacts on net present value were very small.

ii. Platform-Level Barrier-to-Entry Analysis

The barrier-to-entry analysis compares the present value of the initial permitting cost stream (discounted to the year of compliance) plus one-time capital/installation costs to the costs of constructing a new platform. If compliance costs comprise a small fraction of construction costs, EPA assumes that compliance costs would not have an effect on the decision to build a new platform.

The estimated total present values of incremental compliance costs are $306,323 for deepwater projects and $708,058 for Alaska projects. Costs for constructing new deepwater platforms are estimated to range from $114 million to $2.3 billion (see EA for the Synthetic Drilling Fluid Effluent Limitations Guidelines in the rulemaking record, DCN 7–4017). For Alaska, EPA used a value of $120 million (DCN 7–4028). The ratio of incremental compliance costs to current total construction costs therefore ranges from 0.01 percent to 0.3 percent for deepwater projects and is estimated to be 0.6 percent for an Alaska project. Because this represents a small fraction of total construction costs (and even of contingency costs), EPA believes that these costs would not have a material effect on decisions to build new platforms.

iii. Firm-Level Cost-to-Revenue Analysis

• To determine the potential impact of the final rule on firms, EPA used a cost-to-revenue test, which compares the annualized pre-tax and after-tax costs of compliance (calculated for a representative new platform times the maximum number of platforms assumed built by each firm in any one year), with 2004 revenue reported by all firms determined likely to be affected by this regulation. The firms that are considered affected are (1) those identified as currently having existing deepwater platforms or structures that would be subject to regulation if they were newly constructed and (2) the likeliest type of firm to build a new Alaska platform during the time frame of the analysis. EPA assumed each of the 11 firms operating in the deepwater Gulf would bring on-line two platforms during the period of analysis. To reflect the possibility that two structures could be built in one year by one firm, EPA assumes the two platforms come on line in one year for comparison with one year's revenue at each firm. If this assumption has any effect, it would increase the likelihood of finding economic impacts. With no firm-level impacts found under this scenario, then there will also be no impacts under other, possibly more likely, scenarios in which costs are incurred over several years. In addition, one small firm is assumed to build the one Alaska platform over the period of analysis, and the annualized compliance cost is also compared to one year's revenue at that firm.

Using these assumptions, EPA estimates that the annualized pre-tax costs per firm are about $0.2 million, and the after-tax costs are about $0.1 million. The pre-tax cost-to-revenue ratio ranges from <0.001 percent to 0.032 percent, while the after-tax ratios range from <0.001 percent to 0.021 percent. Given that the highest estimated ratio is 0.032 percent, EPA concludes that firm-level impacts would not pose a barrier to entry.

c. Total Facility Compliance Costs and Impacts for All New Oil and Gas Facilities

Exhibit IX–1 summarizes the total facility compliance costs and impacts associated with the final regulation for Phase III new offshore oil and gas facilities. Annualized after-tax costs total $1.9 million per year for MODUs and $1.3 million per year for platforms, or a total of $3.2 million per year for all affected new oil and gas operations estimated to be constructed over the period of the analysis (using a 7 percent discount rate). Costs are incurred assuming 20 years of new facility construction, with each facility incurring costs over a 30-year operating period, discounted to the year the facility is launched or comes on-line. The present value of these costs is calculated, then annualized over the 30 operating years at 7 percent. The present value of private after-tax costs is less than the previously described present value of social costs, which are based on pre-tax costs, because of differences in the discounting for private costs and social costs. Private costs are discounted, for each analysis, only to the first year of compliance. In contrast, for the social cost calculation, all costs are discounted to the beginning of 2007, regardless of when new facilities come into operation. Because new facilities are scheduled to begin operation for a 20 year period following rule promulgation, the total effect of discounting is much greater for the present value of social cost calculation than for the private cost calculation. As a result, the present value of social cost, even though based on pre-tax costs, is less than the present value of private, after-tax cost.

EXHIBIT IX–1.—SUMMARY OF PRIVATE COSTS AND IMPACTS FOR NEW OIL AND GAS FACILITIES

Type of oil and gas facility	Number of new facilities	Annualized private after-tax compliance costs (in millions, $2004)	Facility impacts	Firm impacts
MODUs	103	$1.9	0	0
Platforms	21	1.3	0	0
Total	124	3.2	0	0

Note: Component values may not sum to the reported total due to independent rounding.

Exhibit IX–2, below, summarizes total social costs and impacts for the final regulation for new offshore oil and gas extraction facilities.

EXHIBIT IX–2.—SUMMARY OF ECONOMIC ANALYSIS FOR THE 316(b) PHASE III FINAL REGULATION APPLICABLE TO NEW OFFSHORE OIL AND GAS EXTRACTION FACILITIES

	Annualized social cost (in millions, $2004) [1 2]	Number of facilities subject to national requirements	Number of facilities with impacts
Direct Compliance Cost for New Oil and Gas Facilities	$3.4–$2.8	124	0
Total State and Federal Administrative Cost	$0.4–$0.3		
Total Social Cost	$3.8—$3.2		

[1] The left side of the each range is the cost discounted at 3% and the right side is cost discounted at 7%.
[2] Numbers may not sum to totals due to independent rounding.

B. Existing Phase III Facilities

As described earlier in this Preamble, EPA has decided that Phase III facilities should continue to be permitted on a case-by-case best professional judgment basis. Since EPA is not promulgating a national categorical section 316(b) rule for existing Phase III facilities, there are no additional compliance costs associated with this action for these facilities. However, EPA did estimate the costs for the national categorical regulatory options we considered. More information on the costing analysis can be found in the Development Document and in the public record for this action.

This part of the Preamble describes the cost and economic impact analyses undertaken for the three national categorical regulatory options that were considered for the Phase III final regulation for existing facilities. These three options were defined by a regulatory applicability threshold based on design intake flow (DIF) and by the type of waterbody from which cooling water is withdrawn. As described at Proposal, these regulatory options are as follows:

1. Facilities with a total design intake flow of 50 million gallons per day (MGD) or more and located on any source waterbody type (50 MGD All Waterbodies);

2. Facilities with a total design intake flow of 200 MGD or more and located on any source waterbody type (200 MGD All Waterbodies);

3. Facilities with a total design intake flow of 100 MGD or more and located on certain source waterbody types (*i.e.*, an ocean, estuary, tidal river/stream or one of the Great Lakes) (100 MGD Coastal/Great Lakes).

These facilities are primarily engaged in the manufacturing of paper, chemicals, petroleum, aluminum, and steel, but include other industries such as food production as well as a few non-manufacturing facilities. As described in the NODA, EPA evaluated Food and Kindred Products as a primary industry; see Chapter B2F of the final EA. Non-manufacturing industries comprise less than 1 percent of the total facilities potentially regulated under each of the co-proposed options. In addition to engaging in production activities, some facilities also generate electricity for their own use and occasionally for sale.

Summary of Facilities Potentially Subject to a Final National Categorical Phase III Regulation for Existing Facilities

Exhibit IX–3 presents, by DIF option, EPA's estimates of (1) the number of existing facilities potentially subject to this rulemaking, (2) the number of baseline closures, and (3) the number of existing facilities subject to national requirements under the proposed regulations, after removal of baseline closures.

EXHIBIT IX–3.—PHASE III EXISTING MANUFACTURERS FACILITY COUNTS, BY DIF OPTION

Industry	Facilities potentially subject to regulation, based on applicability criteria	Baseline closures	Subject to National requirements, excluding baseline closures
50 MGD All Waterbodies			
Primary Man. Industries	155	14	140
Other Industries	7	1	6
Total	161	15	146
Total DIF (MGD)	31,215	1,907	29,308
200 MGD All Waterbodies			
Primary Man. Industries	31	1	30
Other Industries	2	1	1
Total	33	2	31
Total DIF (MGD)	18,973	682	18,292
100 MGD Coastal/Great Lakes			
Primary Man. Industries	24	3	21
Other Industries	3	1	2

EXHIBIT IX–3.—PHASE III EXISTING MANUFACTURERS FACILITY COUNTS, BY DIF OPTION—Continued

Industry	Facilities potentially subject to regulation, based on applicability criteria	Baseline closures	Subject to National requirements, excluding baseline closures
Total	27	4	23
Total DIF (MGD)	8,654	747	7,907

Note: Totals may not sum due to independent rounding.

1. Method for Estimating Costs to Manufacturers

Detailed information was not available for the universe of potential Phase III facilities, and the precise cost and performance of each technology on a site-specific basis cannot be determined. Thus, EPA developed model facility costs using the methodology outlined at proposal (see 69 FR 68498) and discussed in Chapter 5 of the TDD. EPA collected facility-specific process information using a detailed technical survey of Electric Generators and Manufacturers (see 69 FR 68457). EPA first calculated facility-specific costs for 354 facilities for which detailed information was available, and applied the model facility approach used at proposal to the remaining facilities to calculate the industry-level costs. This universe included all potential Phase III facilities, including those with a design intake flow of 2 MGD to 50 MGD that were not included in any of the proposed regulatory options.

As was the case in its analysis of compliance costs for the oil and gas extraction rule promulgated today, EPA adopted the best-performing technology approach for estimating compliance costs at cooling water intakes for Phase III existing facilities. EPA recognizes that the actual technology and/or operational measures that each facility might select are based on site-specific considerations. In particular, it is difficult to determine the precise performance of each technology on a site-specific basis for several hundred facilities. The Agency thus selected, for the subset of sites where multiple technologies could be considered to meet the proposed national categorical requirements, a best performing technology rather than the least cost technology from among the choices. As articulated in the preamble to the Phase II final rule (69 FR 41650), the best performing technology concept relies on assigning technologies around a median cost, with some choices above and some choices below. EPA believes that the best-performing technology approach, unlike a least-cost approach, takes site-specific considerations that cannot be accurately predicted in advance into account. EPA believes that the best-performing technology approach is appropriate to use for existing facilities under Phase III, and it has continued to rely upon it here. EPA notes that the proposal and NODA identified refinements made to the methodology, and made it available for public comment.

In addition to the capital and annual operating costs of the selected technology module, some facilities were projected to incur net downtime costs. Downtime costs generally reflect decreased revenue due to lost production or costs of supplemental power purchases during the retrofit of existing cooling water intake structures. As described in the NODA (70 FR 71057), EPA's record suggests that some manufacturers have the flexibility to alter processes or use other intakes to avoid downtime, and other manufacturers may be able to purchase power and would experience a cost lower than the cost of lost production. For example, 14 percent of manufacturing facilities operate less than 75 percent of the year and would likely avoid downtime by scheduling installation of design and construction technologies during this downtime. Some facilities indicated they would select engineering solutions that avoid the need for downtime. However, downtime may be unavoidable at some facilities. For Phase III model facilities with multiple intakes, final downtime estimates remain at zero for those facilities with shoreline intakes that are not dedicated intakes, as discussed in the proposal. Using the approach presented in the NODA, downtime estimates were reduced by 49 weeks (47 percent), 14 weeks (87 percent), and 11 weeks (39 percent), respectively, for the three regulatory options (50 MGD All Waterbodies, 100 MGD Coastal/Great Lakes, and 200 MGD All Waterbodies, respectively). Costs also reflect the corrected design intake flow as described in the NODA. See chapter 5, section 5 of the TDD and DCN 8–6601A, Downtime Duration Input and Analysis of Manufacturing Facilities, for additional details on the final downtime analysis.

Permit costs, including costs for permitting, monitoring, permit reissuance, and recordkeeping were developed separately as part of the proposed Information Collection Request (ICR) for Cooling Water Intake Structures Phase III ("ICR"; DCN 7–0001). The per facility permit costs were added to the incremental compliance costs, along with installation downtime costs (where appropriate), in developing the total model facility cost. The per facility permit costs may be found in Chapter B1 of the EA (also see the ICR for this rule, DCN 9–0001, for more information).

2. Social Cost for Existing Manufacturing Facilities

EPA calculated the social cost of the principal regulatory options for existing manufacturing facilities using two discount rate values: 3 percent and 7 percent. All dollar values presented are in $2004 (average or mid-year). For the analysis of social costs, EPA discounted all costs to the beginning of 2007, assuming that it would take facilities about six months to begin incurring costs. EPA assumed that all facilities subject to the regulation would achieve compliance between 2010 and 2014. EPA estimated the time profile of compliance and related costs over 30 years from the year of compliance for each complying facility.[10] Costs incurred by governments for administering the regulation were analyzed over the same time frame. The last year for which costs were tallied is 2043. Exhibit IX–4 presents the total social cost.

[10] Benefits are tallied and discounted in the same way, although the total time profile for recognition of benefits is longer than the profile for recognition of costs to account for a 1–6 year lag reflecting population dynamics.

EXHIBIT IX–4.—ANNUALIZED SOCIAL COST [1]

(In millions, $2004)

	50 MGD all waterbodies	200 MGD all waterbodies	100 MGD CWB
Direct Compliance Cost:			
Primary Manufacturing Industries	$36.3–37.1	$18.8–$19.5	$13.7–$13.3
Other Industries	1.3–1.2	0.5–0.4	0.7–0.7
Total Direct Compliance Cost	37.6–38.3	19.3–20.0	14.4–13.9
State and Federal Administrative Cost	0.6–0.6	0.2–0.2	0.2–0.2
Total Social Cost	38.2–39.0	19.5–20.2	14.6–14.1

[1] The left side of each range is the cost discounted at 3%, and the right side of each range presents the cost with a 7% discount rate. The effect of the discount rate varies across regulatory options in the table because the time profile of costs varies across facilities and technology choices.

3. Economic Impacts for Manufacturers

The economic impact analyses assess how facilities, and the firms that own them, would potentially be affected financially by the national categorical options. The facility impact analysis uses compliance cost estimates (see section IX.A.2) to calculate how incurring these costs would affect the financial performance and condition of the regulated facilities.

This section presents EPA's estimated economic impacts on manufacturers for the national categorical regulatory options considered by EPA. Impact measures include (1) facility closures and associated losses in employment, (2) financial stress short of closure ("moderate impacts"), and (3) firm-level impacts. EPA eliminated from this analysis those facilities showing materially inadequate financial performance in the absence of additional regulation ("baseline closures").

For the remaining facilities, EPA identified a facility as a regulatory closure if it would have operated under baseline conditions but would fall below an acceptable financial performance level under additional regulatory requirements. EPA's analysis of regulatory closures is based on the estimated change in facility after-tax cash flow and business value as a result of the national categorical regulatory options considered. (See EA, Chapter B3 for details of the cash flow calculation and assessment of the potential for facility closure as a result of additional regulatory requirements.)

EPA's analysis of moderate financial impact is based on change in facility financial performance and condition as indicated by Interest Coverage Ratio (ICR) and Pre-Tax Return on Assets (PTRA). (See EA Appendix B3–A6 for details of the moderate impacts analysis.) See the EA for a detailed description of EPA's baseline closure analysis and firm level analyses.

As shown in Exhibit IX–5, EPA estimated that none of the baseline-pass facilities would incur a severe impact (closure) or a moderate economic impact (financial impact short of closure) under the national categorical regulatory options considered.

EXHIBIT IX–5.—SUMMARY OF COST AND REGULATORY IMPACTS FOR EXISTING MANUFACTURING FACILITIES BY REGULATORY OPTION

	50 MGD All	200 MGD All	100 MGD CWB
Facilities Operating in Baseline	144	144	144
Facilities with Regulatory Requirements	144	30	24
Percentage of Facilities with Regulatory Requirements	100.0%	20.8%	16.7%
Facilities Assessed as Closures (Severe Impacts)	0	0	0
Percentage of Facilities with Regulatory Requirements Assessed as Closures	0.0%	0.0%	0.0%
Facilities Assessed as Moderate Impacts	0	0	0
Percentage of Facilities with Regulatory Requirements with Moderate Impacts	0.0%	0.0%	0.0%
Annualized Compliance Costs (after tax, million $2004)	$26.8	$11.8	$12.1

X. Benefits Analysis

A. Introduction

Since EPA is not promulgating national section 316(b) requirements for existing Phase III facilities, this action will achieve no benefits with respect to existing facilities. Any benefits associated with establishing section 316(b) requirements for existing Phase III facilities will be realized at the permitting level, as is currently the case, and therefore should not be attributed to today's decision. However, EPA did estimate the benefits for the national categorical regulatory options considered. These benefits estimates should be compared only to the cost estimates for these options for existing Phase III facilities.

The benefit estimates presented below reflect impingement mortality and entrainment reductions at Phase III existing facilities but not at new offshore oil and gas extraction facilities. EPA does not project benefits for facilities that have not yet been built because to do so would require projecting where these facilities would be built and/or operate. For a comparison of social use benefits and total social costs, refer to Section XI.

B. Study Design and Methods

The methodologies used here are built upon those used for estimating benefits of the final rule for Phase II facilities (see FR 69, 41576–693). The national benefit estimates are derived from a series of regional studies for a range of waterbody types throughout the U.S. EPA evaluated impingement and entrainment data from 76 Phase II facilities and 20 potentially regulated

Phase III facilities.[11] Using standard fishery modeling techniques, EPA combined facility-derived impingement and entrainment counts with relevant life history data to derive estimates of (1) age-one equivalent losses (the number of individuals of different ages impinged and entrained expressed as an equivalent number of age-one fish), and (2) foregone fishery yield (pounds of commercial harvest and numbers of recreational fish and shellfish not harvested due to impingement and entrainment). Of the organisms that were anticipated to be protected by the national categorical analysis option, approximately 2 to 3 percent would have been eventually harvested by commercial and recreational fishers and therefore can be valued with direct use valuation techniques.

To obtain a national estimate of losses at all potentially regulated facilities, EPA extrapolated impingement and entrainment rates from facilities with data (model facilities) to facilities without data, on the basis of operational intake flow in millions of gallons per day (MGD). Exhibit X–1 presents EPA's estimates of current annual impingement and entrainment (I&E) and EPA's estimates of annual I&E reductions under the national categorical regulatory options.

EXHIBIT X–1.—ANNUAL IMPINGEMENT AND ENTRAINMENT[a] BASELINE LOSSES AND ESTIMATED REDUCTIONS UNDER THE NATIONAL CATEGORICAL REGULATORY OPTIONS

	Age-1 equivalent fish	Foregone fishery yield (lbs)
Baseline	265,000,000	9,640,000
50 MGD All Option	98,200,000	4,770,000
200 MGD All Option	74,500,000	3,290,000
100 MGD CWB Option	71,100,000	4,510,000

[a] I&E data are rounded to three significant figures.

C. National Benefits

Economic benefits of the national categorical regulatory options for the section 316(b) regulation for Phase III existing facilities can be defined according to categories of goods and services provided by the species affected by impingement and entrainment by cooling water intake structures.

The first category includes benefits that pertain to the use (direct or indirect) of the affected fishery resources. Use value reflects the value of all current direct and indirect uses of a good or service such as commercial and recreational harvest of fish (Mitchell and Carson, 1989, DCN 5–1287). In this context, direct use values are associated with harvested fish, while indirect use values are associated with non-harvested fish that are prey for harvested fish. The second category includes benefits that are independent of any current or anticipated use of the resource; these are known as "non-use" or "passive use" values. Non-use values include "nonmarketed" goods and services, which reflect human values associated with existence, bequest, and altruistic motives.

EPA estimated the economic benefits from the national categorical regulatory options using a range of valuation methods, depending on the benefit category, data availability, and other suitable factors. EPA calculated benefits of the national categorical regulatory options for existing Phase III facilities using two discount rate values: 3 percent and 7 percent. All dollar values presented are in $2004 (average or mid-year). Because avoided fish deaths occur mainly in fish that are younger than harvestable age (eggs, larvae and juveniles), the benefits from avoided impingement and entrainment would be realized typically 3–4 years after their avoided death. A detailed description of the approaches used can be found in the Regional Analysis Document.

1. Use Benefits

To estimate recreational benefits of the national categorical regulatory options, EPA developed a benefits transfer approach based on a meta-analysis of recreational fishing valuation studies designed to measure the various factors that determine willingness-to-pay for catching an additional fish per trip. To estimate the benefits, EPA multiplied the per fish values by the number of additional fish that would be caught by anglers under the national categorical regulatory options due to reductions in impingement and entrainment, compared to current levels of recreational catch. To estimate commercial fishing benefits, EPA monetized the reduction in forgone fishery yield using market prices, effectively assuming that the change in forgone yield was small enough to have an insignificant impact on price.

2. Non-Use Benefits

To assess the public policy significance of the ecological gains from the national categorical regulatory options for Phase III facilities, EPA also attempted to quantify nonuse benefits associated with reduction in impingement and entrainment of fish, shellfish, and other aquatic organisms under the national categorical regulatory options, but was unable to do so in time to meet the consent decree deadline. EPA also conducted a break-even analysis of non-use benefits (see the Regional Analysis Document for details).

3. National Benefits

This section presents EPA's estimated benefits of the national categorical regulatory options considered by EPA's final regulation for Phase III existing facilities. Since the Agency was unable to monetize non-use benefits, the monetized estimates of total benefits reflect use values only. National use benefit estimates (see Exhibit X–2) are subject to uncertainties inherent in valuation approaches used for assessing the benefits categories. The combined effect of these uncertainties is of unknown magnitude or direction (*i.e.*, the estimates may over- or under-state the anticipated national-level benefits); however, EPA has no data to indicate that the results for each benefit category are atypical or unreasonable.

[11] "Potentially regulated Phase III facilities" refers to all existing facilities with design intake flows greater than 2 MGD and not regulated under the Phase II rule.

EXHIBIT X–2.—SUMMARY OF MONETIZED SOCIAL USE BENEFITS UNDER THE NATIONAL CATEGORICAL REGULATORY OPTIONS

[Thousands, $2004][a]

Option	Annualized commercial fishing benefits	Annualized recreational fishing benefits	Total annualized value of monetizable impingement and entrainment reductions[b]
50 MGD All	$255–$321	$1,543–$1,931	$1,798–$2,251
200 MGD All	167–211	1,027–1,288	1,194–1,499
100 MGD CWB	244–308	1,244–1,564	1,489–1,872

[a] All benefits presented in this table are annualized. These annualized benefits represent the value of all benefits generated over the time frame of the analysis, discounted to 2007, and then annualized over a thirty year period. For a more detailed discussion of the discounting methodology, refer to section X.D.2 of this preamble. The low end of these ranges is based on the value of benefits discounted using a 7% discount rate while the high end is based on the value of benefits discounted using a 3% discount rate.

[b] The estimate of the total monetizable value of impingement and entrainment reductions includes use benefits only.

XI. Comparison of Benefits and Costs

Since EPA is not promulgating national section 316(b) requirements for existing Phase III facilities, there are no benefits or compliance costs for existing facilities from this action. However, EPA did estimate the benefits and costs for the regulatory options considered for existing facilities. You can find more information on these benefit and cost analyses in the Economic and Benefits Analysis, Regional Analysis Document, and in the public record for this action.

EPA does not project benefits for facilities that have not yet been built because such estimates would rely on speculating where these facilities would be built and/or operate. EPA has no basis to predict exactly where the new facilities might locate, when the facilities might commence operation, or when and where mobile facilities may relocate; therefore EPA did not develop benefits estimates for new offshore oil and gas extraction facilities. Hence it is not possible to compare quantified costs and benefits associated with this final rule.

This section presents comparisons of the national benefits and costs of the national categorical regulatory options. The benefit-cost analysis for the national categorical regulatory options compares total annualized use benefits to total annualized pre-tax costs (social costs) at existing facilities that remain open in the baseline. Benefits and costs were discounted using both a 3 percent and a 7 percent discount rate. The cost estimates include costs of compliance to facilities subject to the final rule as well as administrative costs incurred by state and local governments and by the federal government. The benefits estimates include monetized benefits to commercial and recreational fishing. The total monetizable benefits include only use benefits. The non-use benefits were evaluated qualitatively.

Exhibit XI–1 summarizes total annualized use benefits, total annualized costs, and net benefits for the national categorical options.

EXHIBIT XI.—SUMMARY OF SOCIAL BENEFITS AND COSTS FOR THE NATIONAL CATEGORICAL REGULATORY OPTIONS

[Millions; $2004]

Option	Number facilities subject to option	Number of facilities installing technology	Total annualized use value of I&E reductions[a]	Total annualized costs[b]	Cost/benefit ratio
50 MGD All Waterbodies	146	111	$1.80–$2.25	$38.27–$39.00	17/1–22/1
200 MGD All Waterbodies	31	27	1.19–1.5	19.48–20.14	13/1–17/1
100 MGD Coastal/Great Lakes	23	22	1.49–1.87	14.57–14.11	8/1–10/1

[a] The total monetizable value of I&E reductions includes use benefits only. EPA evaluated non-use benefits only qualitatively. The low and high use values reflect the range of benefits values presented in Section X of the preamble.

[b] Total costs are based on pre-tax facility costs and include State, local, and Federal administrative costs of $0.6 million. The low and high cost values reflect the range of cost values presented in Section IX of the preamble.

XII. Statutory and Executive Order Reviews

The discussion of the regulatory statutes and Executive Orders in this section addresses requirements relevant to new offshore oil and gas extraction facilities. As discussed in section VI of this preamble, EPA has decided not to promulgate national categorical standards for Phase III existing facilities.

A. Executive Order 12866: Regulatory Planning and Review

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

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Substantive changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2040–0268.

The information collected under this final rule will assist EPA in regulating environmental impacts, namely impingement mortality and entrainment, at cooling water intake structures at new offshore oil and gas extraction facilities. This information will be used by these facilities as appropriate to prepare permit applications and comprehensive demonstration studies, monitor impingement mortality and entrainment, verify compliance, and prepare annual reports as required under this rule. The information collected will be reviewed by EPA to ensure that appropriate National Pollutant Discharge Elimination System (NPDES) permit conditions regulating cooling water intake structures are developed and complied with. Compliance with the applicable information collection requirements imposed under this final rule is mandatory (see §§ 122.21(r), 125.136, 125.137, 125, 138).

EPA does not consider the specific data that will be collected under this final rule to be confidential business information. However, if a respondent does consider this information to be confidential, the respondent may request that such information be treated as confidential. All confidential data submitted to EPA will be handled in accordance with 40 CFR 122.7, 40 CFR part 2, and EPA's Security Manual Part III, Chapter 9, dated August 9, 1976.

This final rule modifies regulations at § 122.21 to require new offshore oil and gas extraction facilities to prepare and submit information consistent with that required for Phase I facilities (the requirements vary based on whether the facility is a "fixed" facility and whether it uses a sea chest). A detailed list of required data items is provided below.

The total average annual burden of the information collection requirements for new offshore oil and gas facilities associated with this final rule is estimated at 11,238 hours for an average of 22 facilities during the first three years after promulgation of the rule. Hence, the annual average reporting and recordkeeping burden for the collection of information from facilities complying with the final rule is estimated to be 511 hours per respondent.

For new offshore oil and gas extraction facilities, the permitting process is handled directly by EPA Regions. Because this burden is incurred by the Federal Government rather than the States, it is not included as part of the burden statement for State Directors. Hence, there will be no increase in the Director reporting and recordkeeping burden for the review, oversight, and administration of the rule.

The corresponding estimates of costs other than labor (labor and non-labor costs are included in the total cost of the final rule discussed in section IX of this preamble) during the first three years after promulgation of the rule is $0.58 million. Non-labor costs include activities such as capital costs for remote monitoring devices, laboratory services, photocopying, and the purchase of supplies. The burden and costs are for the information collection, reporting, and recordkeeping requirements for the three-year period beginning with the assumed effective date of this rule. Additional information collection requirements will occur after this initial three-year period as new offshore oil and gas extraction facilities are issued permits and such requirements will be counted in a subsequent information collection request.

Studies to be submitted by new offshore oil and gas extraction facilities under this final rule are listed below. New offshore oil and gas fixed platforms would be required to provide the general information listed below.

• Source Water Physical Data (§ 122.21(r)(2)) (§ 122.21(r)(2)(iv) only for non-fixed new offshore oil and gas extraction facilities)

• Cooling Water Intake Structure Data (§ 122.21(r)(3)) (§ 122.21(r)(3)(ii) not applicable to non-fixed new offshore oil and gas extraction facilities)

New offshore oil and gas extraction facilities would be required to submit the following information under Track I:

• Source Water Baseline Biological Characterization Data (§ 122.21(r)(4)) (not required for non-fixed facilities)

• Velocity Information (§ 125.136(b)(1))

• Source Waterbody Flow Information (§ 125.136(b)(2)) (only applicable to fixed facilities located in estuaries or tidal waters)

• Design and Construction Technology Plan (§ 125.136(b)(3))

Under Track II, new offshore oil and gas extraction facilities would be required to submit the following information:

• Source Waterbody Flow Information (§ 125.136(c)(1)) (only applicable to fixed facilities located in estuaries or tidal waters)

• Comprehensive Demonstration Study (§ 125.136(c)(2))

○ Source Water Biological Study (§ 125.136(c)(2)(iii)(A))

○ Evaluation of Potential Cooling Water Intake Structure Effects (§ 125.136(c)(2)(iii)(B))

○ Verification Monitoring Plan (§ 125.136(c)(2)(iii)(C))

In addition to the information requirements of the permit application, NPDES permits normally specify monitoring and reporting requirements to be met by the permitted entity. New offshore oil and gas extraction fixed facilities would be required to perform monitoring as determined by the Track I or Track II requirements in § 125.136 and in accordance with § 125.137. Additional ambient water quality monitoring may also be required of facilities depending on the specifications of their permits (e.g., as part of velocity monitoring at § 125 137(b)). New offshore oil and gas extraction facilities would be expected to analyze the results from their monitoring efforts and are required to provide these results in an annual status report to the permitting authority. Finally, facilities would be required to maintain records of all submitted documents, supporting materials, and monitoring results for at least three years

All impacted facilities would carry out the specific activities necessary to fulfill the general information collection requirements. The estimated burden includes developing a water balance diagram that can be used to identify the proportion of intake water used for cooling, make-up, and process water. Facilities would also gather data to calculate the reduction in impingement mortality and entrainment of all life stages of fish and shellfish that would be achieved by the technologies and operational measures they select. The burden estimates include sampling,

assessing the source waterbody, estimating the magnitude of impingement mortality and entrainment, and reporting results in a comprehensive demonstration study. The burden may also include conducting a pilot study to evaluate the suitability of the technologies and operational measures based on the species that are found at the site.

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. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

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. This section summarizes EPA's analyses in compliance with the RFA.

1. Definition of Small Entity

Small entities include small businesses, small organizations, and small governmental jurisdictions. For assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The SBA small business size standards changed from a SIC code-based system to a NAICS code-based system on October 1, 2000. The SBA revised the size standards upwards effective January 5, 2006. Since EPA conducted its data collection effort for existing facilities before these changes, EPA performed the small entity analysis for existing facilities based on SIC codes. EPA then conducted a subsequent analysis to determine if the size standards based on the revised NAICS codes would have any effect on the results of the small entity analysis. To be conservative, for those SIC codes that are associated with more than one NAICS code, the highest threshold of the associated NAICS codes was used as the threshold for the SIC code (e.g., if an SIC was associated with two NAICS codes, one with a small business threshold of 500 employees and one with a small business threshold of 750 employees, the SIC code was assigned a small business threshold of 750 employees, the higher of the associated NAICS). This process ensured that at least all small entities would be captured, but could potentially overstate the total number of small entities. This analysis showed there would be no changes to the small entity determination, and therefore to small entity impacts, as a result of switching from SIC-based size standards to NAICS-based size standards.

2. Certification Statement

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This regulation applies to new offshore oil and gas extraction facilities that withdraw 2 MGD or more from waters of the United States.

3. Statement of Basis

From its analysis, EPA estimates that the final rule will apply national standards to only one small entity, a new offshore oil and gas platform. EPA estimates this entity will incur annualized, after-tax compliance costs of less than 0.1 percent of annual revenue. EPA does not know precisely which firms will undertake construction of new offshore oil and gas extraction facilities. However, based on the firms that are currently active in building the types of facilities representative of those covered by the rulemaking, EPA believes that the small firm analyzed represents the smallest firm that will be involved in such activities over the period of the analysis.

4. Summary of Small Business Advocacy Review Panel

As described at Proposal, although not required by the RFA, EPA convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations from small entity representatives (SERs) during development of the proposed regulation. A summary of EPA's small entity outreach and information on the composition, process, and findings of the SBAR panel can be found in the preamble of the Proposal. As noted above, only one small entity is estimated to be subject to national standards under this final regulation.

5. Small Entity Flexibility Analysis

Despite the determination that this rule will not have a significant economic impact on a substantial number of small entities, EPA prepared at Proposal, and updated its analysis for the final regulation, a Small Entity Flexibility Analysis that has all the components of a Final Regulatory Flexibility Analysis (FRFA). A FRFA examines the impact of a rule on small entities along with regulatory alternatives that could reduce that impact. The Small Entity Flexibility Analysis (which is described in detail in the Economic Analysis document) is available for review in the docket.

Under the final regulation, EPA estimates that only one small entity (a new offshore oil and gas facility) will be subject to the national categorical requirements. The one new offshore oil and gas facility potentially affected by the final rule is estimated to have a cost-to-revenue ratio of less than 0.1 percent.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, 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 intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements.

From its analysis for the final regulation, EPA estimates the total annualized after-tax costs of compliance to be $1.9 million ($2004). All of these direct facility costs are incurred by the private sector (124 oil and gas facilities). No facility owned by State or local governments is subject to the national requirements under the final rule. Additionally, permitting authorities will not incur costs to administer the rule for new offshore oil and gas extraction facilities because these facilities are not likely to be under State jurisdiction. As required by UMRA section 202, EPA estimates that the highest undiscounted after-tax cost incurred by the private sector in any one year is approximately $1.5 million in 2013.

From this analysis, EPA determined that this rule does not contain a Federal mandate that would result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. (See Economic Analysis, Chapter D2: UMRA Analysis, for more detailed information.) At proposal, when including the potential costs of the national categorical rule options, EPA determined that the proposal may have resulted in expenditures of $100 million or more for State, local, or Tribal governments, in the aggregate, or the private sector in any one year (69 FR 68539). Since EPA has chosen to continue to rely upon the permitting authority's best professional judgment to establish section 316(b) limits for existing facilities not covered by the Phase II rule, those potential costs were not included in the estimate for the final rule. EPA has determined that this final rule does not contain a federal mandate of $100 million or more. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Rather, this rule would result in minimal administrative costs to States that have an authorized NPDES program.

States do not incur any burden hours and nonlabor costs to administer the rule for new offshore oil and gas extraction facilities since these facilities are outside of the jurisdiction of the States. EPA has identified zero Phase III existing facilities that are owned by federal, state or local government entities; therefore, the annual impacts on these facilities are zero.

The national cooling water intake structure requirements would be implemented through permits issued under the NPDES program. Forty-five States and the Virgin Islands are currently authorized pursuant to section 402(b) of the CWA to implement the NPDES program. In States not authorized to implement the NPDES program, EPA issues NPDES permits. Under the CWA, States are not required to become authorized to administer the NPDES program. Rather, such authorization is available to States if they operate their programs in a manner consistent with section 402(b) and applicable regulations. Generally, these provisions require that State NPDES programs include requirements that are as stringent as Federal program requirements. States retain the ability to implement requirements that are broader in scope or more stringent than Federal requirements. (See section 510 of the CWA.)

This rule would not have substantial direct effects on either authorized or nonauthorized States or on local governments because it would not change how EPA and the States and local governments interact or their respective authority or responsibilities for implementing the NPDES program. This rule would establish national requirements for new offshore oil and gas extraction facilities with cooling water intake structures. NPDES-authorized States that currently do not comply with the regulations based on this rule might need to amend their regulations or statutes to ensure that their NPDES programs are consistent with Federal section 316(b) requirements. For purposes of this rule, the relationship and distribution of power and responsibilities between the Federal government and the States and local governments are established under the CWA (e.g., sections 402(b) and 510); nothing in this rule would alter that. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State governments and representatives of local governments in developing the rule. During the development of the proposed and final Phase I and Phase II section 316(b) rules and the proposed Phase III rule, EPA conducted several outreach activities through which State and local officials were informed about this rule and they provided information and comments to the Agency. The outreach activities were intended to provide EPA with feedback on issues such as adverse environmental impact, best technology available, and the potential cost associated with various regulatory alternatives. These outreach activities are discussed in section III of the preamble to the proposed rule at 69 FR 68457, as well as in the Response to Comment Document.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires 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 rule would not have tribal implications. It would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. At this time, there are no Tribes that own or operate facilities covered under this rule. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

Nevertheless, in the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA solicited comment on the proposed rule from all stakeholders. EPA did not receive any comments from Tribal governments.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not an economically significant rule (using the $100 million threshold) as defined under Executive Order 12866. Further, it does not concern an environmental health or safety risk that would have a disproportionate effect on children.

H. Executive Order 13211: Actions 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 a significant regulatory action under Executive Order 12866. Based on comments received at Proposal, EPA examined the potential for the regulation to cause a "significant adverse effect" on the Nation's energy economy through its potential impact on petroleum refining operations. EPA performed this analysis, which is documented in the Economic Analysis Report for the final regulation, in accordance with guidance for implementing Executive Order 13211 ("Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"). Based on this analysis, EPA continues to find, as stated at Proposal, that the 316(b) Phase III regulation will not cause a Significant Adverse Effect and does not constitute a Significant Energy Action within the meaning of Executive Order 13211. As a result, EPA did not prepare a Statement of Energy Effects.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113, Sec. 12(d) 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 standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve any technical standards. Therefore, EPA did not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

The Executive Order's main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and/or low-income populations.

This rule would require that the location, design, construction, and capacity of cooling water intake structures at new offshore oil and gas extraction facilities reflect the best technology available for minimizing adverse environmental impact. Due to the offshore location of these facilities, EPA does not expect that this rule would have an exclusionary effect, deny persons the benefits of the participating in a program, or subject persons to discrimination because of their race, color, or national origin.

In fact, because EPA expects that this rule would help to preserve the health of aquatic ecosystems located in reasonable proximity to new offshore oil and gas extraction facilities, it believes that all populations, including minority and low-income populations, would benefit from improved environmental conditions as a result of this rule. Thus EPA concludes that this action will not have the effect of excluding persons (including populations) from participating in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination because of their race, color, or national origin.

K. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to "expeditiously propose new science based regulations, as necessary, to ensure appropriate levels of protection for the marine environment." EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law."

This final rule recognizes the biological sensitivity of tidal rivers,

estuaries, and oceans and their susceptibility to adverse environmental impact from cooling water intake structures. This rule provides requirements for reducing both impingement and entrainment using technologies to minimize adverse environmental impact for cooling water intake structures located on these types of waterbodies.

EPA expects that this rule would reduce impingement and entrainment at new offshore oil and gas extraction facilities. The rule would afford protection of aquatic organisms at individual, population, community, and/or ecosystem levels of ecological structures. Therefore, EPA expects this rule would advance the objective of the Executive Order to protect marine areas.

L. Congressional Review Act

The Congressional Review Act, 5. U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act (SBREFA) 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 can not take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This will be effective July 17, 2006.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 23

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous waste, Indians-lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 125

Environmental protection, Cooling water intake structure, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: June 1, 2006.

Stephen L. Johnson,

Administrator.

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

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671, 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1 the table is amended by revising the entry for "122.21(r)" and by adding entries in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * * * *	
EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	
* * * * * * *	
122.21(r)	2040–0241, 2040–0257, 2040–0268
* * * * * * *	
Criteria and Standards for the National Pollutant Discharge Elimination System	
* * * * * * *	
125.134	2040–0268
125.135	2040–0268
125.136	2040–0268
125.137	2040–0268
125.138	2040–0268
125.139	2040–0268
* * * * * * *	

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 3. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 4. Section 122.21 is amended as follows:

■ a. Revising paragraph (r)(1)(i).

■ b. Removing "and" from the end of paragraph (r)(2)(ii).

■ c. Removing the period at the end of paragraph (r)(2)(iii) and adding "; and" in its place.

■ d. Adding a new paragraph (r)(2)(iv).

■ e. Revising paragraph (r)(4) introductory text.

§ 122.21 Application for a permit (applicable to State programs, see § 123.25)

* * * * *

(r) *Application requirements for facilities with cooling water intake structures*—(1)(i) *New facilities with new or modified cooling water intake structures.* New facilities (other than offshore oil and gas extraction facilities) with cooling water intake structures as defined in part 125, subpart I, of this chapter must submit to the Director for review the information required under paragraphs (r)(2) (except (r)(2)(iv)), (3), and (4) of this section and § 125.86 of this chapter as part of their application. New offshore oil and gas extraction facilities with cooling water intake structures as defined in part 125, subpart N, of this chapter that are fixed facilities must submit to the Director for review the information required under paragraphs (r)(2) (except (r)(2)(iv)), (3), and (4) of this section and § 125.136 of this chapter as part of their application. New offshore oil and gas extraction facilities that are *not* fixed facilities must submit to the Director for review only the information required under paragraphs (r)(2)(iv), (r)(3) (except (r)(3)(ii)), and § 125.136 of this chapter as part of their application. Requests for alternative requirements under § 125.85 or § 125.135 of this chapter must be submitted with your permit application.

* * * * *

(2) * * *

(iv) For new offshore oil and gas facilities that are not fixed facilities, a narrative description and/or locational maps providing information on predicted locations within the waterbody during the permit term in sufficient detail for the Director to determine the appropriateness of additional impingement requirements under § 125.134(b)(4).

* * * * *

(4) Source water baseline biological characterization data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The Director may also use this information in subsequent permit renewal proceedings to determine if your Design and Construction Technology Plan as required in § 125.86(b)(4) or § 125.136(b)(3) of this chapter should be revised. This supporting information must include existing data (if they are available). However, you may supplement the data using newly conducted field studies if you choose to do so. The information you submit must include:

* * * * *

■ 5. Section 122.44 is amended by revising paragraph (b)(3) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(3) Requirements applicable to cooling water intake structures under section 316(b) of the CWA, in accordance with part 125, subparts I, J, and N of this chapter.

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

■ 6. The authority citation for part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 7. Section 123.25 is amended by revising paragraph (a)(36) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(36) Subparts A, B, D, H, I, J, and N of part 125 of this chapter;

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

■ 8. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

■ 9. Section 124.10 is amended by revising paragraph (d)(1)(ix) to read as follows:

§ 124.10 Public notice of permit actions and public comment period.

* * * * *

(d) * * *

(1) * * *

(ix) Requirements applicable to cooling water intake structures under section 316(b) of the CWA, in accordance with part 125, subparts I , J, and N of this chapter.

* * * * *

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 10. The authority citation for part 125 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*; unless otherwise noted.

■ 11. In § 125.93 revise the definition of "existing facility" to read as follows:

§ 125.93 What special definitions apply to this subpart?

* * * * *

Existing facility means any facility that commenced construction as described in 40 CFR 122.29(b)(4) on or before January 17, 2002 or July 17, 2006 for an offshore oil and gas extraction facility); and any modification of, or any addition of a unit at such a facility that does not meet the definition of a new facility at § 125.83.

* * * * *

■ 12. Add subpart N to part 125 to read as follows:

Subpart N—Requirements Applicable to Cooling Water Intake Structures for New Offshore Oil and Gas Extraction Facilities Under Section 316(b) of the Act

Sec.

Subpart N—Requirements Applicable to Cooling Water Intake Structures for New Offshore Oil and Gas Extraction Facilities Under Section 316(b) of the Act

§ 125.130 What are the purpose and scope of this subpart?

(a) This subpart establishes requirements that apply to the location, design, construction, and capacity of cooling water intake structures at new offshore oil and gas extraction facilities. The purpose of these requirements is to establish the best technology available for minimizing adverse environmental

impact associated with the use of cooling water intake structures at these facilities. These requirements are implemented through National Pollutant Discharge Elimination System (NPDES) permits issued under section 402 of the Clean Water Act (CWA).

(b) This subpart implements section 316(b) of the CWA for new offshore oil and gas extraction facilities. Section 316(b) of the CWA provides that any standard established pursuant to sections 301 or 306 of the CWA and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(c) New offshore oil and gas extraction facilities that do not meet the threshold requirements regarding amount of water withdrawn or percentage of water withdrawn for cooling water purposes in § 125.131(a) must meet requirements determined by the Director on a case-by-case, best professional judgement (BPJ) basis.

(d) Nothing in this subpart shall be construed to preclude or deny the right of any State or political subdivision of a State or any interstate agency under section 510 of the CWA to adopt or enforce any requirement with respect to control or abatement of pollution that is more stringent than those required by Federal law.

§ 125.131 Who is subject to this subpart?

(a) This subpart applies to a new offshore oil and gas extraction facility if it meets all of the following criteria:

(1) It is a point source that uses or proposes to use a cooling water intake structure;

(2) It has at least one cooling water intake structure that uses at least 25 percent of the water it withdraws for cooling purposes as specified in paragraph (c) of this section; and

(3) It has a design intake flow greater than two (2) million gallons per day (MGD).

(b) Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with an independent supplier (or multiple suppliers) of cooling water if the supplier or suppliers withdraw(s) water from waters of the United States. Use of cooling water does not include obtaining cooling water from a public water system or the use of treated effluent that otherwise would be discharged to a water of the U.S.

(c) The threshold requirement that at least 25 percent of water withdrawn be used for cooling purposes must be measured on an average monthly basis. A new offshore oil and gas extraction facility meets the 25 percent cooling water threshold if, based on the new facility's design, any monthly average over a year for the percentage of cooling water withdrawn is expected to equal or exceed 25 percent of the total water withdrawn.

(d) Neither this subpart nor Subpart I of this part applies to seafood processing vessels or offshore liquefied natural gas import terminals that are new facilities as defined in 40 CFR 125.83. Seafood processing vessels and offshore liquefied natural gas import terminals must meet requirements established by the Director on a case-by-case, best professional judgment (BPJ) basis.

§ 125.132 When must I comply with this subpart?

You must comply with this subpart when an NPDES permit containing requirements consistent with this subpart is issued to you.

§ 125.133 What special definitions apply to this subpart?

In addition to the definitions set forth at 40 CFR 125.83, the following special definitions apply to this subpart:

Cooling water means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in another industrial process either before or after it is used for cooling is considered process water rather than cooling water for the purposes of calculating the percentage of a new offshore oil and gas extraction facility's intake flow that is used for cooling purposes in § 125.131(c).

Fixed facility means a bottom founded offshore oil and gas extraction facility permanently attached to the seabed or subsoil of the outer continental shelf (e.g., platforms, guyed towers, articulated gravity platforms) or a buoyant facility securely and substantially moored so that it cannot be moved without a special effort (e.g., tension leg platforms, permanently moored semi-submersibles) and which is not intended to be moved during the production life of the well. This definition does not include mobile offshore drilling units (MODUs) (e.g., drill ships, temporarily moored semi-submersibles, jack-ups, submersibles, tender-assisted rigs, and drill barges).

Minimum ambient source water surface elevation means the mean low tidal water level for estuaries or oceans. The mean low tidal water level is the average height of the low water over at least 19 years.

New offshore oil and gas extraction facility means any building, structure, facility, or installation that: meets the definition of a "new facility" at 40 CFR 125.83; and is regulated by the Offshore or Coastal Subcategories of the Oil and Gas Extraction Point Source Category Effluent Guidelines in 40 CFR 435.10 or 40 CFR 435.40; but only if it commences construction after July 17, 2006.

Offshore liquefied natural gas (LNG) import terminal means any facility located in waters defined in 40 CFR 435.10 or 40 CFR 435.40 that liquefies, re-gasifies, transfers, or stores liquefied natural gas.

Sea chest means the underwater compartment or cavity within the facility or vessel hull or pontoon through which sea water is drawn in (for cooling and other purposes) or discharged.

Seafood processing vessel means any offshore or nearshore, floating, mobile, facility engaged in the processing of fresh, frozen, canned, smoked, salted or pickled seafood, seafood paste, mince, or meal.

§ 125.134 As an owner or operator of a new offshore oil and gas extraction facility, what must I do to comply with this subpart?

(a)(1) The owner or operator of a new offshore oil and gas extraction facility must comply with:

(i) Track I in paragraph (b) or Track II in paragraph (c) of this section, if it is a fixed facility; or

(ii) Track I in paragraph (b) of this section, if it is *not* a fixed facility.

(2) In addition to meeting the requirements in paragraph (b) or (c) of this section, the owner or operator of a new offshore oil and gas extraction facility may be required to comply with paragraph (d) of this section.

(b) *Track I requirements for new offshore oil and gas extraction facilities.* (1)(i) New offshore oil and gas extraction facilities that *do not* employ sea chests as cooling water intake structures and are fixed facilities must comply with all of the requirements in paragraphs (b)(2) through (8) of this section.

(ii) New offshore oil and gas extraction facilities that employ sea chests as cooling water intake structures and are fixed facilities must comply with the requirements in paragraphs (b)(2), (3), (4), (6), (7), and (8) of this section.

(iii) New offshore oil and gas extraction facilities that are *not* fixed

facilities must comply with the requirements in paragraphs (b)(2), (4), (6), (7), and (8) of this section.

(2) You must design and construct each cooling water intake structure at your facility to a maximum through-screen design intake velocity of 0.5 ft/s;

(3) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than one (1) percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(4) You must select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if the Director determines that:

(i) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(ii) Based on information submitted by any fishery management agency(ies) or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the Director that pass through the hydraulic zone of influence of the cooling water intake structure; or

(iii) Based on information submitted by any fishery management agency(ies) or other relevant information, that the proposed facility, after meeting the technology-based performance requirements in paragraphs (b)(2) and (5) of this section, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(5) You must select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish;

(6) You must submit the applicable application information required in 40 CFR 122.21(r) and § 125.136(b). If you are a fixed facility you must submit the information required in 40 CFR 122.21(r)(2) (except (r)(2)(iv)), (3), and (4) and § 125.136(b) of this subpart as part of your application. If you are a not a fixed facility, you must only submit the information required in 40 CFR 122.21(r)(2)(iv), (r)(3) (except (r)(3)(ii)) and § 125.136(b) as part of your application.

(7) You must implement the monitoring requirements specified in § 125.137; and

(8) You must implement the recordkeeping requirements specified in § 125.138.

(c) *Track II requirements for new offshore oil and gas extraction facilities.* The owner or operator of a new offshore oil and gas extraction facility that is a fixed facility and chooses to comply under Track II must comply with the following requirements:

(1) You must demonstrate to the Director that the technologies employed will reduce the level of adverse environmental impact from your cooling water intake structures to a comparable level to that which you would achieve were you to implement the applicable requirements of paragraph (b)(2) and, if your facility is a fixed facility without a sea chest, also paragraph (b)(5) of this section. This demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, will be comparable to those which would result if you were to implement the requirements of paragraph (b)(2) and, if your facility is a fixed facility without a sea chest, also paragraph (b)(5) of this section. In identifying such species, the Director may consider information provided by any fishery management agency(ies) along with data and information from other sources;

(2) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than one (1) percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(3) You must submit the applicable information required in 40 CFR 122.21(r)(2) (except (r)(2)(iv)), (3) and (4) and § 125.136(c);

(4) You must implement the monitoring requirements specified in § 125.137;

(5) You must implement the record-keeping requirements specified in § 125.138.

(d) You must comply with any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure or monitoring requirements at a new offshore oil and gas extraction facility that the Director deems are reasonably necessary to comply with any provision of federal or state law, including compliance with applicable state water quality standards (including designated uses, criteria, and antidegradation requirements).

§ 125.135 May alternative requirements be authorized?

(a) Any interested person may request that alternative requirements less stringent than those specified in § 125.134(a) through (d) be imposed in the permit. The Director may establish alternative requirements less stringent than the requirements of § 125.134(a) through (d) only if:

(1) There is an applicable requirement under § 125.134(a) through (d);

(2) The Director determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on energy markets;

(3) The alternative requirement requested is no less stringent than justified by the wholly out of proportion cost or the significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on energy markets; and

(4) The alternative requirement will ensure compliance with other applicable provisions of the Clean Water Act and any applicable requirement of federal or state law.

(b) The burden is on the person requesting the alternative requirement to demonstrate that alternative requirements should be authorized.

§ 125.136 As an owner or operator of a new offshore oil and gas extraction facility, what must I collect and submit when I apply for my new or reissued NPDES permit?

(a)(1) As an owner or operator of a new offshore oil and gas extraction facility, you must submit to the Director a statement that you intend to comply with either:

(i) The Track I requirements for new offshore oil and gas extraction facilities in § 125.134(b); or

(ii) If you are a fixed facility, you may choose to comply with the Track II requirements in § 125.134(c).

(2) You must also submit the application information required by 40 CFR 122.21(r) and the information required in either paragraph (b) of this section for Track I or, if you are a fixed facility that chooses to comply under Track II, paragraph (c) of this section when you apply for a new or reissued NPDES permit in accordance with 40 CFR 122.21.

(b) *Track I application requirements.* To demonstrate compliance with Track I requirements in § 125.134(b), you must

collect and submit to the Director the information in paragraphs (b)(1) through (3) of this section.

(1) *Velocity information.* You must submit the following information to the Director to demonstrate that you are complying with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 ft/s at each cooling water intake structure as required in § 125.134(b)(2):

(i) A narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

(ii) Design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevations (based on best professional judgment using available hydrological data) and maximum head loss across the screens or other device.

(2) *Source waterbody flow information.* If you are a fixed facility and your cooling water intake structure is located in an estuary or tidal river, you must provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that your cooling water intake structure facility meets the flow requirements in § 125.134(b)(3).

(3) *Design and Construction Technology Plan.* To comply with § 125.134(b)(4) and/or (5), if applicable, you must submit to the Director the following information in a Design and Construction Technology Plan:

(i) If the Director determines that additional impingement requirements should be included in your permit:

(A) Information to demonstrate whether or not you meet the criteria in § 125.134(b)(4);

(B) Delineation of the hydraulic zone of influence for your cooling water intake structure;

(ii) New offshore oil and gas extraction facilities required to install design and construction technologies and/or operational measures must develop a plan explaining the technologies and measures you have selected. (Examples of appropriate technologies include, but are not limited to, increased opening to cooling water intake structure to decrease design intake velocity, wedgewire screens, fixed screens, velocity caps, location of cooling water intake opening in waterbody, etc. Examples of appropriate operational measures include, but are not limited to, seasonal shutdowns or reductions in flow, continuous operations of screens, etc.) The plan must contain the following information, if applicable:

(A) A narrative description of the design and operation of the design and construction technologies, including fish-handling and return systems, that you will use to maximize the survival of those species expected to be most susceptible to impingement. Provide species-specific information that demonstrates the efficacy of the technology;

(B) To demonstrate compliance with § 125.134(b)(5), if applicable, a narrative description of the design and operation of the design and construction technologies that you will use to minimize entrainment of those species expected to be the most susceptible to entrainment. Provide species-specific information that demonstrates the efficacy of the technology; and

(C) Design calculations, drawings, and estimates to support the descriptions provided in paragraphs (b)(3)(ii)(A) and (B) of this section.

(c) *Application requirements for Track II.* If you are a fixed facility and have chosen to comply with the requirements of Track II in § 125.134(c) you must collect and submit the following information:

(1) *Source waterbody flow information.* If your cooling water intake structure is located in an estuary or tidal river, you must provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that your cooling water intake structure facility meets the flow requirements in § 125.134(c)(2);

(2) *Track II Comprehensive Demonstration Study.* You must perform and submit the results of a Comprehensive Demonstration Study (Study). This information is required to characterize the source water baseline in the vicinity of the cooling water intake structure(s), characterize operation of the cooling water intake(s), and to confirm that the technology(ies) proposed and/or implemented at your cooling water intake structure reduce the impacts to fish and shellfish to levels comparable to those you would achieve were you to implement the applicable requirements in § 125.134(b).

(i) To meet the "comparable level" requirement, you must demonstrate that:

(A) You have reduced impingement mortality of all life stages of fish and shellfish to 90 percent or greater of the reduction that would be achieved through the applicable requirements in § 125.134(b)(2); and

(B) If you are a facility without sea chests, you have minimized entrainment of entrainable life stages of fish and shellfish to 90 percent or greater of the reduction that would have been achieved through the applicable requirements in § 125.134(b)(5);

(ii) You must develop and submit a plan to the Director containing a proposal for how information will be collected to support the study. The plan must include:

(A) A description of the proposed and/or implemented technology(ies) to be evaluated in the Study;

(B) A list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed Study. If you propose to rely on existing source water body data, it must be no more than 5 years old, you must demonstrate that the existing data are sufficient to develop a scientifically valid estimate of potential impingement mortality and (if applicable) entrainment impacts, and provide documentation showing that the data were collected using appropriate quality assurance/quality control procedures;

(C) Any public participation or consultation with Federal or State agencies undertaken in developing the plan; and

(D) A sampling plan for data that will be collected using actual field studies in the source water body. The sampling plan must document all methods and quality assurance procedures for sampling and data analysis. The sampling and data analysis methods you propose must be appropriate for a quantitative survey and based on consideration of methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure and at least 100 meters beyond); taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods; and

(iii) You must submit documentation of the results of the Study to the Director. Documentation of the results of the Study must include:

(A) *Source Water Biological Study.* The Source Water Biological Study must include:

(*1*) A taxonomic identification and characterization of aquatic biological resources including: A summary of historical and contemporary aquatic biological resources; determination and description of the target populations of concern (those species of fish and shellfish and all life stages that are most susceptible to impingement and entrainment); and a description of the

abundance and temporal/spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily activities (e.g., spawning, feeding and water column migration) of all life stages of fish and shellfish found in the vicinity of the cooling water intake structure;

(*2*) An identification of all threatened or endangered species that might be susceptible to impingement and entrainment by the proposed cooling water intake structure(s); and

(*3*) A description of additional chemical, water quality, and other anthropogenic stresses on the source waterbody.

(B) *Evaluation of potential cooling water intake structure effects.* This evaluation must include:

(*1*) Calculations of the reduction in impingement mortality and, (if applicable), entrainment of all life stages of fish and shellfish that would need to be achieved by the technologies you have selected to implement to meet requirements under Track II. To do this, you must determine the reduction in impingement mortality and entrainment that would be achieved by implementing the requirements of § 125.134(b)(2) and, for facilities without sea chests, § 125.134(b)(5) of Track I at your site.

(*2*) An engineering estimate of efficacy for the proposed and/or implemented technologies used to minimize impingement mortality and (if applicable) entrainment of all life stages of fish and shellfish and maximize survival of impinged life stages of fish and shellfish. You must demonstrate that the technologies reduce impingement mortality and (if applicable) entrainment of all life stages of fish and shellfish to a comparable level to that which you would achieve were you to implement the requirements in § 125.134(b)(2) and, for facilities without sea chests, § 125.134(b)(5) of Track I. The efficacy projection must include a site-specific evaluation of technology(ies) suitability for reducing impingement mortality and (if applicable) entrainment based on the results of the Source Water Biological Study in paragraph (c)(2)(iii)(A) of this section. Efficacy estimates may be determined based on case studies that have been conducted in the vicinity of the cooling water intake structure and/or site-specific technology prototype studies.

(C) *Verification monitoring plan.* You must include in the Study a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or implemented technologies and/or operational measures. The verification study must begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the facility is reducing the level of impingement mortality and (if applicable) entrainment to the level documented in paragraph (c)(2)(iii)(B) of this section. The plan must describe the frequency of monitoring and the parameters to be monitored. The Director will use the verification monitoring to confirm that you are meeting the level of impingement mortality and entrainment reduction required in § 125.134(c), and that the operation of the technology has been optimized.

§ 125.137 As an owner or operator of a new offshore oil and gas extraction facility, must I perform monitoring?

As an owner or operator of a new offshore oil and gas extraction facility, you will be required to perform monitoring to demonstrate your compliance with the requirements specified in § 125.134 or alternative requirements under § 125.135.

(a) *Biological monitoring.* (1)(i) Fixed facilities without sea chests that choose to comply with the Track I requirements in § 125.134(b)(1)(i) must monitor for entrainment. These facilities are not required to monitor for impingement, unless the Director determines that the information would be necessary to evaluate the need for or compliance with additional requirements in accordance with § 125.134(b)(4) or more stringent requirements in accordance with § 125.134(d).

(ii) Fixed facilities with sea chests that choose to comply with Track I requirements are not required to perform biological monitoring unless the Director determines that the information would be necessary to evaluate the need for or compliance with additional requirements in accordance with § 125.134(b)(4) or more stringent requirements in accordance with § 125.134(d).

(iii) Facilities that are not fixed facilities are not required to perform biological monitoring unless the Director determines that the information would be necessary to evaluate the need for or compliance with additional requirements in accordance with § 125.134(b)(4) or more stringent requirements in accordance with § 125.134(d).

(iv) Fixed facilities with sea chests that choose to comply with Track II requirements in accordance with § 125.134(c), must monitor for impingement only. Fixed facilities without sea chests that choose to comply with Track II requirements, must monitor for both impingement and entrainment.

(2) Monitoring must characterize the impingement rates and (if applicable) entrainment rates) of commercial, recreational, and forage base fish and shellfish species identified in the Source Water Baseline Biological Characterization data required by 40 CFR 122.21(r)(4), identified in the Comprehensive Demonstration Study required by § 125.136(c)(2), or as specified by the Director.

(3) The monitoring methods used must be consistent with those used for the Source Water Baseline Biological Characterization data required in 40 CFR 122.21(r)(4), those used by the Comprehensive Demonstration Study required by § 125.136(c)(2), or as specified by the Director. You must follow the monitoring frequencies identified below for at least two (2) years after the initial permit issuance. After that time, the Director may approve a request for less frequent sampling in the remaining years of the permit term and when the permit is reissued, if supporting data show that less frequent monitoring would still allow for the detection of any seasonal variations in the species and numbers of individuals that are impinged or entrained.

(4) *Impingement sampling.* You must collect samples to monitor impingement rates (simple enumeration) for each species over a 24-hour period and no less than once per month when the cooling water intake structure is in operation.

(5) *Entrainment sampling.* If your facility is subject to the requirements of § 125.134(b)(1)(i), or if your facility is subject to § 125.134(c) and is a fixed facility without a sea chest, you must collect samples to monitor entrainment rates (simple enumeration) for each species over a 24-hour period and no less than biweekly during the primary period of reproduction, larval recruitment, and peak abundance identified during the Source Water Baseline Biological Characterization required by 40 CFR 122.21(r)(4) or the Comprehensive Demonstration Study required in § 125.136(c)(2). You must collect samples only when the cooling water intake structure is in operation.

(b) *Velocity monitoring.* If your facility uses a surface intake screen systems, you must monitor head loss across the screens and correlate the measured value with the design intake velocity. The head loss across the intake screen must be measured at the

minimum ambient source water surface elevation (best professional judgment based on available hydrological data). The maximum head loss across the screen for each cooling water intake structure must be used to determine compliance with the velocity requirement in § 125.134(b)(2). If your facility uses devices other than surface intake screens, you must monitor velocity at the point of entry through the device. You must monitor head loss or velocity during initial facility startup, and thereafter, at the frequency specified in your NPDES permit, but no less than once per quarter.

(c) *Visual or remote inspections.* You must either conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. You must conduct visual inspections at least weekly to ensure that any design and construction technologies required in § 125.134(b)(4), (b)(5), (c), and/or (d) are maintained and operated to ensure that they will continue to function as designed. Alternatively, you must inspect via remote monitoring devices to ensure that the impingement and entrainment technologies are functioning as designed.

§ 125.138 As an owner or operator of a new offshore oil and gas extraction facility, must I keep records and report?

As an owner or operator of a new offshore oil and gas extraction facility you are required to keep records and report information and data to the Director as follows:

(a) You must keep records of all the data used to complete the permit application and show compliance with the requirements, any supplemental information developed under § 125.136, and any compliance monitoring data submitted under § 125.137, for a period of at least three (3) years from the date of permit issuance. The Director may require that these records be kept for a longer period.

(b) You must provide the following to the Director in a yearly status report:

(1) For fixed facilities, biological monitoring records for each cooling water intake structure as required by § 125.137(a);

(2) Velocity and head loss monitoring records for each cooling water intake structure as required by § 125.137(b); and

(3) Records of visual or remote inspections as required in § 125.137(c).

§ 125.139 As the Director, what must I do to comply with the requirements of this subpart?

(a) *Permit application.* As the Director, you must review materials submitted by the applicant under 40 CFR 122.21(r), § 125.135, and § 125.136 at the time of the initial permit application and before each permit renewal or reissuance.

(1) After receiving the initial permit application from the owner or operator of a new offshore oil and gas extraction facility, the Director must determine applicable standards in § 125.134 or § 125.135 to apply to the new offshore oil and gas extraction facility. In addition, the Director must review materials to determine compliance with the applicable standards.

(2) For each subsequent permit renewal, the Director must review the application materials and monitoring data to determine whether requirements, or additional requirements, for design and construction technologies or operational measures should be included in the permit.

(3) For Track II facilities, the Director may review the information collection proposal plan required by § 125.136(c)(2)(ii). The facility may initiate sampling and data collection activities prior to receiving comment from the Director.

(b) *Permitting requirements.* Section 316(b) requirements are implemented for a facility through an NPDES permit. As the Director, you must determine, based on the information submitted by the new offshore oil and gas extraction facility in its permit application, the appropriate requirements and conditions to include in the permit based on the track (Track I or Track II), or alternative requirements in accordance with § 125.135, the new offshore oil and gas extraction facility has chosen to comply with. The following requirements must be included in each permit:

(1) *Cooling water intake structure requirements.* At a minimum, the permit conditions must include the performance standards that implement the applicable requirements of § 125.134(b)(2), (3), (4) and (5); § 125.134(c)(1) and (2); or § 125.135.

(i) For a facility that chooses Track I, you must review the Design and Construction Technology Plan required in § 125.136(b)(3) to evaluate the suitability and feasibility of the technology proposed to minimize impingement mortality and (if applicable) entrainment of all life stages of fish and shellfish. In the first permit issued, you must include a condition requiring the facility to reduce impingement mortality and/or entrainment commensurate with the implementation of the technologies in the permit. Under subsequent permits, the Director must review the performance of the technologies implemented and require additional or different design and construction technologies, if needed to minimize impingement mortality and/or entrainment of all life stages of fish and shellfish. In addition, you must consider whether more stringent conditions are reasonably necessary in accordance with § 125.134(d).

(ii) For a fixed facility that chooses Track II, you must review the information submitted with the Comprehensive Demonstration Study information required in § 125.136(c)(2), evaluate the suitability of the proposed design and construction technology and/or operational measures to determine whether they will reduce both impingement mortality and/or entrainment of all life stages of fish and shellfish to 90 percent or greater of the reduction that could be achieved through Track I. In addition, you must review the Verification Monitoring Plan in § 125.136(c)(2)(iii)(C) and require that the proposed monitoring begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the technologies and operational measures meet the requirements in § 125.134(c)(1). Under subsequent permits, the Director must review the performance of the additional and /or different technologies or measures used and determine that they reduce the level of adverse environmental impact from the cooling water intake structures to a comparable level that the facility would achieve were it to implement the requirements of § 125.134(b)(2) and, if applicable, § 125.134(b)(5).

(iii) If a facility requests alternative requirements in accordance with § 125.135, you must determine if data specific to the facility meet the requirements in § 125.135(a) and include in the permit requirements that are no less stringent than justified by the wholly out of proportion cost or the significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on energy markets.

(2) *Monitoring conditions.* At a minimum, the permit must require the permittee to perform the monitoring required in § 125.137. You may modify the monitoring program when the permit is reissued and during the term of the permit based on changes in physical or biological conditions in the vicinity of the cooling water intake structure. The Director may require continued monitoring based on the results of monitoring done pursuant to

the Verification Monitoring Plan in § 125.136(c)(2)(iii)(C).

(3) *Record keeping and reporting.* At a minimum, the permit must require the permittee to report and keep records as required by § 125.138.

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June 16, 2006

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Perdido Key Beach Mouse, Choctawhatchee Beach Mouse, and St. Andrew Beach Mouse; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT90

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Perdido Key Beach Mouse, Choctawhatchee Beach Mouse, and St. Andrew Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of comment period, notice of availability of draft economic analysis, and notice of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period and a public hearing on the proposed designation of critical habitat for the Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*), Choctawhatchee beach mouse (*Peromyscus polionotus allophrys*), and St. Andrew beach mouse (*Peromyscus polionotus peninsularis*) and the availability of the draft economic analysis of the proposed designation of critical habitat under the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq. (Act). We are also using this comment period to modify the boundary of proposed critical habitat unit CBM–5 for Choctawhatchee beach mouse and PKBM–5 for Perdido Key beach mouse, correct an error made in the proposed rule, and solicit further comments on the proposed rule. The draft economic analysis finds that costs associated with conservation activities for the three beach mice are forecast to range from $60.4 million to $107.7 million in undiscounted dollars over the next 20 years. Adjusted for possible inflation, the costs would range from $56.3 million to $103.3 million over 20 years, or $3.8 million to $6.9 million annually using a three percent discount; or $52.5 million to $99.4 million over 20 years, or $5.0 million to $9.4 million annually using a seven percent discount rate. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period and will be fully considered in preparation of the final rule.

DATES: *Written comments:* We will accept public comments until 5 p.m. on July 17, 2006. *Public hearings:* The Service has scheduled a public hearing for Choctawhatchee beach mouse and St. Andrew beach mouse on June 26, 2006 and one for Perdido Key beach mouse on June 27, 2006 regarding the proposed critical habitat designation and the draft economic analysis from 6:30 p.m. until 8:30 p.m. Informal informational meetings will precede each hearing from 5 p.m. until 6:30 p.m.

ADDRESSES: *Written comments:* If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Panama City Fish and Wildlife Office, 1601 Balboa Avenue, Panama City, Florida 32405.
2. You may hand-deliver written comments to our Office, at the above address.
3. You may send comments by electronic mail (e-mail) to *floridabeachmouse@fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.
4. You may provide oral or written comments at any of the public hearings.
5. You may fax your comments to 850–763–2177.
6. You may submit your comments through the Federal E-rulemaking Portal at *http://www.regulations.gov*.

Public Hearings: The public hearing for the Choctawhatchee beach mouse and St. Andrew beach mouse on June 26, 2006, will be held at the Gulf Coast Community College, Student Union East Building, Conference Center, 5230 West U.S. Highway 98, Panama City, Florida 32401. The public hearing for the Perdido Key beach mouse on June 27, 2006, will be held at the Perdido Bay Community Center, 13660 Innerarity Point Road, Pensacola, FL 32507.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, U.S. Fish and Wildlife Service, Panama City, Florida 32405, (telephone 850–769–0552; facsimile 850–763–2177).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether it is prudent to designate critical habitat;

(2) Specific information on the presence of Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse habitat, particularly what areas should be included in the designations that were occupied at the time of listing that contain features that are essential for the conservation of the species and why; what areas that were not occupied at listing are essential to the conservation of the species and why; and whether the proposed unit SABM–2 that is now considered unoccupied is essential to the conservation of the species, should be designated as critical habitat, and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(5) Information from the Department of Defense to assist the Secretary of the Interior in evaluating critical habitat on lands administered by or under the control of the Department of Defense based on any benefit provided by an Integrated Natural Resources Management Plan (INRMP) to the conservation of the Choctawhatchee beach mouse and St. Andrew beach mouse; and information regarding impacts to national security associated with the proposed designation of critical habitat;

(6) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(7) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(8) Whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat;

(9) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, and in particular, any impacts on small entities or families; and other information that would indicate that the designation of critical habitat would or would not have

any impacts on small entities or families;

(10) Whether the draft economic analysis appropriately identifies all costs and benefits that could result from the designation;

(11) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments; and

(12) Whether the benefits of exclusion in any particular area outweigh the benefits of inclusion under section 4(b)(2) of the Act.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit comments electronically to *floridabeachmouse@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: Beach mouse critical habitat" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your electronic message, contact us directly by calling the Panama City U.S. Fish and Wildlife Service Office at phone number 850–769–0552. Please note that the e-mail address *floridabeachmouse@fws.gov* will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. We will not consider anonymous comments and we will make all comments available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service Office at the above address.

Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at *http://www.fws.gov/panamacity* or from the Panama City Fish and Wildlife Office at the address and contact numbers above.

Our final designation of critical habitat will take into consideration all comments and any additional information we received during both comment periods. Previous comments and information submitted during the initial comment period on the December 15, 2005, proposed rule (70 FR 74425) need not be resubmitted. On the basis of public comment on this analysis and on the critical habitat proposal, and the final economic analysis, we may during the development of our final determination find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or not appropriate for exclusion. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Panama City U.S. Fish and Wildlife Service Office (see **ADDRESSES** section).

Public Hearing

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearing, please contact the Panama City Fish and Wildlife Office (see **ADDRESSES** above). Persons needing reasonable accommodations in order to attend and participate in the public hearings should contact Gail Carmody at (850) 769–0552 as soon as possible. To allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding the proposal is available in alternative formats upon request.

Background

On December 15, 2005, we published a proposed rule to revise critical habitat for the Perdido Key beach mouse and Choctawhatchee beach mouse, and designate critical habitat for the St. Andrew beach mouse (70 FR 74425). We proposed to designate a total of 13 coastal dune areas (units) in southern Alabama and the panhandle of Florida as critical habitat for the three subspecies of beach mice. These 13 units include 5 units for the Perdido Key beach mouse, 5 units for the Choctawhatchee beach mouse, and 3 units for the St. Andrew beach mouse. As a result of revisions outlined in this revised proposed rule, these units now total 6,416 acres (ac) (2,595 hectares (ha)) of coastal dunes, and include 1,300 ac (526 ha) for the Perdido Key beach mouse in Escambia County, Florida, and Baldwin County, Alabama; 2,483 ac (1,004 ha) for the Choctawhatchee beach mouse, in Okaloosa, Walton, and Bay Counties, Florida; and 2,633 ac (1,065 ha) for the St. Andrew beach mouse in Bay and Gulf Counties, Florida. For the Choctawhatchee and Perdido Key beach mice, the revised designation of critical habitat is a landward expansion of previously designated units to include scrub dune habitat, which is now known to play a crucial role in the long-term persistence of beach mice. We are proposing to exempt two areas that possess incidental take permits under the Act, because of their existing conservation plans. Other than the amendments just described, the proposed rule of December 15, 2005, remains intact. We will submit for publication in the **Federal Register** a final critical habitat designation for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse on or before September 30, 2006.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

By this document, we are also advising the public of three changes to the proposed rule. First, we regret that an error was inadvertently made in the proposed rule concerning unit SABM–2 for St. Andrew beach mouse. This unit was listed in the proposed rule as currently occupied by the St. Andrew beach mouse; however, this unit has been live-trapped extensively to determine presence of the species and is not known to be occupied at this time. However, we believe, based on research conducted by Bowen (1968, page 21), that St. Andrew beach mice were present historically at the location currently proposed for designation. This unit contains features essential to the

conservation of the species. This area provides frontal and secondary dune habitat. It provides Primary Constituent Elements 2, 3, and 4 that were described in the proposed rule. Since St. Andrew beach mice are currently limited to two populations, protecting this mainland site located within the species' historic range is needed for the subspecies' long-term persistence. Since other viable opportunities are limited or nonexistent, this unit is essential to the conservation of the species because it reduces the threats of stochastic events to this subspecies, particularly hurricanes. Unlike the other two SABM units, this unit is somewhat buffered from the effects of storm events due to its location on the mainland.

Second, we would like to make two modifications: (1) Unit CBM–5 for Choctowhatchee beach mouse to include 96 additional acres (39 ha) on Tyndall Air Force Base (Figure 1); and (2) the boundary of unit PKBM–5 for Perdido Key beach mouse to include an additional 36 ac (15 ha) of lands immediately north of the area currently proposed for designation within Gulf Islands National Seashore (Figure 2). The additional area proposed for critical habitat designation within Gulf Islands National Seashore includes two areas that initially appeared to have infrequent connectivity with Perdido Key. However, recent field reconnaissance has identified that these two areas are connected more often than previously realized and act as crucial refuge areas for the Perdido Key beach mouse during and after hurricanes. These two locations are among the few areas where vegetation and beach mice withstood impacts from Hurricane Ivan in 2004 and Hurricanes Cindy, Dennis, Katrina and Tropical Storm Arlene in 2005. The additional area proposed for critical habitat designation within Tyndall Air Force Base is partially an artifact of mapping with older baseline maps and partially due to the shifting coastline on West Crooked Island. These shifts are a result of the above-named storms as well as the natural erosion and accretion that occur daily in coastal environments from wind and waves. In addition, new information from the State Fish and Wildlife Commission indicates that the Choctawhatchee beach mouse is present in this area. This addition more accurately represents the current coastline and coastal dune habitat for beach mice in CBM–5, since the previous map did not include all areas on Tyndall Air Force Base where beach mice are currently present.

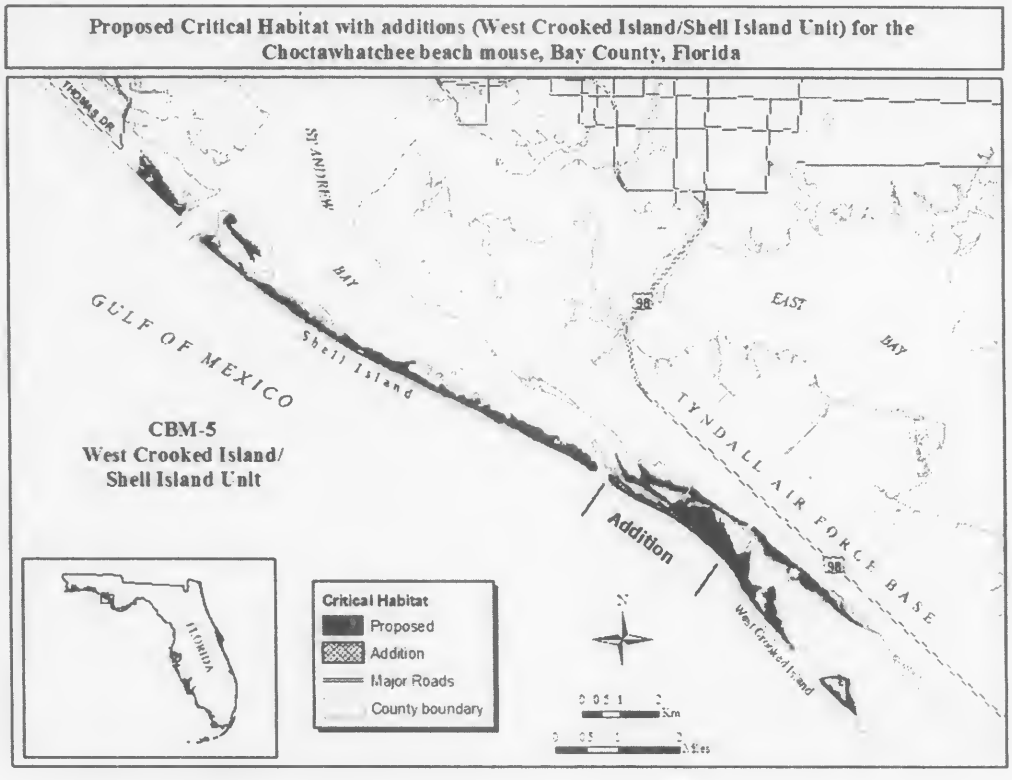

Figure 1: Area proposed for critical habitat designation on Tyndall Air Force Base (CBM-5)

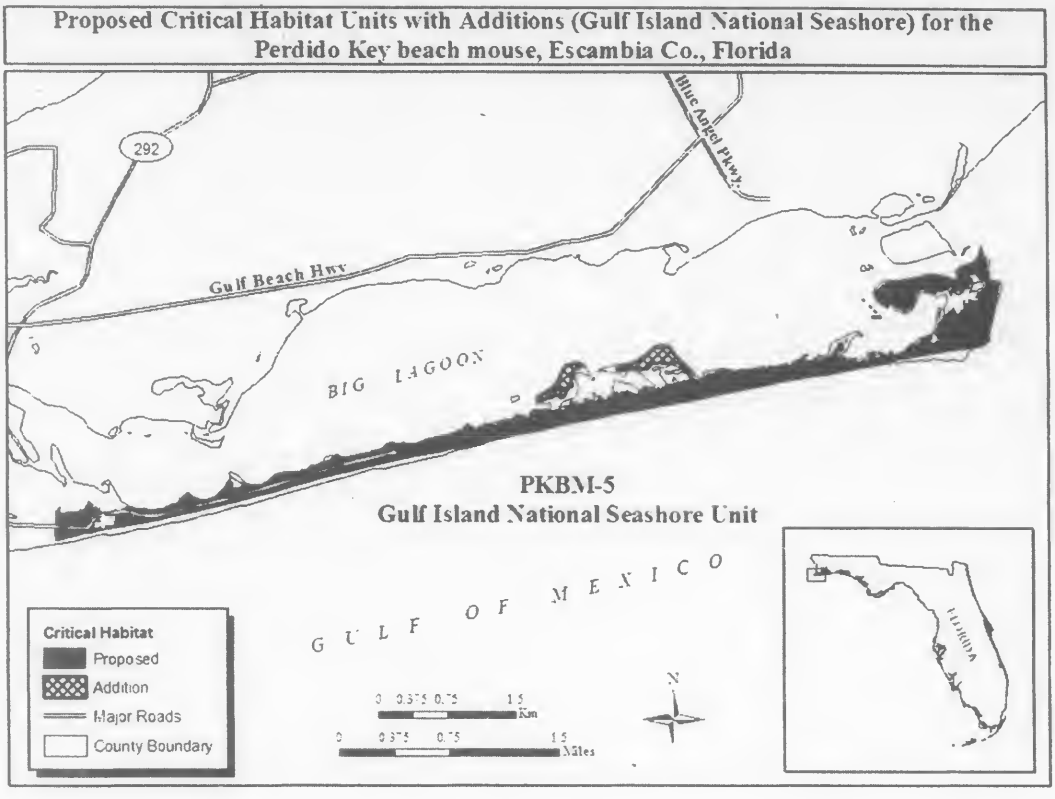

Figure 2: Area proposed for critical habitat designation within Gulf Islands National Seashore (PKBM-5)

Third, acreage estimates of the proposed critical habitat units for St. Andrew beach mice and Choctawhatchee beach mice differ in this revised proposed rule from those in the proposed rule. Some acreage values in the proposed rule were inadvertently not recalculated after edits were made. These acreage differences are minor and do not change the maps that were published in the proposed rule; the maps are a true representation of the updated acreage. Please refer to Tables 1 through 3 (below) for the updated acreage calculations for each species.

TABLE 1.—REVISED ACREAGES FOR PERDIDO KEY BEACH MOUSE PROPOSED CRITICAL HABITAT UNITS

Critical habitat units for Perdido Key beach mouse	Federal acres/ hectares	State acres/ hectares	Local and private acres/ hectares	Total acres/ hectares	Change in acres/hectares
1. Gulf State Park	0	115/46	0	115/46	0
2. West Perdido Key	0	0	147/59	147/59	0
3. Perdido Key State Park	0	238/96	0	238/96	0
4. Gulf Beach	0	0	162/66	162/66	0
5. Gulf Islands National Seashore	638/258	0	0	638/258	36/15*
Total	638/258	353/142	309/125	1,300/526	36/15*

*This is the result of an addition (as previously described), not a recalculation.

TABLE 2.—REVISED ACREAGES FOR CHOCTAWHATCHEE BEACH MOUSE PROPOSED CRITICAL HABITAT UNITS

Critical Habitat Units for Choctawhatchee beach mouse	Federal acres/ hectares	State acres/ hectares	Local and private acres/ hectares	Total acres/ hectares	Change in acres/hectares
1. Henderson Beach	0	96/39	0	96/39	0

TABLE 2.—REVISED ACREAGES FOR CHOCTAWHATCHEE BEACH MOUSE PROPOSED CRITICAL HABITAT UNITS—Continued

Critical Habitat Units for Choctawhatchee beach mouse	Federal acres/ hectares	State acres/ hectares	Local and private acres/ hectares	Total acres/ hectares	Change in acres/hectares
2. Topsail Hill	0	277/112	35/14	313/126	12/5
3. Grayton Beach	0	162/66	21/8	183/74	11/4
4. Deer Lake	0	40/16	80/32	120/48	4/2
5. West Crooked Island/Shell Island	1,649/667	408/165	30/12	1,771/677	122/49*
Total	1,649/667	983/398	166/67	2,483/1,004	149/60*

*Includes 26 acres representing a recalculation and a 96-acre addition (as previously described).

TABLE 3.—REVISED ACREAGES FOR ST. ANDREW BEACH MOUSE PROPOSED CRITICAL HABITAT UNITS

Critical Habitat Units for St. Andrew beach mouse	Federal acres/ hectares	State acres/ hectares	Local and private acres/ hectares	Total acres/ hectares	Change in acres/hectares
1. East Crooked Island	649/263	0	321/130	970/393	0
2. Palm Point	0	0	162/65	162/65	23/9
3. St. Joseph Peninsula	0	1,280/518	221/89	1,501/607	0
Total	649/263	1,280/518	704/284	2,633/1,065	23/9

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic or any other relevant impact of specifying any particular area as critical habitat. We will continue to review any conservation or management plans that address the species within the areas proposed for designation, pursuant to section 4(b)(2) and based on the definition of critical habitat provided in section 3(5)(A) of the Act.

Based on the December 15, 2005, proposed rule to designate critical habitat for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis considers the potential economic effects of actions relating to the conservation of the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse in critical habitat areas. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this draft analysis looks retrospectively at costs that have been incurred since the date the species were listed as endangered (50 FR 23872, June 6, 1985 for PKBM, CBM; 63 FR 70053, December 18, 1998 for SABM) and considers those costs that may occur in the 20 years following a designation of critical habitat.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period.

The current draft economic analysis estimates the foreseeable economic impacts of the proposed critical habitat designation on government agencies and private businesses and individuals. The draft economic analysis finds that costs associated with conservation activities for the three beach mice are forecast to range from $60.4 million to $107.7 million in undiscounted dollars over the next 20 years. Adjusted for possible inflation, the costs would range from $56.3 million to $103.3 million over 20 years, or $3.8 million to $6.9 million annually using a three percent discount; or $52.5 million to $99.4 million over 20 years, or $5.0 million to $9.4 million annually using a seven percent discount rate as a result of the proposed critical habitat designation. The analysis measures lost economic efficiency associated with residential and commercial development, and public projects and activities, such as economic impacts on transportation projects, the energy industry, and State and Federal lands. Overall, the residential and commercial development industry is calculated to experience the highest proportion of these costs (98 percent).

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the

determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. We believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (such as residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies.

In our draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse and proposed designation of their critical habitat. This analysis estimated prospective economic impacts due to the implementation of three Florida beach mice conservation efforts in seven categories: private development activities, recreation, tropical storms and hurricanes, dredging and disposal operations, species management and habitat protection activities, road construction and maintenance, and military activities. We determined from our analysis that in six of these seven categories, impacts of the three Florida beach mice conservation efforts are not anticipated to impact small business. The small business entities that may be affected are private development firms. Costs associated with residential and commercial development comprise 98 percent of the total quantified future impacts. The costs associated with development for the three beach mice are forecast to range from $56.7 million to $102.9 million in undiscounted dollars over the next 20 years. Costs are expected to be $53.5 to $99.7 million over the next 20 years ($3.6 million to $6.7 million annually) assuming a three percent discount, or $50.5 million to $96.8 million over the next 20 years ($4.8 million to $9.1 million annually) assuming a seven percent discount rate, on approximately 614 acres of developable private lands. Conservation effort costs include land preservation (set-asides), monitoring, and predator control that may be required of new development activity on private land. Approximately 562 individual landowners may be impacted by conservation efforts for the three Florida beach mice, assuming each parcel is owned by a different landowner. Among those impacted, the analysis found two developers that may experience a reduction of the value of their land in areas proposed for designation of critical habitat; however, neither of these is considered a small entity. This analysis assumes that, in general, landowners are private citizens and not developers. Thus, although 562 landowners may be affected by this designation, few are anticipated to be small entities. Therefore, we do not believe that the designation of critical habitat for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse will result in a disproportionate effect to small business entities. Please refer to our draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse, the impacts on nonprofits and small governments are expected to be negligible. It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of critical habitat for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse does not pose significant takings implications.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Panama City Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this notice is the staff of the Panama City, Florida Office of the U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Critical habitat for the Choctawhatchee beach mouse (*Peromyscus polionotus allophrys*) and the Perdido Key beach mouse (*Peromyscus polionotus trissyllepsi*) in § 17.95(a), which was proposed to be added on December 15, 2005, at 70 FR 74425, is proposed to be amended by revising the critical habitat unit description for CBM—Unit 5 and map 4 of CBM—Unit 5, the index map for Perdido Key beach mouse, the critical habitat unit description for PKBM—Unit 5, and map 3 of PKBM—Units 4 and 5, as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Choctowhatchee Beach Mouse (*Peromyscus polionotus allophrys*)

* * * * *

(10) CBM—Unit 5: West Crooked Island/Shell Island Unit, Bay County, Florida.

(i) *General Description:* Unit 5 consists of 1,771 ac (677 ha) in Bay County, Florida. This unit encompasses essential features of beach mouse habitat within the boundaries of St. Andrew State Park mainland from 0.1 mile east of trailer park road east to the entrance channel of St. Andrew Sound, Shell Island east of the entrance of St. Andrew Sound east to East Pass, and West Crooked Island southwest of East Bay and east of the entrance channel of St. Andrew Sound, and areas from the MHWL north to the seaward extent of the maritime forest. Shell Island consists of State lands, Tyndall Air Force Base lands, as well as small private inholdings.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle maps Panama City, Beacon

Beach, and Long Point, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): West Crooked Island/Shell Island Unit CBM–5
620962.07, 3334745.86; 620978.22, 3334694.43; 620963.77, 3334700.01; 620976.15, 3334719.99; 620956.70, 3334712.88; 620956.66, 3334745.41; 620948.27, 3334763.05; 620928.14, 3334789.51; 620941.26, 3334789.03; 620978.37, 3334767.36; 620984.33, 3334751.28; 620994.82, 3334745.55; 620996.00, 3334720.43; 620977.67, 3334704.34; 620978.22, 3334694.43 621115.29, 3334512.76; 621027.54, 3334677.02; 621042.28, 3334675.83; 621059.27, 3334679.82; 621060.65, 3334656.44; 621061.40, 3334642.23; 621051.64, 3334635.24; 621048.65, 3334627.99; 621059.23, 3334617.95; 621063.55, 3334604.20; 621091.01, 3334602.89; 621105.19, 3334592.20; 621106.52, 3334602.91; 621092.44, 3334625.15; 621100.13, 3334635.27; 621117.48, 3334624.97; 621118.44, 3334618.25; 621133.23, 3334615.07; 621141.80, 3334605.79; 621136.35, 3334585.80; 621138.72, 3334570.44; 621145.26, 3334563.87; 621157.36, 3334572.10; 621172.61, 3334571.05; 621173.34, 3334542.35; 621169.33, 3334538.13; 621161.41, 3334525.63; 621149.18, 3334521.20; 621149.38, 3334513.03; 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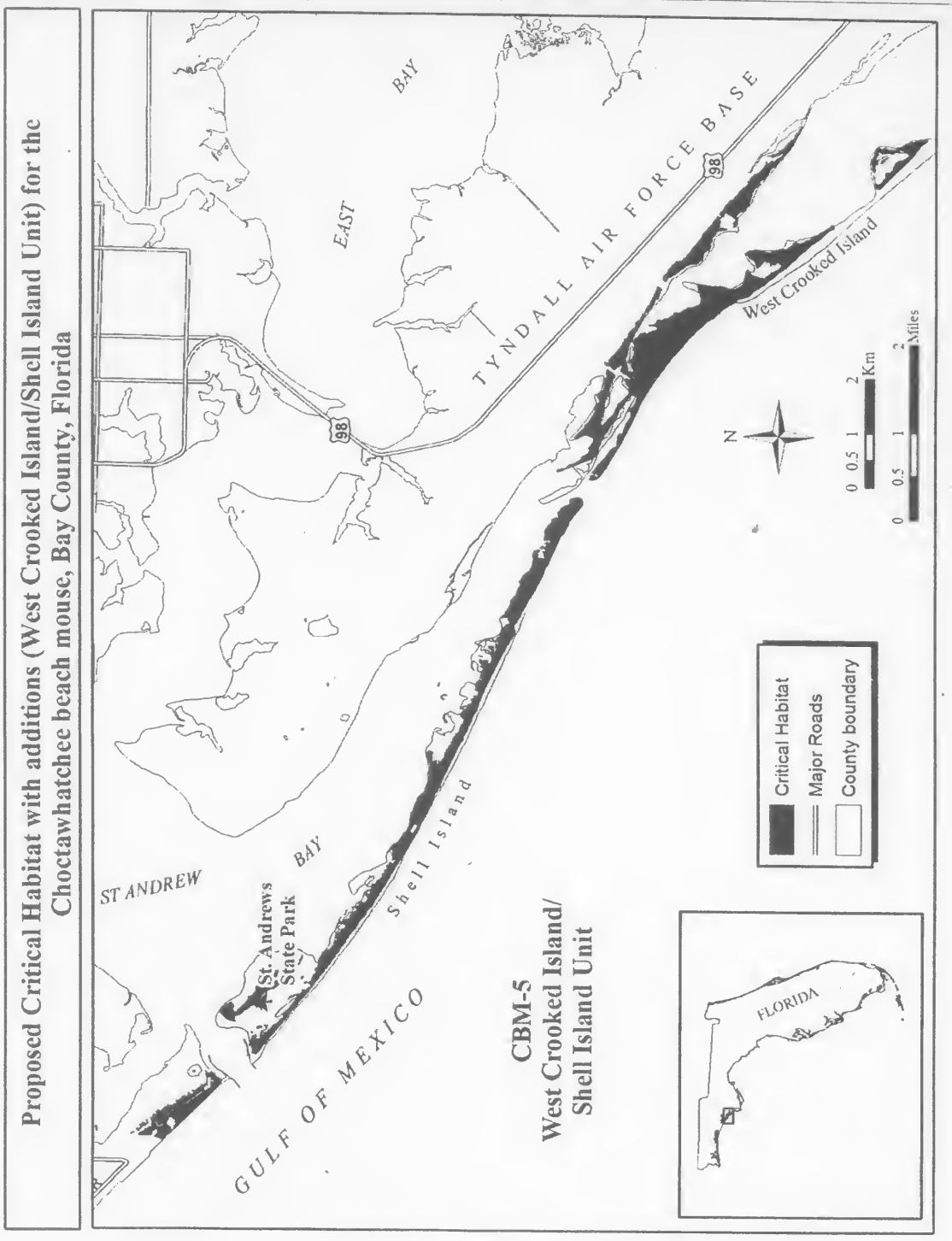
(iii) *Note:* Map 4 of Unit 5 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

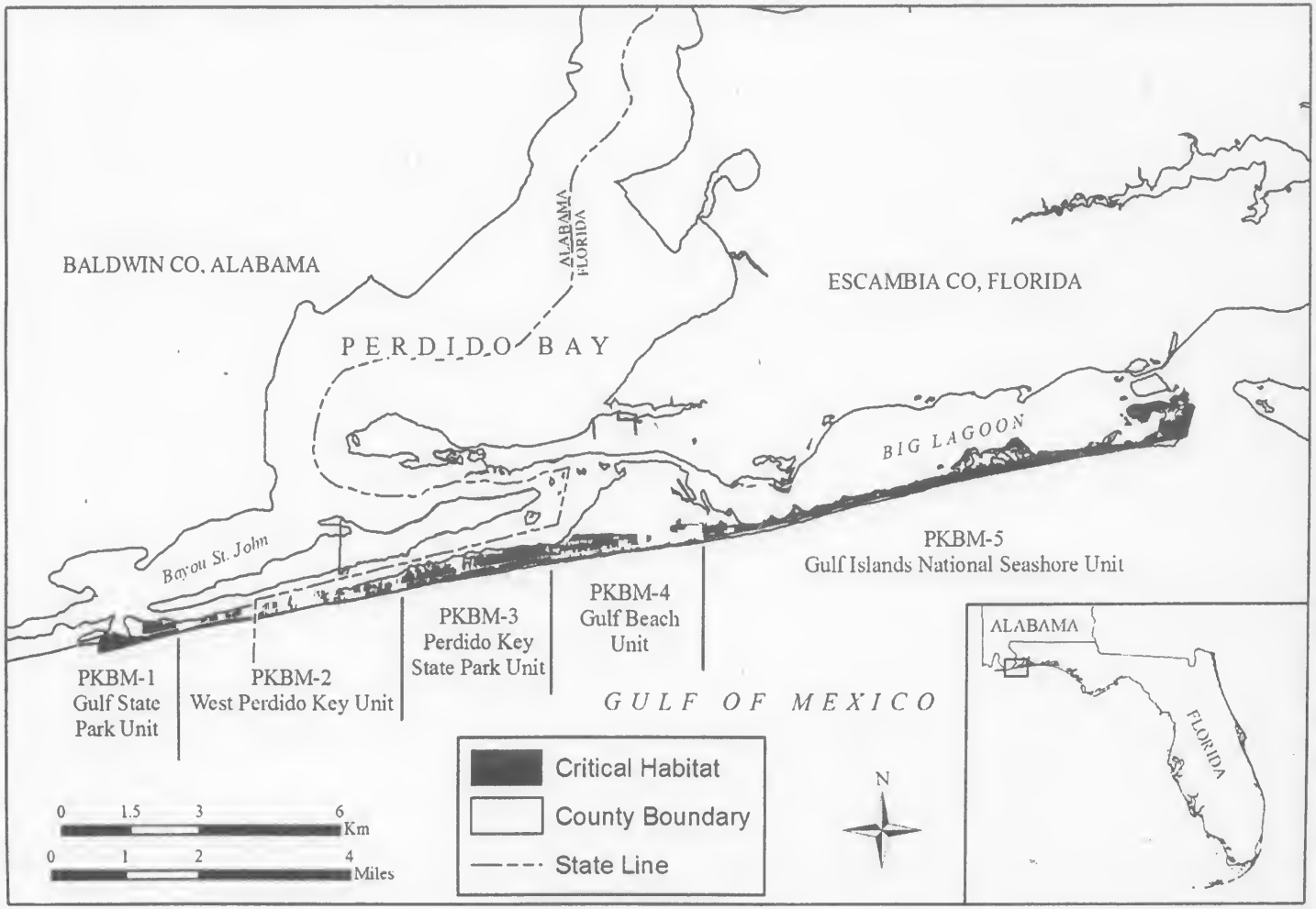
PERDIDO KEY BEACH MOUSE (*Peromyscus polionotus trissyllepsis*)	(5) *Note:* Map 1—Index Map of Critical Habitat Units for the Perdido Key beach mouse follows:

* * * * *

BILLING CODE 4310–55–P

BILLING CODE 4310–55–C

Index of Proposed Critical Habitat Units for the Perdido Key Beach Mouse



* * * * *

(10) PKBM—Unit 5: Gulf Islands National Seashore, Escambia County, Florida.

(i) *General Description:* Unit 5 consists of 638 ac (258 ha) in southern Escambia County, Florida, on the easternmost region of Perdido Key. This unit encompasses essential features of beach mouse habitat within the boundary of Gulf Islands National Seashore-Perdido Key Area (also referred to as Johnson Beach) from approximately 6 miles east of the Alabama-Florida State line to the eastern tip of Perdido Key at Pensacola Bay and the area from the MHWL north to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Perdido Bay, and Fort Barrancas, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 464806.54, 3353248.09; 460167.32, 3352161.40; 460112.98, 3352141.46; 460076.54, 3352115.69; 460062.15, 3352097.38; 460032.76, 3352041.24; 460015.51, 3352024.29; 459999.54, 3352012.96; 459981.75, 3352007.62; 459961.62, 3352003.59; 459912.92, 3352002.90; 459885.33, 3352003.88; 459852.28, 3352012.60; 459823.72, 3352011.33; 459799.52, 3352004.41; 459708.84, 3352005.84; 459649.57, 3352006.10; 459651.00, 3352185.21; 459662.18, 3352177.93; 459676.32, 3352192.77; 459689.75, 3352206.83; 459690.56, 3352217.42; 459692.37, 3352230.15; 459701.27, 3352237.54; 459706.13, 3352230.01; 459707.87, 3352201.51; 459715.92, 3352173.67; 459726.90, 3352160.16; 459735.50, 3352155.08; 459753.65, 3352157.93; 459766.21, 3352155.82; 459768.17, 3352162.20; 459764.82, 3352169.52; 459771.02, 3352176.01; 459828.76, 3352173.60; 459847.49, 3352187.53; 459859.01, 3352171.16; 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(iii) *Note:* Map 3 of Units 4 and 5 follows:

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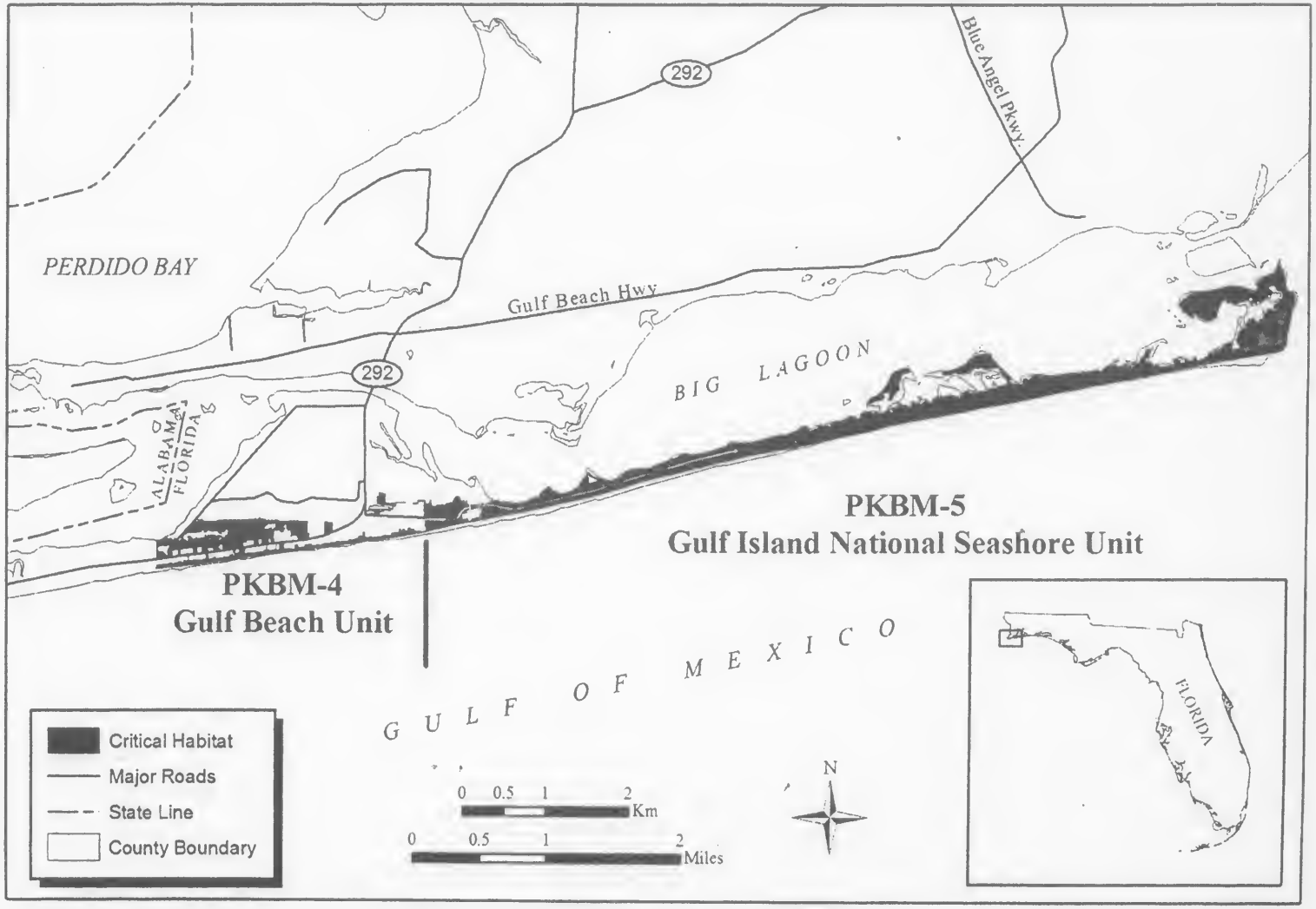
Proposed Critical Habitat Units (Gulf Beach and Gulf Island National Seashore) for the Perdido Key beach mouse, Escambia Co., Florida



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Dated: June 7, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–5441 Filed 6–13–06; 11:06 am]

BILLING CODE 4310–55–C

Federal Register

Friday,
June 16, 2006

Part IV

General Services Administration

Federal Management Regulation; Real Property Asset Management Guiding Principles; Notice

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2006–B5]

Federal Management Regulation; Real Property Asset Management Guiding Principles

AGENCY: General Services Administration.

ACTION: Notice; Bulletin.

SUMMARY: FMR Bulletin 2006–B5 rescinds and supersedes GSA Bulletin FPMR D–240, Public Buildings and Space, dated October 2, 1996. This Bulletin introduces new guiding principles to manage and improve real property performance in support of Executive Order (EO) 13327.

EFFECTIVE DATE: June 16, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Stanley C. Langfeld, Director, Regulations Management Division (MPR), General Services Administration, Washington, DC 20405; *stanley.langfeld@gsa.gov*, (202) 501–1737. Please cite FMR Bulletin 2006–B5.

SUPPLEMENTARY INFORMATION: The guiding principles are strategic objectives and goals designed for Federal agencies to adopt into their asset management programs. Agencies are encouraged to implement these principles to enhance real property performance. The guiding principles are as follows:

1. Support agency missions and strategic goals.
2. Use public and commercial benchmarks and best practices.
3. Employ life-cycle cost benefit analyses.
4. Promote full and appropriate utilization.
5. Dispose of unneeded assets.
6. Provide appropriate levels of investment.
7. Accurately inventory and describe all assets.
8. Employ balanced performance measures.
9. Advance customer satisfaction.
10. Provide for safe, secure and healthy workplaces.

Dated: June 1, 2006.

John G. Sindelar,

Acting Associate Administrator, Office of Governmentwide Policy.

BILLING CODE 6820–34–P

SUBJECT: Real Property Asset Management Guiding Principles

1. **Purpose:** This Bulletin introduces new guiding principles to help Federal agencies manage and improve real property performance effectively in support of Executive Order (EO) 13327. This Bulletin rescinds and supersedes GSA Bulletin FPMR D-240, Public Buildings and Space, dated October 2, 1996.

   The guiding principles are strategic objectives and goals designed for Federal agencies to adopt into their asset management programs. Agencies are encouraged to implement these principles to enhance real property performance. The guiding principles are as follows:

   1. Support agency missions and strategic goals.
   2. Use public and commercial benchmarks and best practices.
   3. Employ life-cycle cost benefit analyses.
   4. Promote full and appropriate utilization.
   5. Dispose of unneeded assets.
   6. Provide appropriate levels of investment.
   7. Accurately inventory and describe all assets.
   8. Employ balanced performance measures.
   9. Advance customer satisfaction.
   10. Provide for safe, secure and healthy workplaces.

2. **Expiration Date:** This Bulletin contains information of a continuing nature and will remain in effect until cancelled.

3. **Background:**

   a. Over the past decade, the Federal Government increasingly has become aware of the significant challenges it faces in managing its real property portfolio. These challenges include deteriorating facilities, an increasing number of excess and underperforming assets, limited capital investment funds, a reliance on costly leasing, and unreliable governmentwide data for strategic asset management. Since 2000, Congress and each Administration have attempted to improve Federal real property asset management through legislative reform, including:

      - H. R. 3285 – "Federal Property Asset Management Improvement Act of 1999," 106th Congress
      - S. 2805 – "Federal Property Asset Management Reform Act of 2000," 106th Congress
      - S. 1612 – "Managerial Flexibility Act of 2001," 107th Congress
      - H. R. 2710 – "Federal Asset Management Improvement Act of 2001," 107th Congress

- H.R. 2548 – "Federal Property Asset Management Reform Act of 2003," 108th Congress
- H.R. 2573 – "Public - Private Partnership Act of 2003," 108th Congress
- H.R. 3134 – "Federal Real Property Disposal Pilot Program and Management Improvement Act of 2005," 109th Congress

The proposed legislation would have amended title 40, United States Code to authorize landholding agencies to use enhanced real property asset management tools, including the ability to enter into public/private partnerships, to manage their real property more effectively. To date, none of these legislative initiatives have been enacted.

b. **In January 2003**, the Government Accountability Office (GAO) issued two reports discussing Federal real property asset management.

- The first, "High Risk Series: Federal Real Property" (GAO-03-122), identified Federal real property as a high-risk area. The report stated that ". . . long-standing problems in the Federal real property area include excess and underutilized property, deteriorating facilities, unreliable real property data, and costly space."

- The second, "Strategic Human Capital Management" (GAO-03-120), identified the challenges of a declining Federal workforce and the need to provide cost-effective and flexible work environments. The report discussed the connection between cost-effective, high-performance workplaces and a dynamic, results-oriented workforce.

c. **In October 2003**, GAO issued "Federal Real Property: Actions Needed to Address Long-standing and Complex Problems" (GAO-04-119T), which concluded that Federal real property was in an alarming state of deterioration, with a significant repair, restoration, and maintenance backlog. Among their findings, GAO identified that key decision makers lack the data required for strategic real property asset management.

d. **On February 4, 2004**, the President signed EO 13327, "Federal Real Property Asset Management," and subsequently added Federal real property to the President's Management Agenda. Designed to promote the efficient and economical use of the Federal Government's real property assets and rightsize the inventory of Federal real property, EO 13327 established the role of Senior Real Property Officer in every executive branch agency (cited in sections 901(b)(1) and (b)(2) of title 31, United States Code, and the Department of Homeland Security) to manage and oversee asset management activities. The EO also established a Federal Real Property Council (FRPC), chaired by the Office of Management and Budget (OMB), to develop guidance, collect best practices, and help Senior Real Property Officers improve the management of real property assets.

e. **In December 2004**, the FRPC issued "Guidance for Improved Asset Management," which established ten governmentwide standards – or **guiding principles** – for improving agency asset management. This information may be accessed at: http://www.whitehouse.gov/omb/financial/fia_asset.html.

4. **Action:** Federal agencies should use the guiding principles to manage and optimize their real property portfolios. When implemented effectively, the guiding principles are designed to promote:

- Sound real property asset management decisions;
- Healthy and productive workplaces;
- Reduced costs associated with real property asset management;
- Disposal of unneeded Federal real property;
- Repair and maintenance for deteriorating facilities;
- Incentives to improve real property asset management;
- Assemblage and maintenance of reliable real property data;
- Increased efficiency and maximized performance of Federal real property assets; and
- Strategic use of limited budgetary resources to maximize asset management.

Federal real property asset managers should apply these principles throughout the life-cycle of a real property asset.

5. For further information, contact Stanley C. Langfeld, Director, Regulations Management Division, Office of Real Property Management (MP) at (202) 501-1737 or stanley.langfeld@gsa.gov.

REAL PROPERTY ASSET MANAGEMENT GUIDING PRINCIPLES

EXECUTIVE SUMMARY

Asset management defines the relationship between a property holding agency (*i.e.*, the "owner") and its property assets. This relationship includes, but is not limited to: financial asset management, day-to-day property management, and occupant satisfaction. The asset management relationship lasts for the entire property life-cycle – from acquisition and utilization to disposal.

Real property asset management presents a variety of challenges that are global in nature and affect both the public and private sectors. Asset management succeeds when organizations implement and use an effective strategic-planning framework to make real property decisions. The guiding principles that comprise this framework are summarized below. The principles are later defined and illustrated with case study examples.

1. **Support Agency Missions and Strategic Goals** by aligning real property decisions with the agency's strategic mission.

   Case Study: Lease Consolidation at the Department of the Treasury's Internal Revenue Service Consolidated Processing Center in Kansas City, Missouri.

2. **Use Public and Commercial Benchmarks and Best Practices** to assess Federal agency asset management performance.

   Case Studies: "Experience Exchange Report" from the Building Owners and Managers Association; "Real Property Performance Results" report from the General Services Administration (GSA); and "Data Report" from the Society of Industrial and Office Realtors.

3. **Employ Life-Cycle Cost-Benefit Analyses** to justify asset management and acquisition decisions.

   Case Study: Department of the Interior and Department of Energy Partnership in the Design and Construction of the Zion National Park Visitor Center in Zion, Utah.

4. **Promote Full and Appropriate Utilization** by operating the property asset to its maximum capacity during its useful economic life (determined by using the Government's financial accounting standards[1]) – while satisfying the occupying agency's mission requirements.

[1]For additional information, contact the agency's Chief Financial Officer (CFO) staff.

Case Studies: Renovation of Eastern Stables in Stockholm, Sweden and GSA's Renovation and Reuse of the Federal Building on South Clark Street in Chicago, Illinois.

5. **Dispose of Unneeded Assets** by redeploying, demolishing, or replacing the asset when it fails to support the agency's mission.

   Case Study: Disposition of the Volunteer Army Ammunition Plant in Chattanooga, Tennessee.

6. **Provide Appropriate Levels of Investment** by making and prioritizing capital investment decisions, such as whether to construct, alter, repair, and/or acquire space to meet changing agency needs.

   Case Study: Financial Analyses Employed by Lockheed Martin Corporation.

7. **Accurately Inventory and Describe All Assets** by submitting real property data at the constructed asset level (*e.g.*, each building/structure within a complex) as defined by the Federal Real Property Council.

   Case Study: Federal Real Property Profile Inventory System Developed and Maintained by GSA.

8. **Employ Balanced Performance Measures** to track progress toward achieving real property management objectives and enable benchmarking against public and private sector organizations.

   Case Study: Balanced Scorecard Approach Used by the Real Property Services Branch of Public Works and Government Services Canada.

9. **Advance Customer Satisfaction** by promoting productive work spaces and focusing on the tenant's needs, primarily changing space requirements.

   Case Study: Surveys used by GSA.

10. **Provide for Safe, Secure and Healthy Workplaces** by implementing standard policies and procedures, documenting asset conditions, and developing action plans and strategies to support a productive workforce.

    Case Study: Design of the New Federal Building in San Francisco, California.

PRINCIPLE #1

SUPPORT AGENCY MISSIONS AND STRATEGIC GOALS

Real property is the physical foundation that enables Federal agencies to accomplish their missions. Effective asset management – including property acquisition, operation, maintenance, and disposition – requires alignment with the agency's core mission and key decisions. This integration involves having a clear understanding of the agency's core mission, its strategic plan, and how real property supports that plan.

Real property managers should collaborate with their customers to develop workplaces – including real property products and services – that adequately support the occupants' short- and long-term goals.

Case Study: Lease Consolidation at the Department of the Treasury's Internal Revenue Service Consolidated Processing Center in Kansas City, Missouri.

The Department of the Treasury's Internal Revenue Service (IRS) lease consolidation in Kansas City, MO, illustrates a real property transaction that will support the agency's core mission and strategic goals successfully. This consolidation is part of the larger IRS reorganization, which is focused on agency-wide restructuring to better align operations and serve taxpayers.

The Kansas City Service Center serves as the main hub for IRS activities - receiving, processing, and storing Federal income tax submissions - in the midwestern United States. The center is currently dispersed across seven different locations, including two Federally-owned buildings and five leased properties. To improve operational efficiency and meet IRS's strategic reorganization goals, GSA's Public Buildings Service (PBS) is assisting the IRS in consolidating the agency's space needs into a single location.

On behalf of the IRS, PBS entered into a 15-year lease for 1.14 million rentable square feet of space with the U.S. Postal Service (USPS) to house support activities for the consolidated IRS Service Center. The leased facilities are currently under construction and will be comprised of new and adaptively used buildings, including the historic 475,000-square foot Kansas City Main Postal facility. The lease is scheduled to commence in late 2006. USPS will hold the master lease, and GSA has entered into a Memorandum of Understanding and will pay rent directly to USPS or its representative. IRS will pay rent to GSA pursuant to an occupancy agreement.

Once the new space is available, IRS will move out of its seven existing Kansas City Service Center facilities. Of the two Federally-owned buildings, one has been determined to be excess to GSA's needs and is being evaluated for disposal. GSA intends to fill the other building with new tenants.

This lease consolidation meets the priorities identified in a study, resulting from the 1998 IRS Restructuring and Reform Act, which evaluated how to improve service to taxpayers while increasing productivity. The study identified as a high priority the need to consolidate the Kansas City Service Center into a new site to accommodate all the IRS functions in a single facility.

PRINCIPLE #2

USE PUBLIC AND COMMERCIAL BENCHMARKS AND BEST PRACTICES

Federal agencies should leverage leading public and private sector benchmarks to evaluate asset performance and help plan for future investments. Given the diversity of the Government's real property portfolio, Federal agencies may find it useful to benchmark against other agencies. Benchmarking property performance and sharing best practices have proven to be effective tools for optimizing asset management.

To be defined as a best practice, the initiative must:

- Produce superior results;
- Lead to exceptional performance;
- Be recognized by an industry expert;
- Be deemed a best practice by an agency's customers; and
- Be a new or innovative use of human capital, resources, or technology.

By routinely benchmarking performance and sharing best practices, Federal agencies can better manage their portfolios, thereby developing high performance workplaces, improving citizen services, and protecting the environment.

Benchmarking is the process of continuously comparing and measuring an organization's performance - against that of other comparable organizations - to gain information on philosophies, practices, and data for measures. This comparison encourages organizations to take appropriate action(s) to improve their performance.

Best practices are specific business methods, processes, or initiatives that work for one agency. Sharing best practices promotes innovation and provides ideas, options, and insights for other agencies.

Case Studies: "Experience Exchange Report" from the Building Owners and Managers Association; "Real Property Performance Results" report from the General Services Administration; and "Data Report" from the Society of Industrial and Office Realtors.

The "Experience Exchange Report,"[2] published annually by the Building Owners and Managers Association, provides valuable real estate benchmarking standards. The 2005 edition, which features 2004 data, contains operating income and expense data on over 5,000 public and private sector office buildings and an analysis of current real estate industry trends. Agencies can track cleaning, maintenance, and utility costs (calculated at the asset level on a per-square-foot basis) and compare them to the standards provided in the report.

In addition, agencies can use GSA's "Real Property Performance Results" report[3] to compare performance with Federal real property performance data and private sector benchmarks.

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[2]To view highlights of the "Experience Exchange Report," go to www.boma.org, The BOMA Store, Benchmarking.

[3]To view "Real Property Performance Results" from the Office of Real Property Management, go to www.gsa.gov, Policy, Real Property Management, Performance Measures, Library.

Agencies can determine if leasing costs are comparable to private sector markets by referencing private sector benchmarks provided in the "Society of Industrial and Office Realtors Data Report."[4]

Finally, the Federal Government is committed to continuously collecting and developing innovative tools, methods, and best practices to improve asset management for its 3.7 billion square foot inventory. GSA recognizes and disseminates governmentwide best practices through the annual Real Property Innovations Awards Program[5], annual "Best Practices Special Edition Real Property Policysite" newsletter[6], and the Office of Real Property Management website[7].

[4]For more information on the "SIOR Data Report", go to www.sior.com, Publications.
[5]To learn more about GSA's Real Property Innovations Awards Program, go to www.gsa.gov, Policy, Real Property Management, Award Program.
[6]To learn more about GSA's "Best Practices Special Edition Real Property Policysite," go to www.gsa.gov, Policy, Real Property Management, Newsletters, Real Property Policysite.
[7]To view best practices from the Office of Real Property Management, go to www.gsa.gov, Policy, Real Property Management, Best Practices.

PRINCIPLE #3

EMPLOY LIFE-CYCLE COST-BENEFIT ANALYSES

OMB Circular No. A-94 requires Federal agencies to justify asset management and acquisition decisions using life-cycle cost-benefit analyses. Life-cycle cost analysis (LCCA) is a method of assessing the overall costs of project alternatives. It is used to select the design that will provide the lowest overall cost of a facility's ownership consistent with its quality and function.

LCCA accounts for initial (capital) and recurring costs (maintenance, refurbishment, and operations) and residual asset value upon decommissioning or disposal. LCCA is well suited for evaluating design alternatives that satisfy a required level of building performance, but may have different initial investment, operation, maintenance and/or repair costs, and possibly different useful lives.

LCCA is especially useful when project alternatives that fulfill the same performance requirements - but differ with respect to initial and operating costs - have to be compared to select the one that maximizes net savings. For example, LCCA will help determine whether the incorporation of a high-performance heating, ventilating and air conditioning or glazing system, which may increase the initial cost but result in reduced operating and maintenance costs, is cost-effective or not. These analyses help agencies make improved real property investment decisions.

LCCA should be applied within a life-cycle assessment framework that accounts for both the costs over the asset life and the environmental consequences of investment decisions on upstream (*e.g.*, extraction, production, transportation, and construction), ongoing (*e.g.*, health impacts on tenants and the community), and downstream (*e.g.*, decommissioning and disposal) costs.

Sustainable design and development, defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs, represents the simplest model for comprehensive life-cycle costing. It offers the longest view of direct and possible side effects of investment decisions.

Case Study: Department of the Interior, National Park Service and Department of Energy Partnership in the Design and Construction of the Zion National Park Visitor Center in Zion, Utah.

The Zion National Park Visitor Center in Zion, Utah, illustrates a design and construction project that considered LCCA and sustainable development.[8] The mission of the National Park Service (NPS) is to promote and regulate the use of national parks, monuments, and reservations in a manner consistent with the principles of sustainable development; that is, to conserve the scenery, natural and historic objects, and wildlife within and to provide for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations.

[8]For additional information about the Zion National Park Visitor Center, go to www.eere.energy.gov, Buildings, A-Z Index, High Performance Zion Visitors Center.

In creating the Zion National Park Visitor Center, NPS, working with the U.S. Department of Energy's National Renewable Energy Laboratory, effectively aligned their mission with the new facility by considering the life-cycle costs associated with both. In so doing, they created a building that uses seventy percent (70%) less energy at a cost less than that of a conventional visitor center.

While performing LCAA, the design team found the optimal space configuration that led to decreased construction costs. They separated the restroom facilities from the main building, which improved pedestrian traffic flow. In addition, they used landscaping and covered areas to create shaded outdoor rooms, which increased the effective space available for visitor amenities. By moving these circulation and exhibit spaces outdoors, the total area of the buildings is now approximately 6,500 square feet less than the original plan.

NPS's comprehensive approach to LCCA also involved the following strategies:

- **Transportation** – Automobile traffic of more than 2.5 million annual visitors caused air and noise pollution as well as congestion, which were detrimental to the park's resources and visitor experience. Visitors now leave their vehicles at facilities outside the park and ride clean-running propane buses to stops in the park and nearby town.
- **Energy Management Computer** (EMC) - A computer collects weather data and makes decisions so that all the building's energy-efficient features work together.
- **Lighting** – Daylight is the primary source of light in the Visitor Center. The EMC adjusts the fluorescent lamps and compact-fluorescent lamps, as needed.
- **Windows** – EMC-controlled clerestory windows are part of the lighting and heating and cooling systems. Alternatives for window size, material, and placement were analyzed to keep the space primarily naturally heated in winter and cooled in summer.
- **Passive Down-Draft Cooltowers** - When natural cooling is not adequate, "cooltowers" help bring the indoor temperature down by producing cool air that is circulated throughout the building under the control of the EMC.
- **Energy-Efficient Landscaping** - Landscaping provides outdoor "rooms" for permanent displays and minimizes heat gain in the building, resulting in lower capital and operation costs.
- **Photovoltaics** – Photovoltaic panels (7,200 watts) provide the majority of the electricity. The use of these photovoltaic panels is possible because the building requires minimal lights and does not use an air-conditioning system, which eliminated the need for large electric loads.

By employing LCAA and including sustainable development, NPS designed and constructed a building that incorporates the area's natural features and energy-efficient building concepts into an attractive design, saves energy and operating expenses, and protects the environment.

PRINCIPLE #4

PROMOTE FULL AND APPROPRIATE UTILIZATION

The Federal Government is responsible for fully and effectively using its real property assets to their maximum capacity during their useful economic life (determined by using the Government's financial accounting standards).[9] Moreover, Federal agencies should use space for the purpose for which it was intended (*e.g.*, office space should not be used for storage/warehouse purposes).

Holding on to assets that no longer support the agency's mission represents mismanagement of Federal resources. To help agencies monitor an asset's utilization, the FRPC established a utilization rate performance metric in the Federal Real Property Profile (FRPP).

When planning and continually evaluating space needs, agencies should explore alternatives that meet the goals of EO 13327 and other Federal laws and EOs concerning agency location.[10] Such alternatives include adapting, supplementing, or consolidating into existing historic facilities that can be cost-effectively upgraded and operated, including underutilized properties available from other Government agencies. Converting and upgrading existing assets are viable alternatives to constructing new buildings, especially given the limited availability of new construction funding.

OMB Circular No. A-11 requires agencies to determine the usefulness of an asset and identify assets suitable for disposal. Real property holding agencies must continuously analyze their space needs. If a property is no longer needed, the agency should take steps toward removing that asset from the agency's inventory, rather than retaining the asset for an undetermined future need.[11]

Case Studies: Renovation of Eastern Stables in Stockholm, Sweden and GSA's Renovation and Reuse of the Federal Building on South Clark Street in Chicago, Illinois.

The renovation of Eastern Stables, Sweden's oldest surviving military establishment, represents a re-utilization success story. The rebuilding of Eastern Stables occurred through close cooperation between the tenant, the National Heritage Board, and the National Property Board, which owns and manages Government buildings in Sweden's Krubban block. Eastern Stables was dilapidated and needed extensive rebuilding and restoration.

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[9]The useful life of an asset is primarily related to its economic value and not its physical life. Elements affecting an asset's useful life include: 1) Physical deterioration; 2) Functional obsolescence; 3) Technological obsolescence; and 4) Economic obsolescence. For additional information, agencies should consult with the agency's Chief Financial Officer.

[10]Other federal laws and EOs include the Rural Development Act of 1972, as amended, EO 13006 "Locating Federal Facilities on Historic Properties in our Nation's Central Cities," and EO 12072 "Federal Space Management."

[11]For additional information on assessing utilization, contact your agency's Senior Real Property Officer.

Given Eastern Stables' historical significance dating back to the early 19th century, the Swedish Government wanted to preserve as much of the original character as possible, maintaining the building's historical dimension. The National Property Board and the National Heritage Board considered cultural, historic, technical, and functional aspects of the building. Their collaboration resulted in the preservation and redevelopment of the historic asset into an acceptable and modern work environment.

Another example of full and appropriate space utilization is the renovation and reuse of the Federal Building on South Clark Street in Chicago, IL. The 10-story, 590,000 gross square foot Federal Building was built in 1912 and had deficiencies that negatively affected safety, building operations, tenant comfort, and energy efficiency. The building housed tenants from numerous agencies; however, since the Department of the Treasury's Financial Management Service vacated a large portion of the building in November 2000, the building was underutilized.

In 1999, to support full utilization of the building, GSA proposed a $61-million renovation and tenant alteration project, which was significantly more cost-effective than new construction. The project will consolidate the Department of Homeland Security operations from several leased and Federally-owned locations around Chicago into the Federal Building. Renovation activities began in FY 2002 and are expected to be completed in FY 2006. The previous, smaller tenants were moved into leased space.

Upon completion, the project will result in an effectively utilized, modern facility that meets the Department of Homeland Security's mission and long-term space requirements.

PRINCIPLE #5

DISPOSE OF UNNEEDED ASSETS

An asset should be designated as **surplus property – and redeployed, demolished, or replaced** – when it no longer meets a Federal need. The decision to dispose of an asset is best made when it is based on an in-depth strategic portfolio review. This approach includes assessing market availability, supply and demand, property performance, physical conditions, future mission needs, and prospective housing profiles.

EO 13327 is intended to reduce the number of unneeded Federal assets. An asset that has no potential use by any Federal agency should be designated as "surplus property" and appropriately disposed of in accordance with Federal statutes.

Retaining ownership of underutilized or unneeded properties results in:

- Lost equity value, while not contributing to the Government's mission or strategic goals;
- Negative impact on local economies, tax revenues, and employment;
- Increased operating costs;
- Drain on limited agency resources; and
- Ineffective property stewardship for the Federal real property portfolio.

Agencies should consider outleasing space in historic properties to non-Federal entities under Section 111 of the National Historic Preservation Act. Section 111 enables private reinvestment and re-use of Federal historic buildings while the Government holds title to the property.

The most common options for asset disposition, depending on agency specific authorities, include:

- Transferring the asset to another Federal agency;
- Exchanging it for another mission-related property;
- Outleasing to non-Federal organizations;
- Making property available for public benefit conveyances; and
- Selling or leasing the property to generate revenue for the Federal Government.

Selection of the disposition option should be based on an economic analysis of the alternatives. If the transaction is handled properly, it will result in a smooth transition of ownership and produce a return to the Government that is in the best interest of the taxpayers.

Case Study: Disposition of the Volunteer Army Ammunition Plant in Chattanooga, Tennessee.

The Volunteer Army Ammunition Plant (VAAP) in Chattanooga, TN, is a successful disposition project of an underutilized, unneeded, contaminated property that was effectively reused for economic development purposes.

The plant, consisting of 6,350 acres, 370 buildings and structures, 80 miles of roadway, and 20 miles of railroad, was located on undeveloped land in a prime area for redevelopment purposes. The Department of the Army (Army) reported the facility as excess property in 1998.

The VAAP disposal was complicated because the property was contaminated. The Army was responsible for phased remediation of the site. The remediation process involved numerous stakeholders, including the Army, the City of Chattanooga and Hamilton County (CCHC), GSA, the Tennessee Department of Environment and Conservation, and the Environmental Protection Agency, prior to disposal.

The planned reuse of VAAP was to support local and regional goals for economic development and sustainable growth. CCHC believed re-use of the VAAP would elevate the region's business and industry profile; increase the availability of jobs; and provide opportunities for active and passive recreation, educational needs, and open space. In collaboration with GSA, CCHC developed a comprehensive re-use plan including park and recreation, education, law enforcement, industrial and manufacturing, and emergency management uses. The plan involved identifying and separating parcels, based on factors such as highest and best-use analyses and levels of contamination.

CCHC purchased 940 acres of VAAP in September 2000, and the local government marketed the property to large-site users, such as automotive assembly and parts manufacturers and medical components manufacturers. In April 2005, CCHC purchased an additional 1,800 acres for economic development purposes. GSA also made approximately 3,000 acres of land available for public benefit conveyances – at up to a one hundred percent (100%) discount – including 2,800 acres for park and recreational uses.

PRINCIPLE #6

PROVIDE APPROPRIATE LEVELS OF INVESTMENT

The Federal Government is accountable for providing appropriate asset investment, which includes determining the costs and benefits of the investment and how the assets are designed, constructed, maintained, managed, protected, and disposed. Ultimately, the Government must effectively manage its global property portfolio – consisting of approximately $1.2 trillion in assets (plant replacement value) – to obtain optimal use and efficiency.

There is a high level of deterioration in existing federal assets, which has significant financial implications. GAO estimates the repair backlog to be in the range of tens of billions of dollars.

Effective portfolio management requires agencies to continuously analyze investment decisions, such as whether to construct, alter, repair, and/or acquire workspace, to meet changing mission needs. Decisions for major investments should be based on an investment framework consisting of financial analyses, valuation criteria, and other required information to determine the proper level of investment. The Capital Programming Guide, Supplement to Part 3 of OMB Circular No. A-11, provides guidance for employing a disciplined capital programming process, focusing on key principles such as thorough planning, risk management, full funding, portfolio analysis, performance-based acquisition management, accountability for meeting goals, and cost effective life-cycle management.[12]

Agencies are encouraged to modernize and maintain real property so that it continues to support the Government's mission. Appropriate reinvestment:

- Provides healthy and safe workplaces;
- Increases the asset's desirability and its fair market value;
- Supports advancing business practices and technologies; and
- Enhances hiring, retention, morale, and productivity of associates.

An agency can also reinvest in existing high-value assets by supplementing them with new construction instead of completely replacing them. This type of investment increases the Government's equity in high-value assets.

Reinvestment projects are major renovation or reconstruction activities necessary to keep existing facilities modern and relevant in an environment of changing standards and missions. Reinvestment extends the service life of facilities or restores lost service life.

Case Study: Financial Analyses Employed by Lockheed Martin Corporation.

Lockheed Martin Corporation (LMC) is one of the world's largest technology companies, with $35.5 billion in net sales and 135,000 employees operating in nearly 500 cities, 45 states and 56 countries.

[12] To view the Capital Programming Guide, go to www.whitehouse.gov/omb/circulars/a11/cpgtoc.html.

LMC Properties, Inc. (LMCPI), the wholly-owned real estate subsidiary of LMC, is responsible for 81 million square feet of space, of which 36 percent is owned and 64 percent is leased. The portfolio is diverse, spanning office facilities, manufacturing plants, warehouses, service centers, and laboratory sites across the globe. LMCPI responsibilities include the acquisition and disposition of corporate real estate, commercial leasing, capital projects involving construction and infrastructure, and facilities management of selected properties.

LMCPI aggressively seeks to align real estate capital expenditures with LMC's corporate growth needs and risk tolerance. To guide profitable capital investment decisions, LMCPI uses several valuation models for evaluating building purchases or new construction. The models include:

1) **Net Present Value,** embedded with the Corporate Hurdle Rate: analyzes a project's cash flow and associated risk;
2) **Internal Rate of Return:** Directly links the project to an economic return; and
3) **Lease versus purchase:** Gauges the effect of not using internal capital for a new real estate project.

When making capital investment decisions related to real property expansions, upgrades, energy projects, or maintenance replacement items, LMCPI uses a combination of internal rate of return, discounted payback period, return on invested capital, and lifecycle benefit analysis. LMCPI also combines discounted payback period and return on invested capital techniques to consider the time value of money, impact of the initial investment, and life-cycle analysis.

By using these techniques, LMCPI has been able to prioritize and allocate funding for hundreds of projects on an annual basis. Even though the Federal Government is subject to different constraints than the private sector, agencies could adopt some of the valuation techniques used by LMCPI, particularly for reinvestment projects.

PRINCIPLE #7

ACCURATELY INVENTORY AND DESCRIBE ALL ASSETS

Real property holding agencies must develop and maintain inventory-tracking systems to assist in managing their asset portfolios. The collection of reliable, uniform data enables agency decision makers to:

- Improve asset management;
- Provide data to aid in timely and informed portfolio management decisions; and
- Respond to inquiries from Congress, the Administration, stakeholders, and the private sector.

Case Study: Federal Real Property Profile Inventory System Developed and Maintained by GSA.

GSA has been collecting governmentwide real property inventory data and producing a summary report for Congress since 1955. The database that originally collected the data has been modified over the years into the system currently known as the Federal Real Property Profile (FRPP) - a single, centralized and descriptive database of all real property managed by executive branch agencies.

In consultation with the FRPC, GSA's Office of Governmentwide Policy evaluated several technology approaches and determined that enhancing the existing FRPP was the most cost-effective solution for developing the governmentwide real property inventory system mandated by EO 13327. Consequently, the FRPP was enhanced in 2005 to provide a more user-friendly, easily-navigable interface, improved security policies, increased asset search capabilities, and enhanced online data transmission, validation, and error-correction functions. Executive branch agencies are required to submit real property data to the FRPP at the "constructed asset level" (*e.g.*, each building/structure within a complex).

In upcoming years, the FRPP will continue to be modified as the system/application matures. Modifications and enhancements may include:

- Establishment of additional data elements and/or performance metrics;
- Refinement of existing data elements;
- Accommodation of uploads from agencies more than once per year;
- Storing historic data (even after an asset is disposed of and is no longer in the agency's inventory);
- Improved reporting and querying facilities (*e.g.*, ad hoc reporting, graphics/charts, mapping data); and
- A portal environment (offering application web features to save and customize user environments).

By supplementing agency-specific data, the FRPP provides important inventory-related information and assists the agency in making timely and informed portfolio decisions.

GSA uses the data gathered in the FRPP to produce a governmentwide real property inventory summary report. The report provides an overview of the Federal Government's owned and leased real property portfolio and summarizes the data submitted by holding agencies. The report, in combination with other available data, is used for:

- Planning space needs;
- Promoting fuller utilization of assets;
- Conducting property management and property accounting surveys;
- Evaluating funding requests for acquisition of real property (office, warehouse, industrial, etc.); and
- Facilitating on-site inspection activities.

The inventory summary report provides a centralized source of information for Congress, OMB, GAO, GSA, and other Federal agencies, as well as universities, libraries, trade associations, the press, the private sector, and the general public.

PRINCIPLE #8

EMPLOY BALANCED PERFORMANCE MEASURES

The FRPC promotes the use of balanced performance measures and management techniques to monitor and evaluate asset efficiency regularly. The FRPC identifies and defines performance measures that Federal agencies are required to collect and report to GSA's Governmentwide inventory system. The results of these performance measures assist Federal agencies in determining the effectiveness of their asset management decisions. The FRPC has defined four "First Tier" performance measures:[13]

1) Utilization;
2) Condition index;
3) Mission dependency; and
4) Annual operating and maintenance costs.

The FRPC continues to evaluate additional performance measures that may be included in the inventory reporting system in the future.

Performance measures are specific data definitions that enable agencies to track their progress toward achieving management objectives. Performance measures provide vital management information through the life of an asset, providing senior management with a reliable monitoring mechanism.

In addition to these governmentwide performance measures, many agencies currently maintain and track their own agency-specific performance measures.

Case Study: Balanced Scorecard Approach Used by the Real Property Services Branch of Public Works and Government Services Canada.

"Results of Using the Balanced Scorecard in the Public Sector," published in the *Journal of Corporate Real Estate* (December 2003), discusses the development of performance measures within organizations. The article presents a generic balanced scorecard framework that allows the global real estate community to monitor the effectiveness of its strategies and benchmark performance across organizations.[14] This framework uses logic models to describe:

- An organization's core activities;
- Major outputs;
- Desired outcomes; and
- How these outcomes benefit the client.

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[13]For additional information on the "First Tier" performance measures, contact your agency's Senior Real Property Officer.

[14]For additional information on using the balanced scorecard approach, refer to the following source: Hagarty, D. Wilson, C. Gauthier, J. "Results Using the Balanced Scorecard in the Public Sector," Journal of Corporate Real Estate, Volume Six, Number 1, December 2003.

The balanced scorecard approach includes four perspectives – financial, client, internal business process, and learning and growth – that have specific key performance indicators.

The Real Property Services Branch of the Public Works and Government Services Canada, the Canadian government organization responsible for providing cost-effective and productive work environments, uses the balanced scorecard approach to measure organizational performance. The following table provides an example of RPS's categories of desired outcomes and key performance indicators.

Balanced Scorecard Approach Used by Canada's Real Property Services Branch

PERSPECTIVE	CATEGORIES OF DESIRED OUTCOMES	KEY PERFORMANCE INDICATORS
Financial	• Financial management	• Budget management (*e.g.*, operating and capital) • Accuracy of financial forecasting compared to year-end results
Client	• Client relations • Expanding RPS's policy role	• Overall client satisfaction with RPS services • Overall tenant satisfaction with property management services • Contribution to public policy priorities, such as the Workplace of the Future Program and Greening of Government Operations
Asset Management (Internal Business Process)	• Real property assets • Valued services	• Accommodation usage (*e.g.*, cost/rentable m^2) • Vacancy rates in owned office space • Return on investment
People (Learning and Growth)	• RPS's people • Strategic relations	• Overall staff satisfaction • Workforce profile (total population by employment status)

The *Journal of Corporate Real Estate* article concludes that applying performance measurement techniques is critical for effective asset management and "should be viewed as a key management tool in telling a performance story on strategy implementation."

PRINCIPLE #9

ADVANCE CUSTOMER SATISFACTION

To advance customer satisfaction, agencies need to assess their customer relationships holistically by:

- Focusing on a tenant's mission;
- Proactively monitoring changing space; and
- Providing a productive workplace.

High-performance workplaces are those that meet agency business needs, are best suited to their employees' work functions, and are readily adapted to accommodate new work practices and strategies with minimal expense and delay.

Customer satisfaction is increased when agencies work collaboratively with their tenants to define specific requirements, integrate these requirements into asset management decisions, and transform decisions into innovative and responsive workplaces. Agencies should continually strive to improve tenant relations and advance customer satisfaction.

As part of these efforts, agencies are encouraged to develop high-performance workplaces and alternative workplace strategies tailored to the tenant's needs.

Case Study: Customer Satisfaction Surveys Used by GSA – the Tenant Satisfaction Survey, Ordering Official Survey, Realty Transaction Survey, and Workforce Engagement Survey.

GSA's PBS works to increase customer and employee satisfaction by collecting information through the following three surveys:

1) *Tenant Satisfaction Survey:* Collects information from tenants in Government-owned and leased buildings (approximately 8,300 nationwide) by conducting surveys adapted from the International Facilities Management Association. Administered by the Gallup Organization, the survey provides building reports that identify how each building scored in the previous survey, the ten drivers of satisfaction for the building, and building tenants' written comments. The survey is administered to one-third of the building inventory each year. PBS has established a goal of attaining 80 percent customer satisfaction nationwide.

2) *Ordering Official Survey:* Assesses specific customer agency experience in doing business with PBS. The survey has five questions related to:

   a. Overall satisfaction with services provided;
   b. Overall satisfaction with value received;
   c. If a customer agency would recommend PBS to another agency;
   d. If services provided contribute to agency productivity; and

e. If there is an anticipated change in the volume of work the agency will request from PBS next year.

The survey is delivered to customers via phone and is completed in approximately eight minutes. PBS uses the Ordering Official Survey to obtain perceptions of agency leadership, ordering officials, and billing contacts.

3) *Realty Transaction Survey*: Helps determine how well PBS provides new owned and leased space to its clients by measuring their satisfaction with each space transaction. PBS uses the survey results to assess its real estate services, program efficiency, training needs, and level of customer service. Real estate specialists and building managers use the data to develop action plans and to improve their processes for providing clients with new space and the most productive workplaces possible. Portions of the Realty Transaction Survey are combined with the Tenant Satisfaction Survey to generate a Customer Relationship Index performance measure.

GSA measures employee engagement in the workplace agencywide by collecting information through the *Workplace Engagement Survey (Q12)*. Developed by The Gallup Organization, the survey consists of 12 questions that measure employee engagement in the workplace. Research has found a statistical relationship between work units whose associates have high scores on the Q12 questions and an increase in the following five business outcomes:

a. Productivity;
b. Profit;
c. Employee retention;
d. Customer satisfaction; and
e. Workplace safety.

Agencies that understand their customer's requirements are best equipped to provide highly customized workplaces, increasing customer satisfaction and the potential for successful business performance.

PRINCIPLE #10

PROVIDE FOR SAFE, SECURE AND HEALTHY WORKPLACES

Effective management of Federal facilities requires that buildings provide safe, secure, and healthy working environments that support a productive workforce. Implementing standard policies and procedures and developing action plans to monitor and maintain workplaces complement the development of, and are basic requirements for, robust asset management strategies. These policies include:

- Minimizing environmental problems and liabilities;
- Complying with building security, fire, and life-safety codes and standards; and
- Meeting historic building and Americans with Disabilities Act requirements.

The highest priority for real property holding agencies is to protect their most important assets – their employees.

In today's world, agencies are developing concepts to promote safe, secure, and healthy workplaces that go beyond simple compliance. Referring to principles established by President John F. Kennedy in 1962 in the *Guiding Principles for Federal Architecture,* agencies are designing Government facilities that are not only "efficient and economical" but also contemporary architectural expressions of "the dignity, enterprise, vigor, and stability of the American Government." As this ideal has matured, the goal has been to establish a definition of excellence that makes safe, secure, and healthy workplaces integral aspects of Federal building projects.

Case Study: Design of the New Federal Building in San Francisco, California.

The new Federal Building in San Francisco, California, represents a model of a safe, secure, and healthy working environment. The project consists of two structures, totaling 575,000 square feet, separated by a public plaza and 3,000-square-foot cafeteria.

The first structure is an 18-story glass tower. The tower is 60 feet wide with high ceilings, which enables natural light to fill the offices and provides almost all employees outside views. Above the fifth floor, operable windows bring in fresh air and cool the building with natural ventilation, replacing a mechanical heating and cooling system. On the 11th floor, a three-story sky-garden provides a dramatic venue for conversation and creative thinking.

The second structure, a four-story building, houses Federal employees that interact with the public. This structure includes a neighborhood daycare center and a restaurant for casual dining, creating a total environment where adults can work productively and enjoy leisure time and children can safely run and play.

The building's facades, setbacks, and perimeter design meet the latest security requirements in ways that create a vibrant landmark and landscaped plaza in the dense

"South of Market" section of the city. The innovative architecture is also safe and secure, not only by physically protecting the facility and its inhabitants, but by encouraging lively public use.

The Federal Building exemplifies the most effective strategies for developing an environment where inhabitants are not only physically safe, secure, and healthy as they work, but also feel that way – facilitating tenant satisfaction and high productivity. In serving the public and reflecting the openness of American democracy and the *Guiding Principles of Federal Architecture*, it promises to be one of the Government's most desirable and productive offices.

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Federal Register

Friday,
June 16, 2006

Part V

Department of Labor

Employment Standards Administration

Office of Federal Contract Compliance Program; Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance With Nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination; Notice

DEPARTMENT OF LABOR

Employment Standards Administration

Office of Federal Contract Compliance Programs; Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance With Nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination

AGENCY: Office of Federal Contract Compliance Programs, Employment Standards Administration, Department of Labor.

ACTION: Notice of final voluntary guidelines for self-evaluation of compensation practices for compliance with Executive Order 11246 with respect to systemic compensation discrimination.

SUMMARY: The Office of Federal Contract Compliance Programs is publishing final voluntary guidelines for self-evaluation of compensation practices for compliance with Executive Order 11246, as amended, with respect to systemic compensation discrimination. This document sets forth the final voluntary guidelines and discusses comments that OFCCP received in response to proposed voluntary guidelines published in the **Federal Register** on November 16, 2004.

DATES: *Effective Date:* June 16, 2006.

FOR FURTHER INFORMATION CONTACT: Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room N3422, Washington, DC 20210. Telephone: (202) 693–0102 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION: In this preamble, OFCCP summarizes the proposed voluntary self-evaluation guidelines, discusses the comments received in response to publication of the proposed voluntary guidelines, and provides a substantive discussion of the final voluntary self-evaluation guidelines. The substantive discussion of the final voluntary self-evaluation guidelines substantially restates the preamble of the proposed voluntary guidelines, except that modifications or clarifications were added in response to the comments.

I. Summary of the Proposed Voluntary Self-Evaluation Guidelines

On November 16, 2004, OFCCP published a Notice in the **Federal Register** in which the agency proposed voluntary guidelines for self-evaluation of compensation practices for compliance with Executive Order 11246 with respect to systemic compensation discrimination. 69 FR 67252 (November 16, 2004). The proposed voluntary self-evaluation guidelines had four principal components, which are summarized below.

First, the proposed voluntary self-evaluation guidelines proposed that contractors may continue to choose whatever form of self-evaluation they deem appropriate in order to comply with OFCCP regulations requiring contractors to perform a self-evaluation of their compensation practices. 69 FR 67253.

Second, the proposed voluntary self-evaluation guidelines provided that contractors have the option, at their discretion, of conducting a self-evaluation that conforms to the proposed voluntary guidelines. 69 FR 67253. As an incentive for contractors to voluntarily choose this option, the proposed voluntary guidelines provided that OFCCP would conform its compliance monitoring activities with the contractor's self-evaluation program. *Id.* That is, if the contractor in good faith implemented a self-evaluation program that reasonably comports with the voluntary guidelines, OFCCP would not conduct an independent evaluation of the contractor's compensation practices during a compliance review. *Id.* The proposed voluntary guidelines made clear that contractors who choose this option must retain certain records so that OFCCP can determine whether the contractor in fact implemented a self-evaluation program that reasonably adhered to the voluntary guidelines. 69 FR 67254. The proposed voluntary guidelines also permitted OFCCP to recommend in writing that the contractor make changes to its self-evaluation program, if the program is only marginally reasonable under the voluntary guidelines. *Id.*

Third, the proposed voluntary self-evaluation guidelines outlined general principles to which a self-evaluation system must reasonably adhere in order to comport with the proposed voluntary guidelines:

(1) The self-evaluation must be based on "similarly-situated employee groupings" or "SSEGs." SSEGs were defined as groupings of employees who perform similar work, and occupy positions with similar responsibility levels and involving similar skills and qualifications. 69 FR 67253–67254. The SSEGs must contain at least 30 employees and at least 5 employees from each comparison group (i.e., females/males, minorities/non-minorities). 69 FR 67254. The proposed voluntary guidelines noted that there may be certain employees who occupy unique positions that are not similar to any other position. *Id.* The contractor must use non-statistical methods to evaluate the compensation of such unique employees. *Id.* However, OFCCP would carefully scrutinize the statistical and non-statistical analysis if the statistical analysis does not encompass at least 80% of the employees in the workplace or affirmative action program. *Id.* (2) The self-evaluation must use some form of statistical analysis that permits assessment of SSEGs, while accounting for the legitimate factors that influence compensation, such as experience, education, performance, productivity, location, etc. 69 FR 67254. The self-evaluation must also permit tests of statistical significance. *Id.* For contractors with 250 or more employees, the statistical analysis must be multiple regression analyses. *Id.* (3) The self-evaluation must be conducted on an annual basis. 69 FR 67253. The contractor must investigate any statistically-significant compensation disparities disclosed by the self-evaluation and provide appropriate remedies if the disparities cannot be explained by legitimate factors. *Id.*

Fourth, the proposed voluntary self-evaluation guidelines provided a "Compliance Certification Alternative," under which OFCCP would not seek a contractor's self-evaluation analysis if the contractor certified in writing that it believes that the self-evaluation is subject to protection from disclosure under the attorney-client privilege and/or the attorney work product doctrine. 69 FR 67255. The proposed voluntary guidelines made clear that a contractor that chooses this option would not receive the benefit of compliance coordination because OFCCP would be unable to assess whether the contractor's self-evaluation program comported with the voluntary guidelines. *Id.*

II. Discussion of the Comments Received

OFCCP received 26 comments on the Notice of proposed voluntary guidelines for self-evaluation of compensation practices for compliance with Executive Order 11246 with respect to systemic compensation discrimination. In response to the comments, OFCCP made several modifications to the proposed voluntary self-evaluation guidelines, discussed below. In addition, many of the commenters asked for clarification of OFCCP's intent with respect to various aspects of the voluntary self-evaluation guidelines, which OFCCP provides as appropriate below.

For the following discussion, OFCCP has grouped the comments around the following major subjects: (A) Similarly Situated Employee Groupings (SSEGs); (B) Statistical Analysis, Including Multiple Regression Analysis; (C) Factors included in the Statistical Analysis; (D) Appropriate Remedies; (E) Relationship with Item 11 of the Scheduling Letter; (F) Confidentiality of Compensation and Personnel Information; (G) Discoverability and the Alternative Compliance Certification; and (H) Adverse Inference.

A. Similarly Situated Employee Groupings (SSEGs)

Several commenters, including HR Analytical Services and National Industry Liaison Group (NILG), requested that OFCCP provide more guidance on how contractors should develop SSEGs. OFCCP agrees that further clarification of this issue will be helpful to interested parties. Contractors must form SSEGs based on the facts about the jobs performed by the particular employees who will be encompassed in the self-evaluation program. Contractors should form SSEGs by determining which employees are similarly situated based on their job duties, responsibility levels, and skills and qualifications involved in the positions, and other pertinent factors (as discussed directly below). The most important aspect of this process is ensuring accurate information about employees' job duties, the responsibility level, skills, and qualifications involved in their positions, and the other pertinent factors. It may also be helpful for contractors to retain counsel for assessment of applicable caselaw as an aid to making such determinations. This review of caselaw typically will involve research for cases that discuss positions that are factually similar to the positions at issue in the contractor's workforce.[1]

Several commenters, such as Equal Employment Advisory Council (EEAC), agreed that similarity in work performed, and in responsibility level, skills, and qualifications involved in the positions, is a necessary condition for employees to be similarly situated, but also argued that similarity in these factors is not a sufficient condition for employees to be similarly situated in all cases. These commenters argued that there may be other factors in particular cases that may make individuals dissimilar who would otherwise meet the proposed standard for similarly situated. For example, these commenters noted that otherwise similarly-situated employees may be paid differently for a variety of reasons: they work in different departments or other functional divisions of the organization with different budgets or different levels of importance to the business; they fall under different pay plans, such as team-based pay plans or incentive pay plans; they are paid on a different basis, such as hourly, salary or through sales commissions; some are covered by wage scales set through collective bargaining, while others are not; they have different employment statuses, such as full-time or part-time; etc. OFCCP agrees with these commenters that such factors may be important to whether employees are similarly situated. *See, e.g.*, EEOC Compliance Manual on "Compensation Discrimination," EEOC Directive No. 915.003 (December 5, 2000), at 10–6 ("the fact that employees work in different departments or other organizational units may be relevant, but is not controlling."); *see also Cooper* v. *Southern Co.*, 390 F.3d 695, 717 (11th Cir. 2004)(noting that plaintiffs' expert "did not tailor her analysis to the specific positions, job locations, or departmental or organizational structures in question; however, the wide-ranging and highly diversified nature of the defendants' operations requires that employee comparisons take these distinctions into account in order to ensure that the black and white employees being compared are similarly situated"); *Goodwin* v. *General Motors Corp.*, 275 F.3d 1005, 1012 n.8 (10th Cir. 2002)(holding employees similarly situated for compensation discrimination claim under Title VII because "[a]ll four representatives had the same supervisor, performed identical job duties and were subject to the same company standards and policies"); *Webb* v. *Merck & Co., Inc.*, 206 F.R.D. 399, 408 (E.D. Pa. 2002)("We agree with defendant that [the plaintiffs" expert's] analysis of hourly (union) workers is unreliable and irrelevant because it fails to control for the mandated wage rate set by collective bargaining agreements for an employee's position * * *"). OFCCP has added a provision in the final voluntary self-evaluation guidelines to make clear that contractors should consider the applicability of such factors in developing SSEGs, in addition to similarity in work performed and in responsibility level, skills, and qualifications involved in the positions.

Several commenters were concerned that the proposed voluntary guidelines would force contractors to group employees who were not similarly situated or otherwise that many employers could not meet the SSEG standards.[2] In particular, these commenters took issue with the provision that OFCCP would carefully scrutinize the self-evaluation analyses of a contractor that could not encompass 80% of the workforce or AAP within the statistical analyses. These commenters argued that 80% was far too high of a percentage of the workforce or AAP for which appropriate grouping under the voluntary guidelines could be expected. Several commenters also believed that the 30/5 size requirements for SSEGs (SSEGs must include at least 30 employees, and five employees from each comparator group (females/males; minorities/non-minorities)) were also unrealistic in light of the diversity of occupations in many workplaces. Several commenters questioned whether OFCCP would permit contractors to develop self-evaluation programs that encompassed several AAPs or establishments, which would help address some of these concerns.

OFCCP agrees with these commenters that it may be expected that certain employees cannot be included in an SSEG because they are not similarly situated to any other employee in the organization, workplace, or AAP. Under no circumstances should a contractor attempt to group employees into an SSEG who do not meet the standards for similarly situated under these final voluntary self-evaluation guidelines.[3] OFCCP added a provision to the final voluntary guidelines to clarify its intent on this issue.

OFCCP does not have any expectation that a certain proportion of employees in every workforce or AAP could be appropriately grouped into an SSEG. The proposed 80% threshold was simply a way to allocate agency resources based on OFCCP's judgment that exclusion of a small percentage of employees from the SSEGs did not warrant further OFCCP scrutiny. In

[1] In the preamble of the final interpretive standards, OFCCP has cited cases that discuss whether specific positions are similarly situated. There are hundreds of other Federal court cases that discuss whether other positions are similarly situated based on facts about the specific positions involved in each of those cases.

[2] *See*, e.g. American Bankers Association, American Society of Employers, Association of Corporate Counsel, Equal Employment Advisory Council, Gayle B. Ashton, Glenn Bartlett Consulting Services, HR Analytical Services, Maly Consulting LLP, National Industry Liaison Group, Northeast Region Corporate Industry Liaison Group, ORC Worldwide, Silicon Valley Industry Liaison Group, Society for Human Resource Management, Sonalysts, and TOC Management Services.

[3] This should not be read as a limitation or criticism of any type of self-evaluation technique or analysis that contractors choose to implement at their discretion. This limitation only applies to the self-evaluation methods outlined in the final voluntary self-evaluation guidelines.

response to the commenters' concerns that 80% is unrealistic because of the occupational diversity in many workplaces, OFCCP has slightly lowered this threshold to 70% in the final voluntary guidelines.

OFCCP also agrees that some of these concerns may be addressed by self-evaluation programs that encompass a group of employees larger than a particular AAP or establishment.[4] Therefore, in the final voluntary self-evaluation guidelines, OFCCP provides that the self-evaluation program must at least encompass employees within an AAP or establishment. However, a self-evaluation program which encompasses larger groups of employees (e.g., by including several (or many) establishments or AAPs) will also comport with the voluntary self-evaluation guidelines, if the other conditions of these voluntary guidelines are satisfied. Contractors have the discretion of selecting the grouping of employees to be included in each self-evaluation program, although no grouping can be smaller than the AAP or establishment level.

Several commenters, such as Berkshire Associates, Tyson Foods, Inc., and Maly Consulting LLC, requested clarification about the types of non-statistical analysis that should be used to evaluate compensation practices involving employees who cannot be combined into an SSEG. OFCCP affords the contractor discretion in determining the type of non-statistical analysis which would be reasonable to use in a particular case. This could include comparison of the employee's compensation to that of other employees who are similarly situated to the employee, if any, or assessment of the decisions which determined the employee's compensation, with a goal of assessing whether legitimate, nondiscriminatory reasons explain each decision. As later explained in part I, Voluntary Guidelines, section E, contractors are obligated to keep the data and documents resulting from these non-statistical methods.

B. Statistical Analysis, Including Multiple Regression Analysis

Several commenters, including Berkshire Associates and DCI Consulting, requested that OFCCP provide more guidance on the types of statistical analysis that the agency would find acceptable under the proposed voluntary guidelines, where a multiple regression analysis is not required. OFCCP affords contractors flexibility in determining the type of statistical analyses which would be reasonable to use in a particular case. However, the statistical analysis must compare compensation within SSEGs and it must take into account legitimate factors that affect compensation of employees in each SSEG. The statistical analysis must also permit tests of statistical significance that are generally accepted in the statistics profession.

Many commenters expressed concern about the proposed voluntary guidelines' requirement that contractors with 250 or more employees must use multiple regression analysis as the method of self-evaluation.[5] These commenters noted that multiple regression analysis is complex and that the requirement would force contractors to hire costly experts to develop and maintain such self-evaluation programs. These commenters also noted that multiple regression analysis requires significant personnel information in electronic format, which contractors do not normally collect and include in their HRIS databases. In order to develop a self-evaluation program that comports with the proposed voluntary guidelines, these commenters argued, contractors would have to expend significant resources attempting to collect relevant personnel information and entering such information into a database. Many of the commenters who expressed these concerns argued that the burdens involved with multiple regression analysis were simply too great for many contractors and that the 250-employee threshold was far too low. In order to address these concerns, several commenters recommended increasing the threshold significantly. Other commenters recommended that OFCCP allow contractors to use a tiered approach in the self-evaluation, much as OFCCP does in its compliance review process. Under the tiered approach, the contractor would be required to conduct a multiple regression analysis only after a less-sophisticated analysis indicated that there was a possible compensation disparity. Several commenters noted that the requirement to conduct the self-evaluation on an annual basis added to the burden of the multiple regression analysis and suggested that OFCCP could reduce this burden by requiring the self-evaluation be conducted less frequently.

OFCCP is cognizant of the complexity involved in performing a multiple regression analysis, and the burden of gathering information entailed therein. In response to the comments, the final Voluntary Self-Evaluation Guidelines only require a multiple regression analysis for those establishments or AAPs that have 500 or more employees. Moreover, OFCCP emphasizes that a multiple regression analysis is not required under 41 CFR 60–2.17(b)(3); rather, a contractor can opt to perform a multiple regression if it desires to obtain the compliance coordination incentive provided by these Voluntary Guidelines. Specifically, if a contractor performs a multiple regression analysis, which reasonably meets the standards outlined in the voluntary guidelines and the analysis finds no discrimination, OFCCP will consider the contractor's compensation practices to be in compliance with Executive Order 11246; in other words, OFCCP will not further investigate the contractor's compensation practices. If a contractor decides that performing a multiple regression is too burdensome or otherwise undesirable, it can choose another self-evaluation technique without any adverse consequences from OFCCP. By choosing not to perform a multiple regression analysis, the contractor is merely choosing not to take advantage of the compliance coordination incentive.

In the final voluntary guidelines OFCCP does not accept a tiered approach to self evaluation as suggested by several commenters. Although OFCCP will use the tiered approach in its analysis of a compensation system pursuant to the Final Interpretive Standards for Systemic Compensation Discrimination the use of a tiered approach in the Systemic Standards is for purposes of OFCCP's allocation of resources. OFCCP is unable to conduct a full-scale compensation review of all of the approximately 100,000 contractor establishments within its jurisdiction. Therefore, OFCCP unavoidably will fail to detect existing discrimination in those establishments that cannot be reviewed. However, OFCCP can maximize the number of establishments subject to some form of compensation review by using a tiered approach to target OFCCP investigations toward establishments with a higher likelihood of a potential discrimination problem.

[4] In this paragraph, OFCCP's use of the terms "encompass," "groups," and "groupings" relates only to the employees included in the overall self-evaluation program, and should not be confused with SSEGs or units for conducting regression analyses (*i.e.*, by SSEG, or by combining several SSEGs into a pooled regression that includes particular SSEG membership variables).

[5] *See, e.g.*, American Bankers Association, American Society of Employers, Association of Corporate Counsel, Berkshire Associates, DCI Consulting, Equal Employment Advisory Council, Gayle B. Ashton, Glenn Barlett Consulting Services, HR Analytical Services, Maly Consulting LLC, National Industry Liaison Group, ORC Worldwide, Silicon Valley Industry Liaison Group, Society for Human Resource Management, Sonalysts, TOC Management Services, and Tyson Foods, Inc.

But in using a tiered approach, OFCCP inevitably will miss discrimination in certain cases. OFCCP accepts this risk of "false negatives." However, a contractor is not required to perform a multiple regression for its self-evaluation. If a contractor chooses to do so, and performs a multiple regression that reasonably meets the general standards outlined in the voluntary guidelines, the contractor will be found in compliance on compensation. In OFCCP's view, because a contractor is incurring a substantial gain if it does a reasonable multiple regression analysis, a contractor should have to conduct a rigorous analysis. A less-sophisticated analysis may miss a potential discrimination problem that would be revealed by the more accurate multiple regression analysis, and a contractor who seeks to avoid OFCCP review should insure against potentially missing discrimination by performing a multiple regression analysis.

OFCCP also believes that it is important for contractors to conduct the self-evaluation analysis on an annual basis. Annual self-evaluation will prevent patterns of discrimination from emerging and will allow the contractor to correct any potential discrimination problems in a timely manner.

Several commenters argued that contractors should have the ability to investigate whether statistically-significant disparities revealed by the regression model were caused by legitimate factors or unique circumstances. OFCCP agrees with these comments. In the final voluntary self-evaluation guidelines, OFCCP retained the provision of the proposed voluntary guidelines that "[t]he contractor must adequately determine whether such statistical disparities are explained by legitimate factors or otherwise are not the product of unlawful discrimination." Thus, contractors must investigate any statistically-significant disparities, determine whether there are legitimate, non-discriminatory explanations for the disparities, and correct the disparities where appropriate.

Several commenters requested that OFCCP provide, post online, or otherwise make available to contractors, the statistical software that contractors can use to evaluate their compensation systems and to discern if discrimination exists. OFCCP uses SAS software to evaluate contractors' compensation systems, and such software was purchased through the normal procurement process. Other software may be available to perform these types of evaluations. This listing does not constitute any endorsement of SAS software, but rather is provided pursuant to several commenters' requests.

Several commenters also requested that OFCCP provide a grace period or a pilot stage before full implementation of the final voluntary guidelines. As OFCCP has explained, the agency does not require the contractor to perform a multiple regression analysis. Rather, a contractor can opt to perform a multiple regression if it desires to obtain the compliance coordination incentive provided by the voluntary guidelines. If a contractor decides that performing a multiple regression is too burdensome or otherwise undesirable, it can choose another self-evaluation technique without any adverse consequences from OFCCP. Because OFCCP is not requiring contractors to engage in any activity to implement these final voluntary guidelines, OFCCP disagrees that a grace or pilot period are appropriate.

C. Factors Included in the Statistical Analysis (Including Multiple Regression Analysis)

Several commenters, such as HR Analytical Services, requested that OFCCP provide more guidance on the factors that contractors should include in the statistical analysis in order to comport with the voluntary guidelines. OFCCP cannot provide additional guidance to contractors on the factors to include in the statistical analysis because those factors must be determined based on the facts of the particular case. Contractors should assess the factors that influence employees' compensation in their workforce. These factors may not be the same for all employees, and even where they are the same, their influence may be significantly different by class of employee. OFCCP listed several of the typical factors to provide some general idea of the types of factors that may be used, not to identify an exhaustive list that is presumed applicable in every case.

Several commenters argued that OFCCP should defer to the contractor's choice of factors used in the multiple regression model and should not require contractors to include every conceivable factor that might have a bearing on compensation. These commenters also asked whether OFCCP would allow contractors to use proxies instead of actual information on a factor where that information is not readily available to the contractor. OFCCP will not simply defer to the contractor in its determination of the appropriate factors. However, if the contractor has made reasonable judgments about the appropriate factors to include in the statistical analyses, based on facts about the factors that influence compensation for the employees encompassed within the analyses, then OFCCP will find that the contractor's self-evaluation program comports with these voluntary guidelines, if the other conditions of the voluntary guidelines are reasonably satisfied. OFCCP does not expect contractors to include all conceivable factors in the analyses. Nor does OFCCP prohibit the use of proxies, but cautions contractors to use proxies with great care. In a particular case, proxies may be reasonable, in light of the availability of actual data, the burden involved with obtaining actual data, and the expected relationship between the proxy and the actual data (i.e., the proxy "tracks" the actual data reasonably well). OFCCP suggests that contractors may test how closely a particular proxy "tracks" the actual data by comparing the proxy to a sample of the actual data. This test may reveal that the proxy tracks the data reasonably well or can be weighted or otherwise modified to reasonably track the actual data.

D. Appropriate Remedies

Several commenters, such as Association of Corporate Counsel, Morgan, Lewis & Bockius, and ORC Worldwide, requested that OFCCP provide more guidance on the circumstances in which a remedy is required under the voluntary guidelines and how the remedy should be determined. OFCCP agrees that general guidance on these issues will be helpful to interested parties. Under the final voluntary self-evaluation guidelines, the contractor must take appropriate remedial action to correct statistically-significant compensation disparities between employees in an SSEG where such disparities are not explained by legitimate, non-discriminatory factors.[6] The remedial action that is appropriate will depend on the facts of the case but should include back pay and other make whole relief. *See Franks* v. *Bowman Transportation Co.*, 424 U.S. 747 (1976). OFCCP recommends that contractors tailor the remedy for each employee as to whom compensation disparities cannot be explained by legitimate factors. *See Rudebusch* v. *Hughes*, 313 F.3d 506, 523–24 (9th Cir. 2002) ("Thus, the real question is not whether Rudebusch should have been brought up to the mean, but whether using the predicted salary of similarly situated white male faculty for the minority and

[6] Not all of the legitimate factors need be included in the statistical analyses, as analyses of individual disparities may reveal legitimate factors that are qualitative, unquantifiable, or unique to a particular employee.

female adjustments somehow overcompensated these minority and women faculty members, i.e., whether the adjustments were more than remedial."). As in all questions of whether the contractor's self-evaluation program comports with the voluntary guidelines, OFCCP will assess whether the contractor's actions were reasonable in light of the particular facts.

E. Relationship With Item 11 of the Scheduling Letter

Several commenters, such as DCI Consulting and Glenn Barlett Consulting Services, requested that OFCCP explain how the voluntary self-evaluation guidelines will be coordinated with OFCCP's compliance review process. In particular, these commenters questioned how the proposed voluntary guidelines would be coordinated with Item 11 of the OFCCP Scheduling Letter. In response to these commenters, OFCCP added a provision in the final voluntary self-evaluation guidelines to clarify this issue. The first step of the compliance review process is that OFCCP sends a Scheduling Letter to the contractor. The Scheduling Letter contains an itemized listing of documents and information that the contractor must submit to OFCCP. Item 11 of the itemized listing requests "annualized compensation data (wages, salaries, commissions, and bonuses) by either salary range, rate, grade, or level showing total number of employees by race and gender and total compensation by race and gender." Under the final voluntary self-evaluation guidelines, a contractor that desires the compliance coordination incentive—and, therefore, has attempted to develop and implement a self-evaluation program that reasonably comports with the voluntary guidelines—will not be required to submit compensation data in response to Item 11. Instead, the contractor should respond to the Item 11 request by noting that the contractor "seeks compliance coordination under the OFCCP voluntary compensation self-evaluation guidelines." OFCCP staff will then call the contractor to discuss the contractor's self-evaluation program and, based on that initial discussion, OFCCP will determine what documents and information it will review in the particular case.

F. Confidentiality of Compensation and Personnel Information

Several commenters, such as Association of Corporate Counsel, NILG, and U.S. Chamber of Commerce, expressed concern about the confidentiality of compensation and personnel information that contractors must maintain and make available to OFCCP to take advantage of the compliance coordination offered in the proposed voluntary self-evaluation guidelines. These commenters requested that OFCCP provide express assurances that the agency would not disclose such information to third-parties or other enforcement agencies. In response to these comments, OFCCP has added a provision to the final voluntary self-evaluation guidelines under which "OFCCP will treat compensation and other personnel information provided by the contractor to OFCCP under these voluntary guidelines as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552." OFCCP borrowed this text from its regulations at 41 CFR 60–2.18(d).

G. Discoverability and the Alternative Compliance Certification

The Alternative Compliance Certification (ACC) is a method by which a contractor is permitted under certain circumstances to certify its compliance with 41 CFR 60–2.17(b)(3) in lieu of producing the methodology or results of the compensation self-evaluation to OFCCP during a compliance review. Several commenters, such as EEAC and Berkshire Associates Inc. expressed confusion about the ACC provision in the proposed voluntary guidelines. For example, several commenters questioned whether the discussion of the ACC implied that contractors were afforded only two ways to comply with the compensation self-evaluation requirement contained in OFCCP's regulations at 41 CFR 60–2.17(b)(3), i.e., either (1) conduct a self-evaluation analysis that comports with the voluntary guidelines, or (2) certify compliance through the ACC. EEAC appeared to favor this interpretation and argued that contractors in reality have a third option: Conduct any form of self-evaluation they deem appropriate. Several commenters, such as Maly Consulting LLC, were concerned that the proposed voluntary guidelines' use of mandatory language in describing self-evaluation methods appeared to contradict provisions which indicated that the voluntary guidelines are indeed voluntary. In response to these comments, OFCCP has clarified this provision in the final voluntary guidelines to make clearer the agency's intent regarding the ACC. The ACC was designed to address only the issue of disclosure of the self-evaluation, not the methods of self-evaluation contractors might use to comply with the self-evaluation requirement in OFCCP's regulations. As to the latter issue, the first sentence of the proposed voluntary guidelines provided that "OFCCP will continue to permit contractors to choose any form of compensation self-evaluation techniques to comply with 41 CFR 60–2.17(b)(3)." 69 FR 67253. The purpose of the ACC was to provide contractors with a way to comply with 41 CFR 60–2.17(b)(3) without engaging OFCCP's scrutiny of their self-evaluation method. However, if a contractor chooses to do an ACC, the contractor would not be eligible for the compliance coordination incentive under the voluntary guidelines. OFCCP has also clarified several other provisions in the final voluntary self-evaluation guidelines to reinforce OFCCP's intent that the voluntary guidelines are indeed strictly voluntary.

Several commenters, such as Association of Corporate Counsel and Morgan, Lewis & Bockius LLP argued that contractors who opt for the ACC should still be eligible for the compliance coordination incentive if they certify that they have implemented a compensation self-evaluation program that complies with the voluntary guidelines. Recognizing that OFCCP would be unable to review the contractor's self-evaluation program if the contractor were permitted to certify, the Association of Corporate Counsel suggested that OFCCP could address this problem by conducting compensation evaluations of a random sample of the contractors that certified. OFCCP does not agree that this approach would be a reasonable enforcement policy. OFCCP expects that many contractors would opt to certify under the suggested approach, because they would obtain the benefit of the compliance coordination incentive without any direct scrutiny of their self-evaluation program. If large numbers of contractors certified, OFCCP would have to divert a rather sizeable portion of its investigation resources toward random compensation reviews. This would defeat the purpose of the voluntary self-evaluation guidelines, which was to afford contractors a compliance coordination incentive for conducting a self-evaluation that comports with the voluntary guidelines.

Several commenters requested additional clarification as to the terms "reasonably meet" the general standards and "marginally reasonable," as used in Section II. Procedure, Paragraph B. However, each self-evaluation involves a contractor's response to a variety of factual issues, such as the composition of SSEGs, the factors to include in a regression, and how to follow-up on

statistical disparities. The wide variety of possible responses to the myriad of possible fact patterns makes greater specificity in this terminology impossible.

Morgan, Lewis & Bockius argued that the ACC should not require the contractor to certify that it conducted any self-evaluation "analysis," which implies that the contractor's chosen self-evaluation technique involved a quantitative or statistical method. OFCCP agrees that the contractor need not have relied on quantitative or statistical techniques to comply with 41 CFR 60–2.17(b)(3), as OFCCP has repeatedly noted that the contractor has the discretion to comply by using any self-evaluation technique it deems appropriate. To ensure that the ACC does not appear to conflict with this intent, OFCCP has removed the term "analyses" in the ACC of the final voluntary guidelines.

Several commenters were concerned that the ACC would not be effective in protecting compensation self-evaluation analyses from disclosure during third-party litigation. Some commenters argued that the ACC could even jeopardize the contractor's privilege claims in such litigation. The U.S. Chamber of Commerce, for example, argued that the existence of the self-evaluation voluntary guidelines might support an argument that the contractor conducted the self-evaluation for reasons other than for obtaining legal advice or in preparation for potential litigation. The fact that the self-evaluation at issue in such a case looked like the self-evaluation outlined in the voluntary guidelines might support the argument that the employer conducted the self-evaluation to take advantage of the voluntary guidelines, not for reasons which would support a recognized protection from disclosure.

OFCCP did not intend the voluntary guidelines to be a basis for employers to lose applicable protections from disclosure. OFCCP included the ACC in the voluntary guidelines to avoid protracted litigation with contractors over the applicability of claimed protections and as a clear statement to contractors that they would not obtain the benefit of the compliance coordination incentive offered under the voluntary guidelines if they did not disclose their self-evaluation analyses to OFCCP. The voluntary guidelines provide only general parameters for a self-evaluation, involving a few high-level concepts, such as SSEGs and multiple regression analysis. Thus, the argument that a self-evaluation which conformed to these general principles must have been conducted under the OFCCP voluntary self-evaluation guidelines is unreasonable. In addition, there are many alternative sources upon which an employer (or the employer's counsel) could draw to develop a self-evaluation method that looks similar to the methods outlined in the voluntary self-evaluation guidelines. After all, OFCCP looked to Title VII caselaw to define SSEGs and to determine that multiple regression analysis is an appropriate statistical method for assessing compensation.

Several commenters requested that OFCCP return the compensation and personnel data after OFCCP concludes its evaluation. The Records Disposal Act, 44 U.S.C 3301 *et seq.* forbids us from doing so, as the Act provides the exclusive means for disposal of such records. 44 U.S.C. 3314. Records received by an agency of the government under Federal Law constitute "records" for purposes of the Records Disposal Act, see Section 3301, and "once a document achieves the status of a "record" as defined by the Act, it may not be alienated or disposed of without the consent of the Administrator of General Services, who has delegated his authority in such matters to the Archivist of the United States." *Kissinger* v. *Reporters Committee for Freedom of the Press*, 445 U.S. 136, 147 (1980). *See also*, 36 CFR part 1220. Be assured, however, that the records will ultimately be disposed of, as provided by the Records Disposal Act.

The Chamber requested that OFCCP recognize a "self-critical privilege" which would protect compensation self-evaluation analysis from disclosure during third-party litigation. OFCCP believes that employers are to be encouraged to implement robust compensation self-evaluation programs, to prevent and timely correct potential compensation discrimination problems. Based on the comments OFCCP received, it is apparent that many employers perceive the possibility of disclosure of compensation self-evaluations in litigation as a compelling disincentive to conducting such analyses. However, OFCCP has no authority to establish privileges applicable in litigation in federal or state court.

H. Adverse Inference

Several commenters, including Gaucher Associates and the Chamber, were concerned that the proposed voluntary self-evaluation guidelines would create a standard for conducting self-evaluations against which employers would be judged in third-party litigation or by OFCCP. These commenters acknowledged that OFCCP has made compliance with the voluntary guidelines entirely voluntary. Nonetheless, these commenters worried that a judge, jury, or OFCCP compliance officer may draw an adverse or negative inference if the employer chooses not to conduct a self-evaluation in the form outlined in the voluntary guidelines. These commenters asked that OFCCP provide in the final voluntary guidelines that the self-evaluation methods outlined in the voluntary guidelines are not the only acceptable methods that an employer could use to conduct a self-evaluation. OFCCP does not intend the voluntary self-evaluation guidelines to provide the basis for any adverse or negative inference against a contractor who decides not to take advantage of the voluntary guidelines. OFCCP has added a provision in the final voluntary self-evaluation guidelines to make clear that the guidelines are entirely voluntary and to express OFCCP's formal policy that the contractor's declining to adopt the methods outlined in the voluntary guidelines will not be used as a basis for any negative or adverse inference about the contractor's compliance status. However, if a contractor fails to adopt any self-evaluation method, such failure will be the basis for a finding of noncompliance with 41 CFR 60–2.17(b)(3). OFCCP agrees with these commenters that there are many methods of conducting a compensation self-evaluation; that application of general self-evaluation methods, such as those outlined in the final voluntary self-evaluation guidelines, will entail significant variability based on the unique facts of each workplace and workforce; and that whether a particular method is more appropriate than another method must be based on a significant understanding of the facts of the particular case.

III. Substantive Discussion Regarding the Final Voluntary Self-Evaluation Guidelines

On May 4, 2000, OFCCP proposed substantial revisions to affirmative action program requirements. 65 FR 26089 (May 4, 2000). As OFCCP explained in the preamble to these May 4, 2000 proposed revisions:

> More recently, an additional objective of the proposed revision has been to advance the Department of Labor's goal of pay equity; that is, ensuring that employees are compensated equally for performing equal work* * *. This NPRM encourages contractors to analyze their own compensation packages to ensure that all their employees are being paid fairly.
>
> 65 FR 26089 (May 4, 2000).

On November 13, 2000, OFCCP published a Final Rule revising the regulatory requirements for written affirmative action programs. 65 FR 68022 (November 13, 2000). OFCCP adopted a requirement that covered contractors evaluate their "[c]ompensation system(s) to determine whether there are gender-, race-or ethnicity-based disparities." 65 FR 68046 (November 13, 2000) (referencing 41 CFR 60–2.17(b)(3).

OFCCP received many comments in response to the Proposed Rule on this compensation self-evaluation requirement. As explained in the Preamble to the November 13, 2000 Final Rule:

> Many of the comments focused on the requirement to review compensation systems, with several commenters asserting that OFCCP does not have authority to enforce equal pay concerns, that analysis of compensation systems is not required by the current regulations, that compensation analyses impose an additional burden, or that OFCCP did not specify the types of analyses it would find acceptable. Commenters also expressed confusion about how the information gained from [the compensation analysis] should be used by contractors, and how the contractor's actions will be evaluated by OFCCP.

65 FR 68036 (November 13, 2000).

OFCCP responded to these commenters in the Preamble to the November 13, 2000 Final Rule: "[C]ontractors have the ability to choose a type of compensation analyses that will determine whether there are gender-, race-, or ethnicity-based disparities." 65 FR 68036 (November 13, 2000).

OFCCP has not, however, provided guidance to contractors or to OFCCP personnel on suggested techniques for compliance with this compensation self-evaluation requirement. These voluntary guidelines are intended to provide suggested techniques for complying with the compensation self-evaluation requirement, although these voluntary guidelines are entirely voluntary. Thus, compliance with these voluntary guidelines is not required for compliance with section 60–2.17(b)(3). OFCCP has included an incentive for contractors to adopt voluntarily the general methods outlined in these voluntary guidelines. Specifically, if a contractor, in good faith, reasonably implements the general methods outlined herein, OFCCP will coordinate its compliance monitoring activities with the contractor's self-evaluation approach. However, compliance with these voluntary guidelines is not the only way to comply with section 60–2.17(b)(3).

While developing these voluntary guidelines for conducting compensation self-evaluations, OFCCP recognizes the risk of liability that an employer faces when making corrective compensation adjustments under a self-evaluation process. For example, female or minority employees may bring claims based on the theory that the employer's own self-evaluation study established that the employer engaged in discrimination or that the employer did not make sufficient compensation adjustments to remedy the discrimination. *See, e.g., Cullen* v. *Indiana Univ.*, 338 F.3d 693, 701–04 (7th Cir. 2003)(female professor sued university alleging compensation discrimination and basing her claim, in part, on university's pay equity study). Similarly, male or non-minority employees may sue the employer alleging violation of Title VII because the employer gave salary adjustments to female or minority employees under the compensation self-evaluation. *See, e.g., Rudebusch* v. *Hughes*, 313 F.3d 506, 515–16 (9th Cir. 2002)(employer's self-audit, regression analysis was not technically sufficient to foreclose male professor's discrimination claim against the employer); *Maitland* v. *Univ. of Minn.*, 155 F.3d 1013, 1016–18 (8th Cir. 1998)(same); *Smith* v. *Virginia Commonwealth Univ.*, 84 F.3d 672, 676–77 (4th Cir. 1996)(same). OFCCP has attempted to provide voluntary guidelines that are technically sufficient to withstand judicial scrutiny, so that contractors do not face potential liability for implementing a robust and effective self-evaluation program. Accordingly, these voluntary guidelines are as follows:

Final Voluntary Guidelines—Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance With Executive Order 11246 With Respect to Systemic Compensation Discrimination ("Voluntary Guidelines")

These Voluntary Guidelines consist of two sections: I. Voluntary Guidelines and II. Procedures.

I. Voluntary Guidelines

OFCCP will continue to permit contractors to choose their own form of compensation self-evaluation techniques to comply with 41 CFR 60–2.17(b)(3). However, as an incentive for contractors to implement a compensation self-evaluation system that conforms to these Voluntary Guidelines, OFCCP will deem a contractor in compliance with section 60–2.17(b)(3) and will coordinate its compliance monitoring activities as explained in Section II of these Voluntary Guidelines, if the contractor's compensation self-evaluation program meets the standards outlined below. These guidelines are strictly voluntary. A contractor's decision not to implement a self-evaluation program that comports with these Voluntary Guidelines shall not be a consideration in OFCCP's assessment of a contractor's compliance with Executive Order 11246 or OFCCP's regulations. However, failure to adopt any self evaluation method will be a basis for a finding of non-compliance with 41 CFR 60–2.17(b)(3). The mandatory language used to describe methods of compensation self-evaluation under these Voluntary Guidelines means that these methods are required if the contractor wishes to obtain the compliance coordination incentive offered under these Voluntary Guidelines. Use of such mandatory terms in these Voluntary Guidelines shall not be construed to imply that the methods outlined in these Voluntary Guidelines are mandatory or to imply any limit on a contractor's discretion to use any self-evaluation technique it deems appropriate to comply with 41 CFR 60–2.17(b)(3). However, OFCCP will deem a contractor in compliance with 41 CFR 60–2.17(b)(3), and will coordinate its compliance monitoring activities as explained in Section II of these Voluntary Guidelines, if the contractor's self-evaluation program meets the following general standards :

A. The self-evaluation is performed by groupings of employees that are similarly situated, referenced hereinafter as "Similarly Situated Employee Groupings," or "SSEGs." Employees may be placed into the same SSEG if they are "similarly situated"; that is, if they perform similar work and occupy positions which are similar in responsibility level, and similar in the skills and qualifications involved in the positions. Employees may not be grouped in an SSEG for purposes of these Voluntary Guidelines unless the work performed, responsibility level, and requisite skills and qualifications involved in their positions are actually similar, regardless of any employer-created designation, such as job title, job classification, pay grade or range, etc. The fact that an employer has grouped employees into a particular pay grade or range does not necessarily mean that these employees are similarly situated; the determining factors are whether the employees are performing similar work, have similar responsibility level, and occupy positions involving similar skills and qualifications. In addition to

work performed, responsibility level, and skills/qualifications involved in the positions, other factors may have a significant bearing on whether employees are similarly situated. Such additional factors may include, for example, department or other functional unit of the employer, employment status (e.g., full-time versus part-time), compensation status (e.g., union versus non-union, hourly versus salaried versus commissions), etc. Contractors should consider the applicability of such factors in developing SSEGs, in addition to similarity in work performed and in responsibility level, skills, and qualifications involved in the positions.

B. The contractor must make a reasonable attempt to produce SSEGs that are large enough for meaningful statistical analysis. However, the SSEGs must in all events conform to Section IA of these Voluntary Guidelines. In general, SSEGs should contain at least 30 employees overall, and contain five or more incumbents who are members of either of the following pairs: male/female or minority/non-minority. Some employees will not be sufficiently similarly situated to other employees to permit them to be grouped in an SSEG. Such employees may be eliminated from the statistical evaluation process; however, the contractor is expected to conduct a self-evaluation of pay decisions related to such employees using non-statistical methods. Further, the contractor should attempt to develop statistical analyses that encompass a significant majority of the employees in the particular affirmative action program (AAP) or establishment. Where the statistical analyses do not encompass at least 70% of the employees in the AAP or establishment, OFCCP will carefully scrutinize the statistical analyses and associated non-statistical self-evaluations. Contractors are afforded discretion to develop self-evaluation programs that encompass various groupings of employees other than AAPs or establishments, subject to the requirements outlined in these Voluntary Guidelines.

C. On an annual basis, the contractor must perform some type of statistical analysis that evaluates SSEGs (as defined in Section IA of these Voluntary Guidelines) and accounts for factors that legitimately affect the compensation of the members of the SSEGs under the contractor's compensation system, such as experience, education, performance, productivity, location, etc. For establishments or AAPs with 500 or more employees, the type of statistical analysis must be multiple regression analysis. The contractor must ensure that any factor within the contractor's control that is included in the analysis is not itself subject to discrimination, although such a factor may be included unless there is evidence that the factor actually was subject to discrimination. Correlation between such a factor and a protected characteristic does not automatically disqualify the factor, if the employer has implemented formal standards to constrain subjective decisionmaking. The analyses must include tests of statistical significance that are generally recognized as appropriate in the statistics profession.

D. The contractor must investigate any statistically-significant compensation disparities identified by the self-evaluation analyses that it has developed. OFCCP considers an identified disparity to be statistically significant if the significance level of the disparity is two or more standard deviations from a zero disparity level.[7] The contractor must adequately determine whether such statistical disparities are explained by legitimate factors or otherwise are not the product of unlawful discrimination. If the statistical disparities cannot be explained, the contractor must provide appropriate remedies. The remedies that are appropriate will depend on the time period in which the disparities emerged. For the initial implementation of the compensation self-evaluation program, the contractor may have to make adjustments based on both current disparities and prior disparities. OFCCP uses a two-year window for back pay corrections. For periodic iterations of the self-evaluation program after the initial implementation, the remedy would involve correcting current disparities. Through the sources of information available to OFCCP under Section IE of these Voluntary Guidelines, OFCCP will carefully evaluate whether the contractor has properly investigated such disparities and has adequately corrected any disparities that are not explained by legitimate factors.

E. The contractor must contemporaneously create and retain the following documents and data:

(1) Documents necessary to explain and justify its decisions with respect to SSEGs, exclusion of certain employees, factors included in the statistical analyses, and the form of the statistical analyses. Such documents must be retained throughout the period in which OFCCP would deem the contractor's compensation practices in compliance with Executive Order 11246, as described in Section IIB of these Voluntary Guidelines;

(2) The data used in the statistical analyses and the results of the statistical analyses for two years from the date that the statistical analyses are performed;

(3) The data and documents explaining the results of the non-statistical methods that the contractor used to evaluate pay decisions of those employees who were eliminated from the statistical evaluation process, which must be retained throughout the period in which OFCCP would deem the contractor's compensation practices in compliance with Executive Order 11246, as described in Section IIB of these Voluntary Guidelines;

(4) Documentation as to any follow-up investigation into statistically-significant disparities, the conclusions of such investigation, and any pay adjustments made to remedy such disparities. These documents must be retained for a period of two years from the date that the follow-up investigation is performed.

F. The contractor must make all of the documents and data referenced in Section IE of these Voluntary Guidelines available to OFCCP during a compliance review. OFCCP may also review any personnel records and conduct any employee interviews necessary to determine the accuracy of any representation made by the contractor in such documentation or data.

II. Procedure

If the contractor's compensation self-evaluation program meets the general standards set forth in Section I of these Voluntary Guidelines, OFCCP will coordinate its compliance monitoring activities as follows:

A. During a compliance review, OFCCP will assess whether the contractor's compensation self-evaluation program comports with the general standards outlined in Section I of these Voluntary Guidelines. A contractor that seeks the compliance coordination incentive under these Voluntary Guidelines should respond to the Item 11 request in OFCCP's Scheduling Letter by noting that the contractor "seeks compliance coordination under the voluntary

[7] This significance level roughly translates to a measured absolute disparity that is more than two times the standard error of the estimated value. *See* David H. Kaye & David A. Freedman, *Reference Guide on Statistics*, in Federal Judicial Center, Reference Manual on Scientific Evidence, at 124 n. 138 (2d ed. 2000). Using a two-tailed test, a statistically significant disparity is a disparity with a significance level of 0.05 or less (subject to the consideration of what is a meaningful difference). This criterion means that, e.g., a disparity in the pay between males and females being either positive or negative, would have a less than a 1-in-20 chance of occurrence unrelated to potential discrimination.

OFCCP compensation self-evaluation voluntary guidelines."

B. If the contractor's compensation self-evaluation system reasonably meets the general standards outlined in Section I of these Voluntary Guidelines, OFCCP will consider the contractor's compensation practices to be in compliance with Executive Order 11246. However, OFCCP may suggest in a written letter that the contractor make prospective modifications to improve the self-evaluation program's conformity with the general standards outlined in Section I of these Voluntary Guidelines, where OFCCP concludes that the self-evaluation program is only marginally reasonable under these Voluntary Guidelines; thereafter, during future compliance reviews, OFCCP will assess whether the contractor made the suggested changes in determining the contractor's prospective compliance with these Voluntary Guidelines. If, during a future compliance review, OFCCP determines that the contractor has not made the changes that OFCCP suggested during the prior compliance review, the contractor's self-evaluation program will no longer be deemed to comport with the general standards outlined in Section I of these Voluntary Guidelines.

C. OFCCP may review the documents and data set forth in Section IE to determine whether the contractor's compensation self-evaluation program reasonably meets the general standards outlined in these Voluntary Guidelines and, if applicable, whether the contractor reasonably made the changes that OFCCP suggested during a prior compliance review.

D. OFCCP personnel will direct technical issues about whether a contractor's self-evaluation program meets the general standards outlined in Section I of these Voluntary Guidelines to OFCCP's Director of Statistical Analysis in the National Office, or his or her designee.

E. *Confidentiality of Compensation and Personnel Information:* OFCCP will treat compensation and other personnel information provided by the contractor to OFCCP under these Voluntary Guidelines as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552. It is the practice of OFCCP not to release data where the contractor is still in business, and the contractor indicates, and through the Department of Labor review process it is determined, that the data are confidential and sensitive and that the release of data would subject the contractor to commercial harm.

F. *Alternative Compliance Certification:* OFCCP understands that some contractors may take the position, based on advice of counsel, that their compensation self-evaluation is subject to certain protections from disclosure, such as the attorney client privilege or attorney work product doctrine, and that these protections would be waived if the contractor disclosed the self-evaluation. OFCCP does not take any position as to the applicability of these protections in the context of a compensation self-evaluation. However, to avoid protracted legal disputes over the applicability of such protections, OFCCP will permit the contractor to certify its compliance with 41 CFR 60–2.17(b)(3) in lieu of producing the methodology or results of its compensation self-evaluation to OFCCP during a compliance review. The certification must be in writing, signed by a duly authorized officer of the contractor under penalty of perjury, and the certification must state that the contractor has performed a compensation self-evaluation with respect to the affirmative action program or establishment at issue, at the direction of counsel, and that counsel has advised the contractor that the compensation self-evaluation and results are subject to the attorney-client privilege and/or the attorney work product doctrine. Because in such an instance OFCCP cannot evaluate the contractor's compliance with the general standards outlined in Section I of these Voluntary Guidelines, a contractor that opts for this compliance certification alternative will not be entitled to the compliance coordination incentive outlined in Section IIB of these Voluntary Guidelines. That is, contractors that opt for this alternative compliance certification do not receive the benefit of OFCCP coordination of agency compliance monitoring activities. Thus, for contractors that elect only to certify compliance with section 60–2.17(b)(3), OFCCP will evaluate their compensation practices without regard to their compensation self-evaluation. This Alternative Compliance Certification is an alternative to the contractor disclosing the self-evaluation and results to OFCCP. It is not to be construed as a limit on contractors' discretion to implement any self-evaluation technique it deems appropriate in order to comply with 41 CFR 60–2.17(b)(3).

Signed at Washington, DC this 12th day of June, 2006.

Victoria A. Lipnic,

Assistant Secretary for the Employment Standards.

Charles E. James, Sr.,

Deputy Assistant Secretary for Federal Contract Compliance.

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Part VI

Department of Labor

Employment Standards Administration

Office of Federal Contract Compliance Programs; Interpreting Nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination; Notice

DEPARTMENT OF LABOR

Employment Standards Administration

Office of Federal Contract Compliance Programs; Interpreting Nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination; Notice

AGENCY: Office of Federal Contract Compliance Programs, Employment Standards Administration, Department of Labor.

ACTION: Notice of final interpretive standards for systemic compensation discrimination under Executive Order 11246.

SUMMARY: The Office of Federal Contract Compliance Programs is publishing final interpretive standards for systemic compensation discrimination under Executive Order 11246, as amended. This document sets forth the final interpretive standards and discusses comments that OFCCP received in response to proposed interpretive standards published in the **Federal Register** on November 16, 2004.

EFFECTIVE DATE: June 16, 2006.

FOR FURTHER INFORMATION CONTACT: Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room N3422, Washington, DC 20210. Telephone: (202) 693–0102 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION: In this preamble, OFCCP summarizes the proposed interpretive standards, discusses the comments received in response to its publication of the proposed standards, and provides a substantive discussion of the final interpretive standards. The substantive discussion of the final interpretive standards substantially restates the preamble of the proposed standards, except that modifications or clarifications were added in response to the comments.

I. Summary of the Proposed Interpretive Standards

On November 16, 2004, OFCCP published a Notice in the **Federal Register** [hereinafter "Notice"] in which the agency proposed standards interpreting Executive Order 11246 with respect to systemic compensation discrimination. 69 FR 67246 (Nov. 16, 2004). Systemic compensation discrimination was defined in the **Federal Register** Notice as discrimination under a pattern or practice, disparate treatment theory of discrimination. 69 FR 67246 n. 2. The Notice explained that OFCCP historically has relied on interpretations of Title VII as a basis for interpreting the nondiscrimination requirements of Executive Order 11246, but that OFCCP had not issued any definitive interpretation of Executive Order 11246 with respect to systemic compensation discrimination. 69 FR 67246–47. The Notice also explained that, in the late-1990s, OFCCP informally used a controversial "pay grade theory" of analyzing compensation practices for systemic discrimination. 69 FR 67247–48. Under the pay grade theory, OFCCP compared the compensation of employees who were in the same pay grade or range, based on the assertion that by creating the pay grade, the employer either "has recognized that certain jobs are essentially similar in terms of skill, effort and responsibility" or "has already identified certain jobs as having similar value to the organization." 69 FR 67247–48. The Notice provided a detailed discussion of OFCCP's reasons for rejecting the grade theory, primarily because the assumptions underlying the grade theory are inconsistent with administrative and judicial interpretations of Title VII and because use of the pay grade theory proved to be a highly ineffective enforcement tool. 69 FR 67248–49.

The proposed interpretive standards had three principal components. The first component of the proposed interpretive standards was adoption of the "similarly situated" standard for comparisons of employees' compensation. 69 FR 67249–67252. Under the proposed standards, employees are similarly situated if they perform similar work and occupy positions involving similar responsibility levels, skills, and qualifications. Id. OFCCP interpreted Executive Order 11246 [1] with respect to systemic compensation discrimination as involving disparate treatment of individuals who are similarly situated under this standard. 69 FR 67251. In adopting the similarly situated standard, OFCCP relied on judicial and administrative interpretations of Title VII. 69 FR 67248–67249. OFCCP stressed that those interpretations were inconsistent with OFCCP's prior "pay grade" method. 69 FR 67248.

The second component of the proposed interpretive standards was adoption of a statistical technique for assessing the combined effects of the multiple, legitimate factors that influence employers' compensation decisions. 69 FR 67250. This statistical technique is called multiple regression analysis. Id. Under the multiple regression analysis, OFCCP would compare the compensation of similarly situated employees, while controlling for legitimate factors that influenced the employers' pay decisions, such as education, experience, performance, productivity, etc. Id. OFCCP explained that it would investigate whether any such factors were actually "tainted" by discrimination, and, if so, OFCCP would not include such factors in the multiple regression analysis. Id. OFCCP also explained that in a particular case it might use a "pooled" regression, in which different groups of similarly-situated employees were combined in a regression while controlling for their membership in their particular similarly-situated group. 69 FR 67250–67251. When using a pooled regression, OFCCP explained, it would test for whether "interaction terms" were required. 69 FR 67251.

The third component of the proposed interpretive standards was its emphasis on the importance of anecdotal evidence of discrimination for a determination of whether systemic compensation discrimination exists. 69 FR 67251. OFCCP noted that it would rarely issue a Notice of Violations alleging systemic compensation discrimination without anecdotal evidence of discrimination to support the statistical evidence of discrimination. Id.

II. Discussion of the Comments Received

OFCCP received 28 comments on the Notice of proposed standards interpreting Executive Order 11246 with respect to systemic compensation discrimination. In response to the comments, OFCCP made several modifications to the proposed interpretive standards, discussed below. In addition, many of the commenters asked for clarification of OFCCP's intent with respect to various aspects of the interpretive standards, which OFCCP provides as appropriate below.

For the following discussion, OFCCP has grouped the comments around the following major subjects: (A) Systemic Compensation Discrimination; (B) The Pay Grade Theory; (C) Similarly Situated Employees; (D) Multiple Regression Analysis; (E) Factors Included in the Regression Analysis; (F) Anecdotal Evidence; and (G) Confidentiality of Compensation and Personnel Information.

[1] Executive Order 11246 has been amended several times since its original promulgation. For ease of reference, "Executive Order 11246" as used hereinafter refers to Executive Order 11246, as amended.

A. Systemic Compensation Discrimination

Several commenters, such as the U.S. Chamber of Commerce and HR Analytical Services, Inc., argued that OFCCP should not focus its efforts on investigating systemic employment discrimination, but should instead spend more agency resources on monitoring compliance with OFCCP's affirmative action regulations. OFCCP does not agree with these commenters. OFCCP believes that elimination of systemic workplace discrimination is an important component of its historical mission. Indeed, affirmative action programs are designed to be tools to prevent workplace discrimination. *See* 41 CFR 60–2.10(a)(3) ("OFCCP has found that when an affirmative action program is approached from this perspective, as a powerful management tool, there is a positive correlation between the presence of affirmative action and the absence of discrimination."). Further, the commenters' suggestion disregards OFCCP's historical enforcement of Executive Order 11246 by requiring payment of back pay and other make whole relief to victims of discrimination. *See* 41 CFR 60–1.26(a)(2) ("OFCCP may seek back pay and other make whole relief for victims of discrimination identified during a complaint investigation or compliance evaluation."). OFCCP's focus on finding and remedying systemic workplace discrimination has provided tangible incentives for contractors to implement affirmative action programs to prevent workplace discrimination.

B. The Pay Grade Theory

Almost all of the commenters addressed the subject of OFCCP's prior "pay grade" method as discussed in the preamble of the proposed standards. Many commenters agreed with OFCCP that the pay grade theory was inconsistent with Title VII standards.[2]

A few commenters, such as Jude Sotherlund, argued that OFCCP should rely on employer-created classifications such as pay grades because these classifications were designed by compensation professionals for the particular employer. OFCCP does not agree with these comments. Unlike compensation professionals, who design compensation systems to meet a variety of business interests, OFCCP's purpose when investigating an employer's compensation practices is to determine whether the employer has engaged in systemic compensation discrimination prohibited by Executive Order 11246. As noted below, EEOC and courts interpreting Title VII have cautioned against reliance on employer classifications in favor of evidence of actual work activities, responsibility level, and skills and qualifications involved in the job.

A few other commenters, including the Employment Task Force of the Leadership Conference on Civil Rights (ETF), argued against OFCCP's conclusion that the pay grade theory should be rejected because it is inconsistent with Title VII. ETF, for example, generally offered two sets of arguments against OFCCP's rejection of the grade theory.

In the first set of arguments, ETF argued that pay grade information can be an effective indicator of potential pay discrimination. ETF noted that "the pay grade approach serves as a unique investigatory tool" and "provided a suitable starting point for investigators to determine which jobs to compare and analyze." ETF questioned, "[i]f the pay grade approach is to be abandoned, it is unclear from these proposed standards how OFCCP intends to utilize its limited resources to identify the appropriate cases for further investigation and enforcement." Several other commenters also expressed concerns about the burden to employers and to the agency if OFCCP conducts the investigation and analysis required by the proposed standards in each compliance review.[3] OFCCP agrees with ETF that pay grade information has some value as an indicator of potential discrimination. OFCCP also agrees with ETF and the other referenced commenters that the agency does not desire to conduct a full-scale compensation investigation in every compliance review. Thus, the interpretive standards are not intended to restrict OFCCP's use of pay grade information or any other information as an indicator of potential discrimination. Rather, the interpretive standards only foreclose the use of the pay grade theory as the basis upon which OFCCP will allege and establish systemic compensation discrimination in violation of Executive Order 11246 and OFCCP regulations. Indeed, OFCCP has historically used a tiered-review approach in its evaluation of contractors that relies on both pay grade information and individual employee information to determine whether to conduct a comprehensive investigation into the contractor's pay practices. Under the tiered-review approach, OFCCP uses pay grade (or other aggregated compensation) information submitted in response to Item 11 of OFCCP's Scheduling Letter.[4] Once it receives the Item 11 data, OFCCP conducts a simple comparison of group average compensation by pay grade or other aggregation unit by which the employer has provided the data. If this comparison indicates a significant disparity, OFCCP will ask the contractor for employee-specific compensation and personnel information.[5] OFCCP intends to continue this tiered-review approach[6] and, in fact, recently implemented additional components to further focus compensation investigations on workplaces where there are significant indicators of potential discrimination. In particular, OFCCP now conducts a "cluster regression" using the employee-specific information requested following the desk audit.[7] If the cluster regression indicates significant disparities, OFCCP conducts a comprehensive evaluation of the pertinent compensation practices, at which point these final interpretive standards govern OFCCP's investigation activity and determinations. OFCCP will afford the contractor an opportunity to

[2] *See, e.g.*, Association of Corporate Counsel, Equal Employment Advisory Council, Gayle B. Ashton, Gaucher Associates, National Industry Liaison Group, ORC Worldwide, Society for Human Resource Management, Sonalysts, TOC Management Services, U.S. Chamber of Commerce, and World at Work. As discussed below, some of these commenters argued that OFCCP should adopt the Equal Pay Act's "substantial equality" standard.

[3] *See, e.g.*, American Society of Employers, Berkshire Associates, Maly Consulting LLC, National Industry Liaison Group, Sonalysts, and the U.S. Chamber of Commerce.

[4] Item 11 of the Scheduling Letter currently requests "annualized compensation data (wages, salaries, commissions, and bonuses) by either salary range, grade, or level showing total number of employees by race and gender and total compensation by race and gender."

[5] OFCCP is studying potential alternatives to use of pay grade information so that the agency can better target its investigative resources.

[6] OFCCP may modify the investigation process leading up to the application of these final interpretive standards, so as to maximize agency resources and efficiency.

[7] The "cluster regression" creates comparison groups by relying on job titles and, where a particular job title does not contain at least 30 employees and at least 5 from each comparator group (females/males, minorities/non-minorities), groups job titles based on the average compensation within each job title. In particular, the cluster regression groups job titles with the closest average compensation values until the 30/5 size requirements are reached. The cluster model uses only two or three explanatory factors in the regression, including age as a proxy for experience, and education level. As noted below, the cluster regression does not comport with Title VII standards for grouping similarly-situated employees, nor does the cluster regression include factors that were determined from an investigation of the employer's pay practices. For these reasons, the cluster regression will be used only as an indicator of potential systemic compensation discrimination; it is not a sufficient basis to issue a Notice of Violation.

provide any additional information and/or analyses that the contractor believes to be pertinent to OFCCP's decision about whether to conduct further investigation of the contractor's compensation practices. OFCCP will consider such information as well as the results of the cluster regression in making a determination of whether further investigation is warranted. Of course, OFCCP will also consider any evidence of discrimination in determining whether to proceed.

Accordingly, OFCCP intends to continue using analysis of pay grade information, supplemented by the cluster regression, as indicators of potential compensation discrimination. However, the pay grade analysis, the cluster regression analysis, and other generalized approaches are only indicators of potential compensation discrimination. These techniques fall far short of the type of fact-intensive investigation and tailored analysis required to make and sustain an allegation of systemic compensation discrimination under Executive Order 11246 and OFCCP regulations. These final interpretive standards fit into the latter part of the OFCCP compliance review process: They serve as the substantive standards interpreting Executive Order 11246 and OFCCP regulations with respect to systemic compensation discrimination. In practical terms, this means that OFCCP must allege and prove facts which meet the interpretive standards in order to establish systemic compensation discrimination in violation of Executive Order 11246 and OFCCP's regulations.

ETF also objected to the provisions of the proposed interpretive standards which mandated prerequisites to issuing a Notice of Violation (NOV). ETF argued that OFCCP should not subject itself to a standard during the "investigatory stage" that is the same standard that OFCCP would be subject to when it pursued enforcement litigation.[8] OFCCP agrees that its investigations need not adhere to the precise requirements of enforcement litigation in order to issue an NOV. For example, OFCCP need not base its decision to issue an NOV on information that has been obtained in a format which would be admissible in court, *e.g.*, OFCCP can rely on notes of an employee interview during an investigation which may not be admissible in litigation. However, OFCCP disagrees that the substantive standards for whether an employment practice constitutes a violation of Executive Order 11246 can depend on whether the matter is in the "investigation stage" or in litigation. If the pay grade theory assumptions (discussed in the preamble of the proposed interpretive standards and below) do not adhere to legal standards, OFCCP has no authority to rely on such assumptions to allege a violation even during the investigation stage. Because the pay grade assumptions are contrary to legal standards, to base a violation on the pay grade theory during the investigation stage is tantamount to changing the substantive requirements of Executive Order 11246.

ETF offered additional arguments against OFCCP's rejection of the pay grade theory. These arguments were premised on a correct understanding that the interpretive standards ruled out the pay grade theory as a basis for alleging and establishing systemic compensation discrimination under Executive Order 11246 and OFCCP regulations. First, ETF argued that OFCCP should continue to use the pay grade theory, suggesting that it is consistent with interpretations of Title VII. Second, ETF argued that the Title VII cases OFCCP cited do not require rejection of the pay grade theory because the plaintiffs failed in the cited cases when they were unable "to provide additional evidence where employers have put forward a legitimate nondiscriminatory reason." In this regard, ETF noted that, "[w]hile pay grade information may not have been enough to win these particular cases, such information was clearly instrumental in establishing possible discrimination in the first place." Finally, ETF argued that the rejection of the pay grade theory could harm or curtail future enforcement efforts or developments in the law.

OFCCP does not find ETF's comments to be persuasive reasons for retaining the pay grade theory as a basis for alleging and establishing systemic compensation discrimination under Executive Order 11246 and OFCCP regulations. As to ETF's argument that OFCCP should continue to rely on the pay grade theory to establish systemic compensation discrimination, OFCCP believes that the pay grade theory was inconsistent with Title VII standards and that there are compelling reasons for ensuring that the nondiscrimination provisions of Executive Order 11246 are interpreted consistently with Title VII. First, this has been OFCCP's historical practice, as well as the practice of the Department of Labor in rendering final agency decisions in cases arising under Executive Order 11246. See note 29, below; see also OFCCP Federal Contract Compliance Manual, at Section 3K00(c) ("It is OFCCP policy, in conducting analyses of potential discrimination under the Executive Order, to follow Title VII principles.").[9] Second, OFCCP expects that the federal courts will look to Title VII interpretations when interpreting the nondiscrimination requirements of Executive Order 11246. This is a significant consideration in light of the fact that Department of Labor determinations under Executive Order 11246 are subject to review in federal court under the Administrative Procedure Act. Thus, federal courts are likely to defer to these final interpretive standards because they accord with the weight of authority under Title VII, in addition to deference under traditional deference doctrines. See *Barnhart* v. *Walton*, 535 U.S. 212, 217 (2002) ("Courts grant an agency's interpretation of its own regulations considerable legal leeway"); *Auer* v. *Robbins*, 519 U.S. 452, 461 (1997) (agency's interpretation of its own regulation is "controlling unless 'plainly erroneous or inconsistent with the regulation,'" quoting *Bowles* v. *Seminole Rock Co.*, 385 U.S. 410, 413–14 (1945)); *Udall* v. *Tallman*, 380 U.S. 1, 16–17 (1965) (agency interpretations of Executive Orders they are charged with enforcing are afforded deference under *Bowles* v. *Seminole Rock Co.*, 385 U.S. 410, 413–14 (1945)); *Reynolds* v. *Rumsfeld*, 564 F.2d 663, 668 (4th Cir. 1977) (OFCCP interpretation of Executive Order 11246 entitled to *Seminole Rock* deference).

Third, this policy ensures uniformity and consistency with the principal congressional enactment on equal employment opportunity, and with EEOC enforcement standards. OFCCP relied expressly and extensively on the EEOC Compliance Manual chapter on compensation discrimination in developing the interpretive standards. In addition, the EEOC provided written comments for the public record in

[8] This is one of the arguments presented in the publication circulated in support of the pay grade theory. *See* "Update on Systemic Compensation Analysis," at 1 ("It is not OFCCP's policy or practice to 'litigate' the merits of investigation findings at the investigatory stage of a review."). However, the "Update on Systemic Compensation Analysis" also noted that "OFCCP has always applied Title VII principles to its methods of investigation." *Id.*

[9] Section 3R(a) of OFCCP's Federal Contract Compliance Manual (FCCM) provides that "compensation discrimination" encompasses "[d]isparate treatment in pay in relationship to the established range for a job, whether at entry or later; e.g., Blacks with similar backgrounds to Whites on the legitimate factors considered for initial salary are hired at less money, etc. * * *." To the extend that this reference, or any other reference in the FCCM, implies the pay grade theory or any other theory of compensation discrimination that permits comparison of compensation of individuals who are not similarly situated under these final interpretive standards, or otherwise conficts with these interpretive standards, these interpretive standards supercede the FCCM in that regard.

which EEOC stated, "we are pleased that your approach to addressing compensation discrimination is consistent with EEOC's own view."

OFCCP also does not agree with ETF's characterization of the authority cited in the preamble of the proposed interpretive standards. First, ETF's comments conflict with the EEOC compensation guidelines, which expressly adopt the "similarly situated" standard. EEOC Compliance Manual on "Compensation Discrimination," EEOC Directive No. 915.003 (Dec. 5, 2000)[hereinafter, "CMCD"], at 10–5 to 10–8 ("The investigator should determine the similarity of jobs by ascertaining whether the jobs generally involve similar tasks, require similar skill, effort, and responsibility, working conditions, and are similarly complex or difficult.").

Second, OFCCP does not agree that the plaintiffs in "virtually all" of the cases cited in the preamble of the proposed interpretive standards were able to establish a *prima facie* case by comparing themselves to individuals who did not perform similar work and whose positions were not similar in the responsibility level, skills, and qualifications involved. It has long been established that plaintiffs must demonstrate that similarly situated employees were treated differently as part of their own *prima facie* case. See *Texas Dep't of Community Affairs* v. *Burdine*, 450 U.S. 248, 258 (1981) ("*McDonnell Douglas* teaches that it is the plaintiff's task to demonstrate that similarly situated employees were not treated equally."); see also *Quarless* v. *Bronx Lebanon Hosp. Ctr.*, 228 F. Supp.2d 377, 383 (S.D.N.Y. 2002) ("In order to establish a *prima facie* case of discriminatory disparate pay under Title VII, a plaintiff must show * * * that he was paid less than similarly situated non-members of his protected class; * * *") *aff'd*, 75 Fed. Appx. 846, 848 (2d Cir. 2003); *Lewis* v. *Smith*, 255 F. Supp.2d 1054, 1060–61 (D. Ariz. 2003) ("Plaintiff can establish a *prima facie* case under Title VII because he can show that * * * he was given greater or similar responsibilities but paid less than [a coworker] who occupied a similar, if not substantially equal, position."). Indeed, in many of the cited cases, the plaintiffs were unable to establish a *prima facie* case precisely because they attempted to compare themselves to individuals whose work, responsibility level, and skills and qualifications were not similar to their own. See, e.g., *Block* v. *Kwal-Howells, Inc.*, No. 03–1101, 2004 WL 296976, at *2–*4 (10th Cir. Feb. 17, 2004) ("The district court concluded Ms. Block failed to establish a *prima facie* case of discrimination because she failed to prove she occupied a substantially similar position to Mr. Dennis. Aplt. Br., Att. A. at 26. Upon a thorough review of the evidence, we agree. Ms. Block and Mr. Dennis were not similarly situated."); *Williams* v. *Galveston Ind. Sch. Dist.*, No. 03–40436, 78 Fed. Appx. 946, 949–50, 2003 WL 22426852 (5th Cir. Oct. 23, 2003) ("Appellants attempt to found their *prima facie* case on a comparison between their positions and the positions held by Mr. McLarty and Ms. Garcia. However, each employee's responsibilities are plainly dissimilar from the responsibilities of the other three grade 8 employees * * *. The fact that GISD lists all four employees at grade 8 is not significant. Pay grades represent a range of possible salaries, and Appellants concede that salaries can differ within a pay grade.") [10];

[10] ETF argues that the fact that *Williams* was unpublished and, under Fifth Circuit rules, cannot be cited as precedent, "undermines the case's significance." However, under Rule 47.5.4 of the Local Rules of Appellate Procedure for the United States Court of Appeals for the Fifth Circuit, "[a]n unpublished opinion may, however, be persuasive. An unpublished opinion may be cited, but if cited in any document being submitted to the court, a copy of the unpublished opinion must be attached to each document. The first page of each unpublished opinion bears the following legend: Pursuant to Loc. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Loc. R. 47.5.4." A district court in the Fifth Circuit has found the reasoning in *Williams* to be persuasive. See *Dean* v. *Kimberly-Clark Corp.*, No. 3:02–CV–1682–K, 2005 WL 309509, at *2 (N.D. Tex. Feb. 8, 2005) ("Plaintiff claims that Kimberly-Clark discriminated against him by failing to compensate him at the same rate it compensated its Process Specialists, although he admits he was a Production Officer, not a Process Specialist. "If a plaintiff's job responsibilities are significantly different from the responsibilities of employees [he] cites as a point of comparison, then the plaintiff has not made out a *prima facie* case." Williams 78 Fed. Appx. at 949."). In addition to *Williams*, the district court in *Woodward* v. *United Parcel Serv., Inc.*, 306 F. Supp. 2d 567, 574–75 (D. S.C. 2004), expressly rejected the pay grade theory as a basis for establishing a *prima facie* case of compensation discrimination: "In order to establish a *prima facie* case of pay discrimination, Woodward must show that he * * * was paid less than similarly situated employees who were outside his protected class * * *. Woodward has not identified any relevant group of similarly situated comparators to support his claim of pay discrimination * * *. In 1998, Woodward transferred to the District Assessor position in the South Carolina District—a job in which he had no comparators because the other six Grade 16 managers in the IE department during 1998 and 1999 (while Woodward was the Assessor) all held positions with significantly different duties * * *. In summary, Woodward has failed to identify any comparators who are similarly situated with respect to pay. Woodward has made no effort to demonstrate that any of the alleged comparators that he has identified held positions whose duties were the same as or substantially similar to his own. Instead, Woodward relies solely on his unsupported assertion that all Grade 16 level employees are similarly situated with respect to pay."

Verwey v. *Illinois Coll. of Optometry*, 43 Fed. Appx. 996, 2002 WL 1836507, at *4 (7th Cir. Aug. 9, 2002) ("Verwey also argues that the district court erred in granting summary judgment to the College on her wage discrimination claim. She asserts that she raised an inference of discrimination by showing that the three maintenance men in her department received raises after voting against unionizing, but that she, the lone female employee, did not. Verwey's claim fails for several reasons. First, she did not establish that the maintenance men were similarly situated to her. Although they worked in the same department, they had different job titles and responsibilities and therefore did not hold equivalent positions; Verwey was an administrative assistant, not a maintenance worker."); *Rodriguez* v. *SmithKline Beecham*, 224 F.3d 1, 8 (1st Cir. 2000) ("As we set forth above, the uncontested facts before the district court indicate that appellant's job functions and responsibilities were not substantially similar or comparable to those of Document Manager Llivina or Records Management Leader Feo, nor to those of Edwin López. Absent such a showing, plaintiff's Title VII claim fails as a matter of law for lack of a *prima facie* case."); *Sprague* v. *Thorn Americas, Inc.*, 129 F.3d 1355, 1362 (10th Cir. 1997) ("It is apparent from the record that Sprague failed to present genuine issues of material fact which would support her equal pay claim under Title VII. As the district court observed, Sprague contrasts her functions and pay in the jewelry department to those of the assistant product manager of electronics and the assistant product manager of furniture/appliances, both of whom are males. 'However, the Electronics, Furniture/Appliances, and Jewelry Departments do not contribute equally to [Thorn's] revenues.' See district court's Memorandum and Order at 5. While the electronics department comprises approximately 50% of revenues and the furniture/appliance department accounts for approximately 45% of revenues, the jewelry department only produces approximately 4% of revenues. Id. * * * Given the evidence presented to the district court, we find that Sprague failed to present a *prima facie* case of intentional gender discrimination."); *EEOC* v. *Sears, Roebuck & Co.*, 839 F.2d 302, 347 (7th Cir. 1988) ("As it turns out, the EEOC's failure to introduce any evidence of actual job content or job performance is fatal to its sex discrimination in wages claim in light of Sears' evidence regarding differences in

job content. The EEOC appears to suggest that Sears had the burden of showing the inequality of job content. This line of argument is similar to that which we recognized in Epstein, 739 F.2d at 278: 'Plaintiff would, it seems, have us infer equal work from the defendants' failure to prove otherwise.' We responded that this argument ignores the elementary fact that the burden for proving the *prima facie* case is on the plaintiff."); *Eastland* v. *Tennessee Valley Auth.*, 704 F.2d 613, 624–25 (11th Cir. 1983) ("In the present case Eastland's analyses account for many objective qualifications, but the failure to control for job category casts doubt on whether the regressions are comparing appropriate groups. Given the weakness of the theoretical foundation and the failure to control for job category, the district court did not err in determining that Eastland's regressions were insufficient to establish a *prima facie* case."); *Lawton* v. *Sunoco, Inc.*, No. 01–2784, 2002 WL 1585582, at *7 (E.D. Pa. Jul 17, 2002) ("In order to establish a *prima facie* case of wage discrimination under Title VII * * * the plaintiffs 'must demonstrate that they were performing work substantially equal to that of white employees who were compensated at higher rates than they were,'" quoting *Aman* v. *Cort Furniture Rental Corp.*, 85 F.3d 1074 (3d Cir. 1996), but also citing *Watson* v. *Eastman Kodak Co.*, 235 F.3d 851 (3d Cir. 2000), for "similarly situated" standard).[11]

ETF's arguments also do not address the fundamental point for which OFCCP cited these cases. OFCCP relied on these cases to identify the factors that courts use to determine whether employees are similarly situated in compensation discrimination claims under Title VII. Under the pay grade theory, OFCCP took the position that employees included in the same pay grade were necessarily similarly situated, without regard to their actual job duties, responsibility levels, and skills and qualifications, and OFCCP persisted in that position, even threatening enforcement action, regardless of the evidence the employer submitted about differences in job duties, responsibility levels and skills and qualifications. Indeed, the defining feature of the pay grade theory was its assumption that employees were similarly situated based solely on the fact that they were included in the same pay grade (or that they were in the same pay grade and their pay could progress to the top of the pay grade without changing jobs). OFCCP has rejected the pay grade theory because it conflicts with courts' interpretations of Title VII.

As noted earlier, ETF expressed concern regarding the stage of the case in which the similarly situated issue arises. However, ETF did not expressly endorse the pay grade assumptions that individuals are similarly situated because they are in the same pay grade. Thus, there are not substantial differences between the final interpretive standards and ETF's position. As noted below, in a particular case the pay grade could coincidentally group employees who in fact performed similar work, and occupied positions involving similar responsibility levels, skills, and qualifications. However, what would make such employees similarly situated is the fact that that they perform similar work and occupy positions involving similar responsibility levels, skills and qualifications, not the fact that they are in the same pay grade. Moreover, ETF apparently accepts that an employer could always justify pay differentials between employees who occupy the same pay grade through evidence that the employees are not similar with respect to the work they perform, their responsibility levels, or the skills and qualifications involved in their positions.[12]

OFCCP disagrees with ETF's last argument, that the agency should not promulgate the final interpretive standards because they could harm or curtail future enforcement efforts and development of the law. In fact, OFCCP's experience demonstrates that just the opposite is true. OFCCP believes that it is important for the agency to promulgate a definitive interpretation of Executive Order 11246 and OFCCP regulations with respect to systemic compensation discrimination. Most significantly, these final interpretive standards will promote compliance with Executive Order 11246 by helping agency personnel and covered contractors and subcontractors understand the meaning of Executive Order 11246 and OFCCP regulations with respect to systemic compensation discrimination. OFCCP personnel will be guided by written standards which will promote uniformity in OFCCP's enforcement of Executive Order 11246. Together with the Voluntary Self-Evaluation Guidelines, these interpretive standards will help contractors with developing programs for monitoring their own compensation practices. OFCCP also believes these interpretive standards will ensure that OFCCP's enforcement efforts are effective, by providing standards that are consistent with administrative and judicial interpretations of Title VII. In fact, OFCCP has been successful in pursuing systemic compensation discrimination cases under standards quite similar to the standards articulated in these final interpretive standards. In the last three years, OFCCP pursued enforcement litigation in two cases using multiple regression analyses that did not rely on the grade theory. These were the first two compensation cases OFCCP has filed in twenty-five years, and both cases resulted in significant settlements, including a near record $5.5 million settlement. By contrast, OFCCP did not pursue even one case through enforcement litigation during the period in which the agency relied on the grade theory. OFCCP does not believe that it will be effective in establishing and remedying systemic compensation discrimination unless contractors perceive that OFCCP's methods will support a credible threat of successful enforcement litigation.

In sum, OFCCP agrees with ETF that grade information can be useful as an indicator of potential compensation discrimination, and OFCCP intends to

[11] By contrast, plaintiffs were successful in their claims when they offered evidence that they were similarly situated based on the work they performed, and the responsibility level, skills, and qualifications involved in their positions. See, e.g., *Brinkley-Ubo* v. *Hughes Training Inc.*, 36 F.3d 336, 343 (4th Cir. 1994) ("The plaintiff may establish a *prima facie* case by demonstrating * * * that the job she occupied was similar to higher paying jobs occupied by males."); *Miranda* v. *B&B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1526–31 (11th Cir. 1992) ("We agree with the trial court that Miranda carried her burden of proof and established that B & B discriminated against her because of her gender. The plaintiff establishes a *prima facie* case of sex discrimination under Title VII by demonstrating that she is female and that the job she occupied was similar to higher paying jobs occupied by males. The trial court found that Miranda's description of the type of duties she performed as a buyer, as well as testimony from defendant's witnesses established that she shared the same type of tasks as the other buyers.").

[12] Of course, if OFCCP used pay grade as the initial grouping, subject to the employer's rebuttal that the jobs were dissimilar, employers typically would argue that the pay grade grouped positions that were dissimilar, as they did throughout the period that OFCCP used the pay grade theory. However, in the past, OFCCP generally did not investigate the employer's contention that the jobs were dissimilar because the pay grade theory assumed that employees were similarly situated if they were in the same pay grade, regardless of whether they were similar or dissimilar in the work they performed, their responsibility levels, or the skills and qualifications involved in their positions. However, if OFCCP used grade as the initial grouping subject to the employer's rebuttal that the jobs were dissimilar, OFCCP could not simply accept the employer's contention that jobs were dissimilar, but would have to investigate whether the facts supported the employer's contention. This would require OFCCP to conduct the same type of factual investigation specified in these final interpretive standards.

continue to use grade information to target agency resources on workplaces where further investigation is warranted. However, OFCCP disagrees with ETF that the grade theory is consistent with Title VII standards or that the grade theory is an efficient and effective method for OFCCP to accomplish its important mission.

C. Similarly Situated Employees

Many commenters approved of OFCCP's proposed interpretive standards for defining similarly-situated employees.[13] However, several commenters, such as Ellen Shong & Associates, Gaucher Associates, and Society for Human Resource Management (SHRM), argued that OFCCP should adopt the Equal Pay Act standard of "substantial equality" instead of the "similarly situated" standard. OFCCP does not agree with these commenters. As noted, OFCCP has historically relied on interpretations of Title VII to interpret the nondiscrimination requirements of Executive Order 11246. Many courts and the EEOC have interpreted Title VII to allow comparisons of individuals who are "similarly situated" as defined in these final interpretive standards.[14]

Several commenters, such as TOC Management Services, questioned whether the proposed paragraph 7 of the Standards for OFCCP Evaluation of Contractors' Compensation Practices conflicted with OFCCP's adoption of the similarly situated standard. Proposed paragraph 7 stated that "OFCCP will also assert a compensation discrimination violation if the contractor establishes compensation rates for jobs (not for particular employees) that are occupied predominantly by women or minorities that are significantly lower than rates established for jobs occupied predominantly by men or non-minorities, where the evidence establishes that the contractor made the job wage-rate decisions based on the sex, race or ethnicity of the incumbent employees that predominate in each job." In response to the comments, OFCCP added a footnote to paragraph 7 of the "Standards for OFCCP Evaluation of Contractors' Compensation Practices" in the final interpretive guidelines to make clear that the intent of paragraph 7 was not to permit a systemic compensation discrimination theory based on comparison of employees who were not similarly situated. Rather, the intent is simply to permit the type of unique compensation discrimination claim approved of in *County of Washington* v. *Gunther*, 452 U.S. 161, 166 (1981) ("[R]espondents seek to prove, by direct evidence, that their wages were depressed because of intentional sex discrimination, consisting of setting the wage scale for female guards, but not for male guards, at a level lower than its own survey of outside markets and the worth of the jobs warranted."). Unlike the systemic compensation discrimination standards set forth in the final interpretive standards, which involve comparisons of the compensation of similarly-situated employees using multiple regression to control for the joint contributions of the various legitimate factors that influence compensation, the *Gunther*-type claim "does not attempt by statistical technique or other method to quantify the effect of sex discrimination on the wage rates." 452 U.S. at 181 & n. 20 (citing Franklin M. Fisher, *Multiple Regression in Legal Proceedings*, 80 Colum.L.Rev. 702, 721–725 (1980)).[15]

Several of the commenters who agreed that similarity in job duties, responsibility level, and skills/qualifications is a necessary condition for employees to be similarly situated,[16] also argued that similarity in these factors is not a sufficient condition for employees to be similarly situated in all cases. These commenters argued that there may be other factors in particular cases that may make individuals dissimilar who would otherwise meet the proposed standard for similarly situated. For example, these commenters noted that otherwise similarly-situated employees may be paid differently for a variety of reasons: They work in different departments or other functional divisions of the organization with different budgets or different levels of importance to the business; they fall under different pay plans, such as team-based pay plans or incentive pay plans; they are paid on a different basis, such as hourly, salary or through sales commissions; some are covered by wage scales set through collective bargaining, while others are not; they have different employment statuses, such as full-time or part-time; etc. OFCCP agrees with these commenters that such factors may be important to whether employees are similarly situated in a particular case. See, e.g., CMCD, at 10–6 ("[T]he fact that employees work in different departments or other organizational units may be relevant, but is not controlling."); see also *Cooper* v. *Southern Co.*, 390 F.3d 695, 717 (11th Cir. 2004) (noting that plaintiffs' expert "did not tailor her analysis to the specific positions, job locations, or departmental or organizational structures in question; however, the wide-ranging and highly diversified nature of the defendants' operations requires that employee comparisons take these distinctions into account in order to ensure that the black and white employees being compared are similarly situated"); *Goodwin* v. *General Motors Corp.*, 275 F.3d 1005, 1012 n.8 (10th Cir. 2002) (holding employees similarly situated for compensation discrimination claim under Title VII because "[a]ll four representatives had the same supervisor, performed identical job duties and were subject to the same company standards and policies"); *Webb* v. *Merck & Co., Inc.*, 206 F.R.D. 399, 408 (E.D. Pa. 2002) ("We agree with defendant that [the plaintiffs'' expert's] analysis of hourly (union) workers is unreliable and irrelevant because it fails to control for the mandated wage rate set by collective bargaining agreements for an employee's position * * *"). OFCCP has added provisions (Paragraph 2 of the "Standards for Systemic Compensation Discrimination Under Executive Order 11246" and Paragraph 3 of the "Standards for OFCCP Evaluation of Contractors' Compensation Practices") to the final standards to make clear that the agency will consider the applicability of such additional factors in each case and make a determination based on the facts of the particular case.

Several commenters, including ETF and National Industry Liaison Group (NILG), noted that the proposed interpretive standards were ambiguous about whether similarity of qualifications involves similarity in qualifications required for the position or similarity of qualifications possessed by the individual employees who hold the position. ETF noted that the EEOC

[13] See, *e.g.*, Association of Corporate Counsel, Equal Employment Advisory Council, HR Analytical Services, National Industry Liaison Group, ORC Worldwide, TOC Management Services, U.S. Chamber of Commerce, and World at Work.

[14] See, e.g., *Sprague* v. *Thorn Americas, Inc.*, 129 F.3d 1355 (10th Cir. 1997); *Mulhall* v. *Advance Sec., Inc.*, 19 F.3d 586 (11th Cir. 1994); *Brinkley-Obu* v. *Hughes Training, Inc.*, 36 F.3d 336 (4th Cir. 1994); *Miranda* v. *B & B Cash Grocery Store, Inc.*, 975 F.2d 1518 (11th Cir. 1992); *Crockwell* v. *Blackmon-Mooring Steamatic, Inc.*, 627 F. Supp. 800 (W.D. Tenn. 1985).

[15] Because *Gunther*-type claims are unique, OFCCP has not included a paragraph regarding such claims in the "Standards for Systemic Compensation Discrimination Under Executive Order 11246."

[16] See, *e.g.*, Equal Employment Advisory Council, Morgan, Lewis & Bockius LLP, Northeast Region Corporate Industry Liaison Group, ORC Worldwide, and Picha & Salisbury, Society for Human Resource Management.

Compliance Manual chapter on compensation discrimination relies on the qualifications for the position, not the qualifications of the particular employees. OFCCP agrees with ETF that it is the qualifications involved in the position, not the qualifications of the individuals who occupy the position, that determine whether employees are similarly situated under these final interpretive standards. See CMCD, at 10–7. However, OFCCP generally will consider qualifications of the individuals as an explanatory factor in a regression model because superior qualifications are a legitimate reason for pay differences between similarly-situated employees. Id.; see also *Goodwin* v. *General Motors Corp.*, 275 F.3d 1005, 1012 n.8 (10th Cir. 2002) (noting in context of disparate treatment compensation discrimination claim under Title VII that plaintiff had superior qualifications to similarly situated male employees: "And Goodwin was one of just two who had master's degrees."); *Klindt* v. *Honeywell Int'l Inc.*, 303 F. Supp.2d. 1206, 1223 (D. Kan. 2004) (employer not precluded from considering superior educational qualifications in determining employees' salaries).

Several commenters, such as SHRM and HR Analytical Services, requested that OFCCP provide more guidance on how the agency intends to determine whether employees are similarly situated. OFCCP agrees that further clarification of this issue will be helpful to interested parties. OFCCP intends to gather information on employees' job duties, responsibility levels, and skills and qualifications, and other pertinent factors (as discussed above) through review of job descriptions and interviews of employees, managers, and HR and compensation personnel. Once OFCCP has gathered such information, it will determine which individuals are similarly situated by assessing the information under the standard for similarly situated set forth in these final interpretive standards. Since the final interpretive standards rely on federal court interpretations of Title VII, OFCCP will review applicable caselaw as an aid to making such determinations in particular cases. This review of caselaw typically will involve research for cases that discuss positions that are factually similar to the positions at issue in OFCCP's investigation.[17] OFCCP will review the reasoning and determinations of the courts in such factually-similar cases for guidance in making a determination on the facts before OFCCP.

Several commenters expressed concern that OFCCP would be forced to group dissimilar employees in order to create groupings of sufficient size for statistical analysis, especially in light of OFCCP's stated desire to cover "most" or "a significant number of" employees.[18] Several of these commenters also requested that OFCCP explicitly acknowledge that certain employees, such as high-level executives, are unique and are not similarly situated to any other employees. OFCCP agrees with these commenters that it may be expected that certain employees are not similarly situated to any other employee in the organization, workplace, or AAP. Under no circumstances will OFCCP attempt to combine, group, or compare employees who are not similarly situated under these final interpretive standards. If employees are not similarly situated under these final interpretive standards, they will not be included in the statistical analysis, regardless of statistical size requirements or of OFCCP's general objective to include a significant majority of employees in the regression analyses.[19]

Several commenters, including Equal Employment Advisory Council (EEAC) and ORC Worldwide (ORC), expressed concern with OFCCP's stated intent to review job descriptions and conduct employee interviews to determine whether employees are similarly situated. These commenters noted that job descriptions are often outdated and inaccurate. Several commenters requested that OFCCP also interview managers or supervisors to determine which employees are similarly situated. OFCCP agrees with these commenters that it will be important for agency staff to interview supervisors, managers, and HR and compensation personnel to obtain information needed to determine whether employees are similarly situated, as well as to obtain other pertinent information about the employer's compensation practices.

D. Multiple Regression Analysis

Many commenters agreed that multiple regression analysis is a legally and statistically valid method for evaluating systemic compensation discrimination.[20] However, several commenters, such as Ellen Shong & Associates, Peopleclick Research Institute (PRI), and David W. Peterson, argued that OFCCP's proposed regression analysis is inaccurate because it does not evaluate pay and personnel decisions directly (or indirectly through a "pay progression study"), but compares employees' compensation at a particular point in time. OFCCP does not agree with these commenters that multiple regression analysis of current compensation is legally or statistically deficient. Indeed, the Supreme Court has approved of such analysis. See *Bazemore* v. *Friday*, 478 U.S. 385, 400 (1986). Without expressing any view as to whether the types of analysis that these commenters suggest may also be legally and statistically acceptable,[21] OFCCP does not believe that such analysis is preferable to the approach outlined in the final interpretive standards, for two reasons. First, the analysis suggested by the commenters would require OFCCP to gather far more information than required by the regression analysis outlined in these final interpretive standards. For example, under the commenters' approach, OFCCP would have to identify the variety of personnel decisions that influenced employees' compensation over a significant period of time and, as to each decision, evaluate whether the employer treated the employee similarly to other employees who were similarly situated with respect to that particular decision. This would impose significant burdens both on OFCCP and on contractors during OFCCP's investigation to obtain the information needed for the suggested analysis. Second, the commenters' suggested analysis would combine pay, promotion, and perhaps other personnel decisions in the same analysis, making it difficult to define the nature of the alleged discrimination or to determine an appropriate remedy.

Many commenters expressed concern about the complexity of multiple regression analysis and the burden of collecting the data required for such analysis.[22] Others were concerned that

[17] OFCCP has cited cases in this preamble that discuss whether specific positions are similarly situated. There are hundreds of other federal court pay discrimination cases that discuss whether other positions are similarly situated based on facts about the specific positions involved in each of those cases.

[18] See, e.g., Equal Employment Advisory Council, Gaucher Associates, and World at Work.

[19] OFCCP reserves the right, in rare cases, to perform non-statistical analyses on the wages of those employees who are not similarly situated to any other employee, such as high-level executives.

[20] See, e.g., Berkshire Associates, Equal Employment Advisory Council, HR Analytical Service, Society for Human Resource Management, U.S. Chamber of Commerce, and World at Work.

[21] Unfortunately, these commenters did not cite any cases in which the court accepted these types of analysis to prove systemic compensation discrimination. OFCCP currently is studying methods for evaluating promotion practices for systemic discrimination and does not intend this discussion to foreclose exploration of such analysis for that purpose.

[22] See, e.g., American Society of Employers, Gaucher Associates, Glenn Barlett Consulting

they would need to hire statisticians or other experts.[23] OFCCP understands that multiple regression analysis is complicated and requires significant compensation and personnel information. However, because OFCCP will use the analysis as a basis for alleging and establishing systemic compensation discrimination, the agency believes that it must conduct an analysis that meets legal and statistical standards. Indeed, the pay grade method undoubtedly was simple, but OFCCP could not prove systemic compensation discrimination by using that method because it did not adhere to legal and statistical standards and it was widely criticized by contractors for those reasons. Thus, there is a natural tension between the accuracy of the analysis and the complexity and burden associated with it. As discussed above, OFCCP has attempted to balance these competing factors by using a tiered-review approach, in which a multiple regression analysis is conducted only after less complex and less intrusive analyses reveal indicators of potential discrimination. Moreover, OFCCP, not the contractor, has the burden of gathering data and conducting the multiple regression analyses. Contractors need not convert their data to electronic format for purposes of a compliance evaluation. If the data is already in electronic format, OFCCP will use it, but if not, OFCCP has the responsibility of taking the raw data and converting it into an electronic format which can be used in the regression analyses. Similarly, contractors are not required to hire experts to conduct the multiple regression analyses, OFCCP will conduct the multiple regression analyses.

Several commenters, such as EEAC and SHRM, requested that OFCCP provide more guidance about how the agency will determine whether to use a pooled regression model.[24] OFCCP's determination will be based on the general objectives of attempting to cover as many employees as possible—in light of prohibitions on combining or comparing employees who are not similarly situated—and statistical requirements about the size of employee groupings necessary to conduct a meaningful regression analysis. As noted above, OFCCP will not compare employees who are not similarly situated as defined in these final interpretive standards. OFCCP added text to provisions (Paragraph 5 of "Standards for Systemic Compensation Discrimination Under Executive Order 11246" and Paragraph 5 of "Standards for OFCCP Evaluation of Contractors' Compensation Practices") of the final standards which make clear that pooled regressions must contain category factors that are defined to group only similarly-situated employees as defined in these standards. The pooled regression model affords OFCCP flexibility to conduct an analysis controlling for groupings of similarly-situated employees. However, OFCCP does not intend to use the pooled regression model on a widespread basis as a preferred approach.

Several commenters, including Northeast Region Corporate Industry Liaison Group (NRCILG) and Association of Corporate Counsel (ACC), argued that OFCCP should provide the contractor with the regression model, not just the results of the regression model, in support of any NOV containing an allegation of systemic compensation discrimination. OFCCP agrees that providing such information to contractors will permit the agency to conciliate alleged violations effectively and expeditiously. OFCCP will provide the contractor with enough information about OFCCP's regression model for the contractor to understand the basis for OFCCP's determinations and for the contractor to replicate OFCCP's regression model. OFCCP has revised the interpretive standards (at Paragraph 2 of "Standards for OFCCP Evaluation of Contractors' Compensation Practices") to provide that OFCCP will attach such information to NOVs which contain an allegation of systemic compensation discrimination. With such information, contractors have an opportunity to discuss settlement with OFCCP or to attempt to rebut OFCCP's determination.

Several commenters raised technical statistical issues regarding OFCCP's discussion of multiple regression analysis. PRI and David W. Peterson argued that OFCCP should include all interaction terms when using a pooled regression model, not just interaction terms that are statistically significant. These comments raise a statistical controversy regarding factor reduction techniques in regression analysis. While some statisticians disagree on the use of automated stepwise regression techniques to eliminate insignificant factors, most agree that some form of variable reduction is appropriate. As PRI noted, factors which are individually insignificant may in combination have a significant impact on the regression results. However, OFCCP considers there to be greater risks with full-factor modeling procedures. In particular, especially in the analyses of smaller workforces, the statistical precision in the measured disparities decreases as more factors are added to the analysis. As such, if several inconsequential factors are added to the analysis, they will lessen the ability to measure any gender or racial disparities. Furthermore, as the number of factors increases so does the possibility of a statistical problem called "multicollinearity," which can produce inaccurate results. See Daniel L. Rubenfeld, *Reference Guide on Multiple Regression*, in Federal Judicial Center, Reference Manual on Scientific Evidence, at 197 (2d ed. 2000) ("When two or more variables are highly, but not perfectly, correlated—that is, when there is multicollinearity—the regression can be estimated, but some concerns remain. The greater the multicollinearity between two variables, the less precise are the estimates of individual regression parameters (even though there is no problem in estimating the joint influence of the two variables and all other regression parameters).").

Several commenters questioned OFCCP's adoption of a two standard deviation threshold for assessing statistical significance. Some commenters, including ACC, noted that the caselaw is more nuanced and does not support a bright-line rule. OFCCP recognizes that the courts have not announced an exact threshold for statistical significance. However, OFCCP has determined that it is helpful to adopt a bright-line rule of two standard deviations as an enforcement standard based on the need for uniformity and predictability in this area.

Several commenters, including NILG, noted that statistical significance is dependent on sample size and questioned whether OFCCP would take that fact into consideration. OFCCP notes that standard tests for statistical significance already take sample size into account. Since smaller samples have a higher degree of variation, they require a larger observed disparity to achieve statistical significance. OFCCP recognizes when sample sizes become

Services, HR Analytical Services, National Industry Liaison Group, and Picha & Salisbury.

[23] See, e.g., Berkshire Associates Inc., HR Analytical Services, and Northeast Region Corporate Industry Liaison Group.

[24] As noted in the preamble of the proposed interpretive standards and restated below, if separate regressions by categories of jobs would not permit OFCCP to assess the way the contractor's compensation practices impact on a significant number of employees, OFCCP may perform a "pooled" regression, which combines these categories of jobs into a single regression (while including an OFCCP-developed category factor in the "pooled" regression that controls for groupings of employees who are similarly situated based on work performed, responsibility level, and skills and qualifications).

very large, small and potentially non-meaningful disparities may be found to be statistically significant at the two or higher standard deviation threshold. See Daniel L. Rubenfeld, *Reference Guide on Multiple Regression,* in Federal Judicial Center, Reference Manual on Scientific Evidence, at 181 (2d ed. 2000) ("Other things being equal, the statistical significance of a regression coefficient increases as the sample size increases. Thus, a $1 per hour wage differential between men and women that was determined to be insignificantly different from zero with a sample of 20 men and women could be highly significant if the sample were increased to 200. Often, results that are practically significant are also statistically significant. However, it is possible with a large data set to find statistically significant coefficients that are practically insignificant. Similarly, it is also possible (especially when the sample size is small) to obtain results that are practically significant but statistically insignificant."); see also David H. Kaye & David A. Freedman, *Reference Guide on Statistics,* in Federal Judicial Center, Reference Manual on Scientific Evidence, at 127 (2d ed. 2000) ("Significance depends not only on the magnitude of the effect but on the sample size. Thus significant differences are evidence of something besides random error is at work, but they are not evidence that this 'something' is legally or practically important. Statisticians distinguish between 'statistical' and 'practical' significance to make that point. When practical significance is lacking—when the size of a disparity or correlation is negligible—there is no reason to worry about statistical significance.").

Several commenters, including HR Analytical Services and Northeast Region Corporate Industry Liaison Group, requested that OFCCP provide, post online, or otherwise make available to contractors, the statistical software that OFCCP will use in evaluating whether contractors engaged in systemic compensation discrimination. OFCCP uses SAS software, which was purchased through the normal procurement process. Other software may be available to perform the evaluation. This listing does not constitute any endorsement of SAS software, but rather is provided pursuant to several commenters' requests.

Several commenters, including NILG and SHRM, requested that OFCCP provide a grace period or a pilot stage before full implementation of the final interpretive standards. As OFCCP has explained, the agency does not require or expect the contractor to gather data, build databases, or perform multiple regression analyses. OFCCP will do all of those activities. In fact, OFCCP has been using aspects of the analyses discussed in these final interpretive standards in a substantial number of compliance reviews over the last several years. Because OFCCP is not requiring contractors to engage in any activity to implement these final interpretive standards, OFCCP disagrees that a grace or pilot period are appropriate.

E. Factors Included in the Regression Analysis

Several commenters, including the U.S. Chamber of Commerce, were concerned that the listing of factors in the proposed guidelines could result in agency investigators presuming that the listed factors must be used in all cases. These commenters asked OFCCP to clarify that the factors to be used in the regression analysis must be determined by the facts of the particular case. By contrast, several commenters, such as HR Analytical Services, requested that OFCCP provide more guidance on the factors that the agency would use in the regression analysis. OFCCP agrees that the factors must be determined based on the facts of the particular case. OFCCP listed several of the typical factors to provide some general idea of the types of factors that may be used, not to identify an exhaustive list that is presumed to apply in every case. Because the factors must be based on the facts of the particular case, OFCCP is unable to provide additional guidance on which factors may be used in a case. OFCCP agrees that there are many other factors that may be important in a particular case, such as significant leaves of absence, employment with a predecessor company, whether the educational degree is related to the employee's position, etc.

Many commenters noted that contractors frequently do not collect data in their HRIS systems on all of the factors that may influence compensation decisions, and that some of the factors used in making compensation decisions cannot be quantified.[25] As noted above, OFCCP does not expect a contractor to maintain all of the data necessary to conduct a multiple regression analysis in its HRIS system. Nor does OFCCP require that contractors collect such data and build a database to turn over to OFCCP during a compliance review. Instead, OFCCP will gather the pertinent information through interviews and though review of personnel files and other pertinent documents. Once OFCCP gathers the necessary information, OFCCP staff will build a database. OFCCP does not presume that every factor that may influence compensation is necessarily quantifiable. OFCCP may attempt to account for such factors in the regression model through categorical variables or proxies, if possible. OFCCP also may assess whether unquantifiable or inherently qualitative factors explain multiple regression results through non-statistical methods.

ETF argued that OFCCP should include only factors that the employer actually relied on in making pay decisions. OFCCP agrees that the factors that are included in the multiple regression analysis must be factors that actually had an influence on the employer's compensation practices. However, OFCCP does not agree that the factor must have been overtly considered by a particular decisionmaker when making a particular compensation decision. A legitimate factor may influence compensation without having been a factor that the employer's decisionmakers overtly relied on in making a particular compensation decision. For example, a department manager responsible for setting merit pay increases in a particular year may only have limited discretion to determine merit increases because of constraints established by budget decisions made by other decisionmakers and by the employer's compensation guidelines. Thus, the merit increase decisions actually involved a host of other decisions by other decisionmakers at an earlier point in time. As noted above, some commenters criticized the proposed standards because the referenced regression model evaluates current compensation, not each and every individual pay decision that contributed to current compensation (or compensation at a particular point in time). OFCCP rejected those commenters' suggestion of using an analysis that focuses more directly on compensation decisions. Because the regression approach OFCCP adopts in the final standards uses compensation at a particular point in time, the factors that influence compensation may not necessarily be factors that the employer's decisionmakers relied on overtly in making particular pay decisions. However, OFCCP can obtain an indication through the multiple regression analyses whether a particular factor had an influence on specific

[25] See, e.g., DCI Consulting, Equal Employment Advisory Council, Gaucher Associates, Gayle B. Ashton, Glenn Barlett Consulting Services, Peopleclick Research Institute, and Society for Human Resource Management.

employees' current compensation (or compensation at the particular point in time).

F. Anecdotal Evidence

Several commenters, including ETF, ACC, NILG, EEAC, and ORC, commented on OFCCP's interpretive standard relating to anecdotal evidence. ETF commented that OFCCP's proposed standard places additional burdens on OFCCP not required by Title VII or Executive Order 11246 because the proposed standards suggest that anecdotal evidence is required to establish a violation of systemic compensation discrimination. OFCCP disagrees with ETF's characterization of the interpretive standard relating to anecdotal evidence. The interpretive standard on anecdotal evidence is not intended to place burdens on OFCCP in establishing a violation beyond what is required by interpretations of Title VII. Rather, the interpretive standard sets forth OFCCP's interpretation that anecdotal evidence is important in establishing systemic compensation discrimination and its position that rarely will a Notice of Violation be issued by OFCCP alleging systemic compensation discrimination absent anecdotal evidence.

OFCCP's strong preference for anecdotal evidence and the important role that such evidence plays in determining whether systemic compensation discrimination exists is supported by case law. For example, in *EEOC* v. *Morgan Stanley & Co., Inc.*, No. 01 Civ. 8421, 2002 WL 1431685, at *1 (S.D.N.Y. July 1, 2002)[footnote omitted], the court discussed the importance of anecdotal evidence to the EEOC's case:

> The Court agrees that the EEOC is entitled "to develop its case, including the circumstances surrounding discrimination against individual women," see Plaintiff's Opp. at 3, with the safeguards put in place by Judge Ellis. While the EEOC's case "depends on a statistical analysis of promotion and compensation data of an entire class of women, the [EEOC] is also entitled to put on proof of anecdotal evidence of discrimination." Plaintiff's Opp. at 3; see *Rossini*, 798 F.2d at 604 (recognizing the importance of anecdotal evidence in employment discrimination cases) (citing *Intl'l Brotherhood of Teamsters* v. *United States*, 431 U.S. 324, 339, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977)); see also *Coser* v. *Moore*, 739 F.2d 746, 751–752 (2d Cir.1984) ("where a pattern and practice of discrimination is alleged, [statistical evidence alone] must be weighed in light of the failure to locate and identify a meaningful number of concrete examples of discrimination * * *.").

Similarly, in *Obrey* v. *Johnson*, 400 F.3d 691, 698 (9th Cir. 2005), the court noted the important role of anecdotal evidence:

> It is commonplace that a plaintiff attempting to establish a pattern or practice of discriminatory employment will present some anecdotal testimony regarding past discriminatory acts. See, e.g., *Rossini* v. *Ogilvy & Mather, Inc.*, 798 F.2d 590, 604 (2d Cir. 1986) ("In evaluating all of the evidence in a discrimination case, a district court may properly consider the quality of any anecdotal evidence or the absence of such evidence."); *Coates* v. *Johnson & Johnson*, 756 F.2d 524, 532 (7th Cir. 1985) ("The plaintiffs" prima facie case will thus usually consist of statistical evidence demonstrating substantial disparities in the application of employment actions as to minorities and the unprotected group, buttressed by evidence of * * * specific instances of discrimination."); *Valentino* v. *United States Postal Serv.*, 674 F.2d 56, 69 (D.C. Cir. 1982) ("[W]hen the statistical evidence does not adequately account for the diverse and specialized qualifications necessary for (the positions in question), strong evidence of individual instances of discrimination becomes vital to the plaintiff's case.") (internal quotation marks omitted); *Garcia* v. *Rush-Presbyterian-St. Lukes Med. Ctr.*, 660 F.2d 1217, 1225 (7th Cir. 1981) ("We find very damaging to plaintiff's position the fact that not only was their statistical evidence insufficient, but that they failed completely to come forward with any direct or anecdotal evidence of discriminatory employment practices by defendants. Plaintiffs did not present in evidence even one specific instance of discrimination.").

OFCCP cited additional cases that support the important role of anecdotal evidence in the preamble of the proposed interpretive standards. See, e.g., *Bazemore*, 478 U.S. at 473 (noting that statistics were supported by "evidence consisting of individual comparisons between salaries of blacks and whites similarly situated"); *Morgan* v. *United Parcel Service of America, Inc.*, 380 F.3d 459, 471 (8th Cir. 2004) ("One of the most important flaws in Plaintiffs" case is that they adduced no individual testimony regarding intentional discrimination. As mentioned above, Plaintiffs' purported anecdotal evidence was insufficient for the working-conditions claim, and we see none with regard to pay. Although such evidence is not required, the failure to adduce it 'reinforces the doubt arising from the questions about validity of the statistical evidence.' *EEOC* v. *Sears, Roebuck & Co.*, 839 F.2d 302, 311 (7th Cir.1988) (quoting *Griffin* v. *Board of Regents*, 795 F.2d 1281, 1292 (7th Cir.1986))"); *Dukes* v. *Wal-Mart Stores, Inc.*, 22 F.R.D. 137, 165–66 (N.D. Cal. 2004) ("[P]laintiffs have submitted * * * 114 declarations from class members around the country * * *. [who will] testify to being paid less than similarly situated men, * * *, and being subjected to various individual sexist acts."); *Bakewell* v. *Stephen F. Austin Univ.*, 975 F. Supp. 858, 905–06 (E.D. Tex. 1996) ("The paucity of anecdotal evidence of discrimination severely diminishes plaintiffs' contention that a pattern or practice of salary discrimination against female faculty members prevails at SFA.").[26] OFCCP's position is also consistent with EEOC's guidance on compensation discrimination. See CMCD, at 10–13 n.30 ("A cause finding of systemic discrimination should rarely be based on statistics alone."). OFCCP's Federal Contract Compliance Manual for many years has included a section on anecdotal evidence and a description of its use in systemic discrimination cases. See OFCCP's Federal Contract Compliance Manual, at Section 7D05(e) ("While courts have held that statistics alone may be sufficient to prove discrimination where disparities are gross; i.e., at least two standard deviations, supporting evidence strengthens statistical cases and should always be sought. One type of supporting evidence is anecdotal evidence. Anecdotal evidence consists of statements from minorities or women who can show that they met all of the contractor's requirements but still did not receive the benefit at issue, and any first hand accounts of discriminatory acts on the part of the contractor that

[26] OFCCP's strong preference for anecdotal evidence does not imply that the agency believes that anecdotal evidence is sufficient to refute statistical or other evidence of a pattern or practice of discrimination. OFCCP's use of anecdotal evidence fits into the pattern-or-practice framework established by the Supreme Court in *Intl'l Bhd. of Teamsters* v. *United States*, 431 U.S. 324, 360 & n. 46 (1977) (citations omitted):

> "The plaintiff in a pattern-or-practice action is the Government, and its initial burden is to demonstrate that unlawful discrimination has been a regular procedure or policy followed by an employer or group of employers. At the initial, "liability" stage of a pattern-or-practice suit the Government is not required to offer evidence that each person for whom it will ultimately seek relief was a victim of the employer's discriminatory policy. Its burden is to establish a prima facie case that such a policy existed. The burden then shifts to the employer to defeat the prima facie showing of a pattern or practice by demonstrating that the Government's proof is either inaccurate or insignificant * * *. The employer's defense must, of course, meet the prima facie case of the Government. We do not mean to suggest that there are any particular limits on the type of evidence an employer may use. The point is that at the liability stage of a pattern-or-practice trial the focus often will not be on individual hiring decisions, but on a pattern of discriminatory decisionmaking. While a pattern might be demonstrated by examining the discrete decisions of which it is composed, the Government's suits have more commonly involved proof of the expected result of a regularly followed discriminatory policy. In such cases the employer's burden is to provide a nondiscriminatory explanation for the apparently discriminatory result."

support the statistical inference. Thus, anecdotal evidence is not limited to independent examples of comparative disparate treatment.").

OFCCP agrees with ETF that anecdotal evidence need not be, and in most cases likely will not be, in the form of "'smoking gun' evidence of discrimination," or what is known in the caselaw as "direct evidence" of discrimination. See, e.g., *Desert Palace Co.* v. *Costa*, 539 U.S. 90, 97 (2003) (noting that Ninth Circuit defined direct evidence as "'substantial evidence of conduct or statements by the employer directly reflecting discriminatory animus,'" quoting *Costa* v. *Desert Palace, Inc.*, 268 F.3d 882, 884 (9th Cir. 2001)). OFCCP's reference to "anecdotal evidence" in these final interpretive standards is to evidence that leads to an inference that the employer subjected a particular employee or particular employees to disparate treatment in compensation. See, e.g., *Bazemore*, 478 U.S. at 473; *Morgan*, 380 F.3d at 471; *Dukes*, 22 F.R.D. at 165–66; CMCD, at 10–13 n.30 ("Where possible, evidence of individual instances of discrimination should be used to bring the 'cold numbers convincingly to life,' *Teamsters*, 431 U.S. at 339, 340 * * *"); *Obrey* v. *Johnson*, 400 F.3d 691, 698 (9th Cir. 2005); *EEOC* v. *Morgan Stanley & Co., Inc.*, No. 01 Civ. 8421, 2002 WL 1431685, at *1 (S.D.N.Y. July 1, 2002). OFCCP agrees with ETF that witness testimony from management officials and employees concerning the employer's pay practices would help establish the appropriate factors for the regression analysis and OFCCP will seek such evidence in evaluating whether there is systemic pay compensation discrimination. See, e.g., *Eastland* v. *Tennessee Valley Auth.*, 704 F.2d 613, 623 (11th Cir. 1983) ("By evaluating the basis upon which the party selected the variables included in its regression the court may assess the model's validity. 'Three kinds of evidence may be offered in support of a regression model; direct testimony as to what factors operated in the decision-making process under challenge, what kinds of factors generally operate in decision-making processes of the kind under challenge, and expert testimony concerning what factors can be expected to influence the process under challenge according to principles of economic theory.' D. Baldus & J. Cole, Statistical Proof of Discrimination Sec. 8.22 at 70 (1980 & 1982 Supp.) (hereinafter Baldus & Cole). The strength of the factual foundation supporting a regression model may be a factor in assessing whether the group status coefficient indicates discrimination or the influence of legitimate qualifications which happen to correlate with group status. Baldus & Cole, supra, Sec. 8.021 at 66 (1982 Supp.)."). However, in addition to this type of evidence, OFCCP will seek the anecdotal evidence described above.

Several commenters, including ACC, NILG, and NRCILG, were concerned that OFCCP's investigation for anecdotal evidence of discrimination would unduly disrupt the employer's operations when agency staff interviewed employees. These commenters argued that OFCCP should afford the contractor an opportunity to rebut OFCCP's regression analysis or settle the case before the agency conducts such employee interviews. OFCCP is sensitive to the commenters concerns that employee interviews may disrupt the employer's operations and OFCCP will accommodate the employer's legitimate business needs in scheduling the interviews. At the same time, however, OFCCP disagrees with the commenters that the agency should allege a violation or offer the contractor an opportunity to rebut a regression analysis or settle with OFCCP prior to the completion of the agency's investigation under the final interpretive standards. In this regard, the proposed standards reflect OFCCP's strong preference for developing anecdotal evidence in establishing systemic compensation discrimination.

Several commenters, such as EEAC and ORC, argued that OFCCP should never allege systemic compensation discrimination without anecdotal evidence of discrimination, nor should the agency ever allege systemic compensation discrimination based only on anecdotal evidence. OFCCP disagrees with these commenters. There may be cases in which the statistical analysis is so compelling that an allegation of systemic discrimination is warranted even in the absence of anecdotal evidence of compensation discrimination.[27] Similarly, the amount, weight, and reliability of anecdotal evidence found in a case may support an inference of systemic discrimination, even in the absence of statistical evidence.[28] Of course, the anecdotal evidence of systemic compensation discrimination in such a case would have to support an inference that the employer compensated similarly situated employees differently based on gender or race and that the employer's compensation "discrimination was the company's standard operating procedure—the regular rather than the unusual practice." *Bazemore*, 478 U.S. at 398 (quoting *Teamsters*, 431 U.S. at 336).

G. Confidentiality of Compensation and Personnel Information

Many commenters expressed concern about the confidentiality of compensation and personnel information contractors will be required to submit or make available to OFCCP under the proposed interpretive standards. These commenters requested that OFCCP provide express assurances that the agency would not disclose such information to third-parties or other enforcement agencies. In response to these comments, OFCCP has added a provision (Paragraph 8 of the "Standards for OFCCP Evaluation of Contractors' Compensation Practices") to the final interpretive standards under which "OFCCP will treat compensation and other personnel information provided by the contractor to OFCCP during a systemic compensation investigation as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552 * * *." OFCCP borrowed this text from its regulations at 41 CFR 60–2.18(d).

[27] As discussed in the cases cited above, one would expect some anecdotal evidence of compensation discrimination if the employer has engaged in systemic compensation discrimination. However, there may be unusual factors, applicable in a particular case, which explain why OFCCP was unable to uncover anecdotal evidence during its investigation despite the statistical evidence of systemic compensation discrimination.

[28] This issue does not arise in a *Gunther*-type claim, which does not involve statistical evidence. See discussion in text above.

III. Substantive Discussion Regarding the Final Standards

A. OFCCP Compliance Reviews Focus on Systemic Compensation Discrimination

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces Executive Order 11246, which prohibits covered federal contractors and subcontractors from making employment decisions on the basis of race, color, national origin, religion, or sex.[29]

OFCCP conducts compliance reviews to determine whether covered contractors have been engaging in workplace discrimination prohibited by Executive Order 11246. As part of its compliance review process, OFCCP investigates whether contractors' pay practices are discriminatory.

OFCCP compliance reviews typically produce cases that involve allegations of systemic discrimination, not discrimination against a particular individual employee. OFCCP systemic compensation discrimination cases typically are proven under a disparate treatment, pattern or practice theory of discrimination.[30] The burdens of persuasion necessary to succeed on a discrimination claim differ depending on whether the case involves allegations of a pattern or practice of discrimination or allegations that a particular individual was subjected to discrimination. In a case involving alleged discrimination against a particular individual, the plaintiff must establish by a preponderance of the evidence that the employer made the challenged employment decision because of the individual's race, color, religion, sex, or national origin. *United States Postal Service Bd. of Governors* v. *Aikens*, 460 U.S. 711, 715 (1983). In a pattern or practice case, "plaintiffs must 'establish by a preponderance of the evidence that racial discrimination was the company's standard operating procedure—the regular rather than the unusual practice.' *Teamsters* v. *United States*, 431 U.S. 324, 336 (1977)." *Bazemore* v. *Friday*, 478 U.S. 385, 398 (1986).

In addition to differences in the burdens of persuasion as between cases involving alleged discrimination against a particular individual and an alleged pattern or practice of discrimination, the burdens of production necessary to survive a motion for summary disposition are different between the two types of cases. In both types of cases, a plaintiff bears the initial burden of presenting a prima facie case of discrimination. There is no precise set of requirements for a plaintiff's prima facie case. "The facts necessarily will vary in Title VII cases, and the specification * * * of the prima facie proof required from [a plaintiff] is not necessarily applicable in every respect to differing factual circumstances." *Int'l Bhd. of Teamsters* v. *United States*, 431 U.S. 324, 358 (1977) (quoting *McDonnell Douglas*, 411 U.S. at 802 n. 13). "The importance of McDonnell Douglas lies, not in its specification of the discrete elements of the proof there required, but in its recognition of the general principle that any Title VII plaintiff must carry the initial burden of offering evidence adequate to create an inference that an employment decision was based on a discriminatory criterion illegal under [Title VII]." *Teamsters*, 431 U.S. at 358.

In an individual case, the plaintiff typically must rely on evidence pertaining to his or her own circumstances to establish a prima facie case of discrimination. The prima facie case creates a presumption of discrimination that the employer may rebut by articulating a legitimate nondiscriminatory reason for the alleged discriminatory employment decision. *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 802 (1973). The employer must produce admissible evidence of a legitimate, nondiscriminatory reason for the challenged employment decision. *Texas Dep't of Community Affairs* v. *Burdine*, 450 U.S. 248, 254 (1981). "Th[e] [employer's] burden is one of production, not persuasion; 'it can involve no credibility assessment.'" *Reeves* v. *Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 142 (2000) (quoting *St. Mary's Honor Center* v. *Hicks*, 509 U.S. 502, 509 (1993)). Once the employer articulates a legitimate nondiscriminatory reason for the challenged employment decision, the plaintiff is afforded the opportunity to prove that the employer's articulated reason is a pretext for discrimination. *McDonnell Douglas*, 411 U.S. at 804; *Reeves*, 530 U.S. at 142. "Proof that the [employer's] explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination * * *." *Reeves*, 530 U.S. at 147. "Other evidence that may be relevant to any showing of pretext includes * * * [the employer's] general policy and practice with respect to minority employment * * *. On the latter point, statistics as to [the employer's] employment policy and practice may be helpful to a determination of whether [the employer's actions] * * * conformed to a general pattern of discrimination * * *" *McDonnell Douglas*, 411 U.S. at 804–05.

In a pattern or practice case, the plaintiffs' "initial burden is to demonstrate that unlawful discrimination has been a regular procedure or policy followed by an employer * * *." *Teamsters*, 431 U.S. at 360. "The burden then shifts to the employer to defeat the prima facie showing of a pattern or practice by demonstrating that the [plaintiffs'] proof is either inaccurate or insignificant." Id. "The employer's defense must, of course, be designed to meet the prima facie case of the [plaintiffs] * * *." which typically focuses on "a pattern of discriminatory decisionmaking." Id., at 360 n. 46. However, there are no "particular limits on the type of evidence an employer may use." Id.

Despite these differences in the burdens of persuasion and production, however, once the plaintiff has offered evidence that is sufficient to establish a prima facie case, and the employer has produced evidence that is sufficient to rebut the prima facie case, then the factfinder must decide whether plaintiffs have demonstrated discrimination by a preponderance of the evidence. "[O]ur decision in *United States Postal Service Board of Governors* v. *Aikens*, 460 U.S. 711 (1983), although not decided in the context of a pattern-and-practice case, makes clear that if the defendants have not succeeded in having a case dismissed on the ground that plaintiffs have failed to establish a prima facie case, and have responded to the plaintiffs' proof by offering evidence

[29] The Administrative Review Board, and, before its creation, the Secretary of Labor, have turned to Title VII standards for determining compliance with the nondiscrimination requirements of Executive Order 11246. See, e.g., *OFCCP* v. *Greenwood Mills, Inc.*, 89–OFC–039, ARB Final Decision and Order, December 20, 2002, at 5; *OFCCP* v. *Honeywell*, 77–OFCCP–3, Secretary of Labor Decision and Order on Mediation, June 2, 1993, at 14 and 16, Secretary of Labor Decision and Remand Order, March 2, 1994. The EEOC has issued guidance on compensation discrimination in the form of a chapter in the EEOC Compliance Manual on "Compensation Discrimination." EEOC Directive No. 915.003 (Dec. 5, 2000). EEOC is the agency with primary enforcement responsibility for Title VII and its interpretations of that statute constitute a body of experience and informed judgment to which courts and litigants can turn for guidance. See, e.g., *Clackamas Gastroenterology Assocs., P.C.* v. *Wells*, 538 U.S. 440, 449 n.9 (2003) (citing with approval and quoting from an EEOC Compliance Manual chapter applicable to Title VII).

[30] The term "systemic compensation discrimination" used hereinafter references compensation discrimination under a disparate treatment, pattern or practice theory of discrimination. These interpretive standards address only systemic compensation discrimination. However, nothing in these final interpretive standards precludes OFCCP from investigating and alleging compensation discrimination under an individual disparate treatment theory or under a disparate impact theory of compensation discrimination in accordance with applicable law.

of their own, the factfinder then must decide whether the plaintiffs have demonstrated a pattern or practice of discrimination by a preponderance of the evidence. This is because the only issue to be decided at that point is whether the plaintiffs have actually proved discrimination. Id., at 715." *Bazemore*, 478 U.S. at 398.

B. OFCCP Has Not Issued Significant Interpretive Guidance on Systemic Compensation Discrimination Under Executive Order 11246

In 1970, the Department of Labor published "Sex Discrimination Guidelines," codified at 41 CFR part 60–20, which included a section (60–20.5) on "[d]iscriminatory wages." 35 FR 8888 (June 9, 1970). The Sex Discrimination Guidelines (SDG) do not provide specific standards for determining systemic compensation discrimination for OFCCP or a contractor.[31] Rather, the SDG provide that "[t]he employer's wages (sic) schedules must not be related to or based on the sex of the employees," and contains a short "note" that references the "more obvious cases of discrimination * * * where employees of different sexes are paid different wages on jobs which require substantially equal skill, effort and responsibility and are performed under similar working conditions." 41 CFR 60–20.5(a) (2004). OFCCP has not promulgated any definitive interpretation of the SDG, nor has a definitive interpretation arisen through longstanding agency practice.[32]

Instead, OFCCP has provided only a general policy statement about compensation discrimination in the preamble to a May 4, 2000 Notice of Proposed Rulemaking (NPRM). In the May 4, 2000 NPRM, OFCCP formally expressed the Department of Labor's policy regarding compensation analysis:

> More recently, an additional objective of the proposed revision has been to advance the Department of Labor's goal of pay equity; that is, ensuring that employees are compensated equally for performing equal work.

65 FR 26089 (May 4, 2000).

This stated policy was reflected in several significant settlements in systemic compensation discrimination cases in which OFCCP relied on sophisticated multiple regression analyses to remedy an alleged violation of Executive Order 11246. OFCCP has not, however, published formal guidance providing any interpretation of Executive Order 11246 with respect to systemic compensation discrimination.

C. OFCCP's Informal Approaches to Systemic Compensation Discrimination in the Late 1990s Involved the Controversial "Pay Grade Theory"

In the late-1990s several OFCCP regions began to use a controversial "grade theory" approach to compensation discrimination analysis.[33]

The basic unit of analysis under the grade theory is the pay grade or pay range. Under this theory, it is assumed that employees are similarly situated with respect to evaluating compensation decisions regarding such employees if the contractor has placed their jobs in the same pay grade:

> By the very act of creating a grade level system, where each employee has approximately the same potential to move from the minimum to the maximum of his/her grade range dependent upon performance, the employer has recognized that certain jobs are essentially similar in terms of skill, effort and responsibility.

"Systemic Compensation Analysis: An Investigatory Approach" (hereinafter "SCA"), at 5. A later paper, "Update on Systemic Compensation Analysis" (hereinafter, "Update"), also described this pay grade assumption:

> Where we determine that each employee in a salary grade system has the same opportunity, subject to performance, to move to the maximum rate of the salary grade range without a change in job title, we believe the employer * * * has already identified certain jobs as having similar value to the organization.

Update, at 6.[34]

After identifying employees in the same pay grade, one version of the grade theory method called for a comparison of the median compensation of males versus females, and minorities versus non-minorities in each pay grade. SCA, at 6; Update, at 7. If there was a "significant" difference (although "significant" was not defined) in median compensation between males/females or minorities/non-minorities within a given pay grade, then the next step was to assess whether this disparity is explained by median or average differences in other factors, such as time in grade, prior experience, education, and performance. SCA, at 7; Update, at 11. However, this method did not use tests of statistical significance in determining whether a pattern of compensation discrimination exists. If a "pattern" of pay disparities (although "pattern" was not defined) emerged not explicable by analysis of median or average differences in time in grade, prior experience, or other factors, OFCCP alleged that the contractor violated the nondiscrimination requirements of Executive Order 11246. Update, at 15.

In another version of the grade theory method used by some OFCCP regions in the late 1990s,[35] the pay grade was included as a factor in a regression model that typically covered all exempt employees in the workplace within a single, "pooled" regression. The regression typically included factors such as time in grade, experience, and education. This method did rely on tests of statistical significance, although rarely did OFCCP develop anecdotal evidence to support the statistical analysis under this method.

D. The Pay Grade Theory Is Inconsistent With Title VII Standards

OFCCP has discontinued using these pay grade methods because the agency has determined that the methods' principal assumptions related to pay grade or pay range do not comport with Title VII standards as to whether employees are similarly situated. OFCCP recognizes that, with respect to compensation discrimination, similarity in job content, skills and qualifications involved in the job, and responsibility level are crucial determinants of whether employees are similarly situated under Title VII. See, e.g., CMCD, at 10–5 to 10–8; *Block* v. *Kwal-Howells, Inc.*, No. 03–1101, 2004 WL 296976, at *2–*4 (10th Cir. Feb. 17, 2004); *Williams* v. *Galveston Ind. Sch. Dist.*, No. 03–40436, 78 Fed. Appx. 946, 949–50, 2003 WL 22426852 (5th Cir. Oct. 23, 2003); *Verwey* v. *Illinois Coll. of Optometry*, 43 Fed. Appx. 996, 2002 WL 1836507, at *4 (7th Cir. Aug. 9, 2002); *Lang* v. *Kohl's Food Stores, Inc.*, 217

[31] By contrast to sex-based compensation discrimination, OFCCP has published regulations providing specific guidance with respect to hiring discrimination. Thus, OFCCP is a signatory to the Uniform Guidelines on Employee Selection Procedures (UGESP), which provide formal guidance as to how OFCCP evaluates contractors' selection procedures to determine compliance with Executive Order 11246. See 41 CFR part 60–3. Before being published as a final rule, 43 Fed. Reg. 38290 (August 25, 1978), UGESP was published in the **Federal Register** as a proposed rule and subject to public comment. See 42 Fed. Reg. 65542 (December 30, 1977).

[32] The final interpretive standards contained in this Notice are intended to provide definitive interpretations of both the SDG and Executive Order 11246 with respect to systemic compensation discrimination, regardless of the specific basis (e.g., sex, race, national origin, etc.) of the discrimination.

[33] Although used in practice by several OFCCP regions for several years, the grade theory was never formally adopted by OFCCP.

[34] OFCCP officials informally distributed the SCA and the Update in the late 1990's. They were not published by OFCCP nor did they bear any indication of formal agency approval, e.g., they were not printed on OFCCP letterhead.

[35] This method was not described in materials made available to the general public. The method was used primarily in OFCCP's Southeast Region.

F.3d 919, 922–23 (7th Cir. 2002); *Rodriguez* v. *SmithKline Beecham*, 224 F.3d 1, 8 (1st Cir. 2000); *Coward* v. *ADT Sec. Sys., Inc.*, 140 F.3d 271, 274 (D.C. Cir. 1998); *Aman* v. *Cort Furniture Rental Corp.*, 85 F.3d 1078, 1087 (3d Cir. 1996); *Sprague* v. *Thorn Americas, Inc.*, 129 F.3d 1355, 1362 (10th Cir. 1997); *Tomka* v. *Seiler Corp.*, 66 F.3d 1295, 1310–11 (2d Cir. 1995), abrogated on other grounds by *Burlington Indus., Inc.* v. *Ellerth*, 524 U.S. 742 (1998); *Mulhall* v. *Advance Sec., Inc.*, 19 F.3d 586, 598 (11th Cir. 1994); *Brinkley-Obu* v. *Hughes Training, Inc.*, 36 F.3d 336, 343 (4th Cir. 1994); *Miranda* v. *B&B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1526–31 (11th Cir. 1992); *EEOC* v. *Sears, Roebuck & Co.*, 839 F.2d 302, 343–53 (7th Cir. 1988); *Marcoux* v. *State of Maine*, 797 F.2d 1100, 1107 (1st Cir. 1986); *Eastland* v. *Tennessee Valley Auth.*, 704 F.2d 613, 624–25 (11th Cir. 1983); *Woodward* v. *United Parcel Serv., Inc.*, 306 F. Supp.2d 567, 574–75 (D. S.C. 2004); *Lawton* v. *Sunoco, Inc.*, No. 01–2784, 2002 WL 1585582, at *7 (E.D. Pa. Jul 17, 2002); *Stroup* v. *J.L. Clark*, No. 99C50029, 2001 WL 114404, at *6 (N.D. Ill. Feb. 2, 2001); *Donaldson* v. *Microsoft Corp.*, 205 F.R.D. 558, 563 (W.D. Wash. 2001); *Dobbs-Weinstein* v. *Vanderbilt Univ.*, 1 F. Supp.2d 783, 803–04 (M.D. Tenn. 1998); *Beard* v. *Whitley Co. REMC*, 656 F. Supp. 1461, 1471–72 (N.D. Ind. 1987); *Dalley* v. *Michigan Blue Cross/Blue Shield, Inc.*, 612 F. Supp. 1444, 1451–52 (E.D. Mich. 1985); *EEOC* v. *Kendall of Dallas, Inc.*, No. TY–80–441–CA, 1984 WL 978, at *9–*12 (E.D. Tex. Mar. 8, 1984); *Presseisen* v. *Swarthmore Coll.*, 442 F. Supp. 593, 615–19 (E.D. Pa. 1977), aff'd 582 F.2d 1275 (3d Cir. 1978) (Table).

Contrary to these standards, the grade theory assumed that employers' pre-existing job-groupings, such as pay grades or pay ranges, are absolute indicia of similarity in employees' job content, skills and qualifications involved in the job, and responsibility level. While all of the courts in the above string cite have implicitly rejected the grade theory by emphasizing the importance of facts about the work employees actually perform, several of these courts have expressly rejected the proposition that a pay grade offers absolute indicia of similarity in job content, qualifications and skills involved in the job, and responsibility level. See *Williams*, 78 Fed. Appx. at 949 n. 9; *Cort Furniture*, 85 F.3d at 1087; *Woodward*, 306 F. Supp.2d at 574–75. The facts about employees' actual work activities, the skills and qualifications involved in the job, and responsibility levels in a particular case may, of course, happen to coincide with the employer's pay grade or pay range, but the crucial determinant of whether the employees are similarly situated is their actual work activities, not the fact that the employees have been placed in the same pay grade or range.[36]

[36] OFCCP's principal basis for rejecting the grade theory is that it allows for comparison of employees who are not similarly situated under applicable legal standards, as discussed in the text. However, an alternative reason for OFCCP's rejection of the grade theory applies specifically to attempts to justify the use of pay grades to compare dissimilar employees or jobs on the grounds that the employees perform or the jobs entail (dissimilar) work that has equal or similar "value" or "worth" to the employer. See Update, at 6 (justifying use of pay grade on grounds that by creating pay grades the employer has "identif[ied] certain jobs as having similar value to the organization."). Regardless of whether the worth or value of the dissimilar work or jobs is alleged to have been established by the employer (i.e., by placing the employee or the employee's job into a particular pay grade along with other, dissimilar employees or jobs) or by someone other than the employer, the attempt to compare employees who are performing dissimilar work or who occupy dissimilar jobs based on the "value" or "worth" of the work or jobs, constitutes the comparable worth theory of compensation discrimination, which has been widely discredited by the courts. See *American Federation of State, County, and Municipal Employees* v. *State of Washington*, 770 F.2d 1401, 1404 (9th Cir. 1985) ("The comparable worth theory, as developed in the case before us, postulates that sex-based wage discrimination exists if employees in job classifications occupied primarily by women are paid less than employees in job classifications filled primarily by men, if the jobs are of equal value to the employer, though otherwise dissimilar."); *Colby* v. *J.C. Penney Co.*, 811 F.2d 1119, 1125–26 (7th Cir. 1987 (describing comparable worth theory as "bas[ing] liability on the fact that the[] employer paid higher wages to workers in job classifications predominantly occupied by men than to workers in job classifications predominantly occupied by women, though it paid the same wages to men and women within each classification"); *American Nurses Association* v. *Illinois*, 783 F.2d 716, 720–22 (7th Cir. 1986) (considering plaintiffs "charge that the state pays workers in predominantly male job classifications a higher wage not justified by any difference in the relative worth of the predominantly male and the predominantly female jobs in the state's roster."); *Lemons* v. *City and County of Denver*, 620 F.2d 228, 229 (10th Cir. 1980) ("In summary, the suit is based on the proposition that nurses are underpaid in City positions, and in the community, in comparison with other and different jobs which they assert are of equal worth to the employer."); *Christensen* v. *Iowa*, 563 F.2d 353, 354–56 (8th Cir. 1977) ("Appellants, who are clerical employees at UNI, argue that UNI's practice of paying male plant workers more than female clerical workers of similar seniority, where the jobs are of equal value to UNI, constitutes sex discrimination and violates Title VII"); see also *County of Washington* v. *Gunther*, 452 U.S. 161, 165 (1981) ("Respondents' claim is not based on the controversial concept of "comparable worth" under which plaintiffs might claim increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community." [footnotes omitted]); *Gunther*, 452 U.S. at 203 (Rehnquist, J., dissenting) ("The opinion does not endorse the so-called 'comparable worth' theory: though the Court does not indicate how a plaintiff might establish a prima facie case under Title VII, the Court does suggest that allegations of unequal pay for unequal, but comparable, work will not state a claim on which relief may be granted. The Court, for example, repeatedly emphasizes that this is not a case where plaintiffs ask the court to compare the value of dissimilar jobs or to quantify the effect of sex discrimination on wage rates."); Judith Olans Brown *et al.*, *Equal Pay for Jobs of Comparable Worth: An Analysis of the Rhetoric*, 21 Harv. C.R.–C.L. Rev. 127, 129 (1986) ("'Comparable worth' means that workers, regardless of their sex, should earn equal pay for work of comparable value to their common employer * * *. The basic premise of comparable worth theory is that women should be able to substantiate a claim for equal wages by showing that their jobs and those of male workers are of equal value to their common employer."); Hydee R. Feldstein, Comment, *Sex-Based Wage Discrimination Claims After County of Washington* v. *Gunther*, 81 Colum. L. Rev. 1333, 1333 (1981) (noting comparable worth "theory holds that employees performing work of equal value, even if the work they do is different, should receive the same wages.").

Based on these considerations, the Department interprets Executive Order 11246 and the SDG as not permitting the pay grade theory approach to systemic compensation discrimination. Instead, the Department interprets Executive Order 11246 and the SDG as prohibiting systemic compensation discrimination involving dissimilar treatment of individuals who are similarly situated, based on similarity in work performed, skills and qualifications involved in the job, and responsibility levels.

E. The Department Has Decided To Promulgate Interpretive Standards on Systemic Compensation Discrimination To Guide Agency Officials and Covered Contractors and Subcontractors

The Department of Labor has decided to formally promulgate detailed standards interpreting Executive Order 11246 and the SDG with respect to systemic compensation discrimination. The final interpretive standards will provide guidance and methods for OFCCP evaluations of contractors' compensation practices during compliance reviews. This will ensure that agency personnel and covered Federal contractors and subcontractors understand the substantive standards for systemic compensation discrimination under Executive Order 11246. The Department believes that contractors and subcontractors are more likely to comply with Executive Order 11246 if they understand the substantive standards which determine whether there is systemic compensation discrimination prohibited by Executive Order 11246. Further, agency officials will have a stronger basis for pursuing investigations of possible systemic compensation discrimination because of the transparency and uniformity provided by these standards.

These final standards are intended to govern OFCCP's analysis of contractors'

compensation practices, and in particular, OFCCP's determination of whether a contractor has engaged in systemic compensation discrimination. In addition, these final standards are intended to constitute a definitive interpretation of the SDG and Executive Order 11246 with respect to systemic compensation discrimination.

F. Discussion of the Final Interpretive Standards

OFCCP adopts final standards interpreting Executive Order 11246 and the SDG with respect to systemic compensation discrimination. The systemic compensation discrimination analysis as set forth in these final standards has two major characteristics: (1) The determination of employees who are "similarly situated" for purposes of comparing contractor pay decisions will focus on the similarity of the work performed, the levels of responsibility, and the skills and qualifications involved in the positions; and (2) the analysis relies on a statistical technique known as multiple regression.

Under OFCCP's final standards, employees are similarly situated with respect to pay decisions where the employees perform similar work, have similar responsibility levels, and occupy positions involving similar qualifications and skills. See discussion and cases cited under Section IIID, supra.[37]

The determination of whether employees are similarly situated must be based on the actual facts about the work performed, the responsibility level of the employees, and whether the positions involve similar skills and qualifications. The employer's preexisting groupings developed and maintained for other purposes, such as job families or affirmative action program job groups, may provide some indication of similarity in work, responsibility level, and skills and qualifications. However, these preexisting groupings are not dispositive, and OFCCP will not assume that these groupings contain similarly situated employees. For example, it cannot be assumed that employees are similarly situated merely because they share the same pay grade or range, or because their pay can progress to the top of a pay grade or range without changing jobs.[38] Thus, OFCCP will investigate whether such preexisting groupings do in fact contain employees who perform similar work, and whose positions involve similar skills, qualifications, and responsibility levels, by looking at job descriptions and conducting employee interviews. Based on sufficient empirical data (e.g., job descriptions and employee interviews), OFCCP will determine which employees are in fact similarly situated. There may be other factors that have a bearing on whether employees are similarly situated, in addition to work performed, responsibility level, and skills/qualifications involved in the positions. For example, additional factors may include department or other functional unit of the employer, employment status (e.g., full-time versus part-time), compensation status (e.g., union versus non-union, hourly versus salaried versus commissions), etc. OFCCP will consider the applicability of these additional factors in each case and make a determination based on the facts of the particular case.

In addition to similarity in work performed, skills and qualifications, and responsibility levels, systemic compensation discrimination under Executive Order 11246 requires that the comparison take into account legitimate factors that affect compensation. In order to account for the influence of such legitimate factors on compensation, a statistical analysis known as "multiple regression" must be used. Multiple regression is explained as follows:

> Multiple regression analysis is a statistical tool for understanding the relationship between two or more variables. Multiple regression involves a variable to be explained—called the dependent variable—and additional explanatory variables that are thought to produce or be associated with changes in the dependent variable. For example, a multiple regression analysis might estimate the effect of the number of years of work on salary. Salary would be the dependent variable to be explained; years of experience would be the explanatory variable. Multiple regression analysis is sometimes well suited to the analysis of data about competing theories in which there are several possible explanations for the relationship among a number of explanatory variables. Multiple regression typically uses a single dependent variable and several explanatory variables to assess the statistical data pertinent to these theories. In a case alleging sex discrimination in salaries, for example, a multiple regression analysis would examine not only sex, but also other explanatory variables of interest, such as education and experience. The employer-defendant might use multiple regression to argue that salary is a function of the employee's education and experience, and the employee-plaintiff might argue that salary is also a function of the individual's sex.
>
> Daniel L. Rubenfeld, *Reference Guide on Multiple Regression*, in Federal Judicial Center, Reference Manual on Scientific Evidence, at 181 (2d ed. 2000).

The multiple regression model must include those factors that are important to how the contractor in practice makes pay decisions. "Such factors could include the employees' education, work experience with previous employers, seniority in the job, time in a particular salary grade, performance ratings, and others." CMCD, at 10–18. OFCCP generally will attempt to build the regression model in such a way that controls for the factors that the investigation reveals are important to the employer's pay decisions, but also allows the agency to assess how the employers' pay decisions affect most employees. One factor that must be controlled for in the regression model is categories or groupings of jobs that are similarly situated based on the analysis of job similarity noted above (i.e., similarity in the content of the work employees perform, and similarity in the skills, qualifications, and responsibility levels of the positions the employees occupy, and additional factors as discussed above). This will ensure that the analysis compares the treatment of employees who are in fact similarly situated.

In addition, OFCCP will investigate the facts of each particular case to ensure that factors included in the regression are legitimate and are not themselves influenced by unlawful discrimination, which is often discussed in case law as a factor "tainted" by discrimination. However, OFCCP will not automatically presume that a factor is tainted without initially investigating the facts of the particular case. OFCCP will determine whether a factor is tainted by evaluating proof of discrimination with respect to that factor, but not based on the fact that the factor has an influence on the outcome of a regression model that includes the factor. See, e.g., *Morgan* v. *United Parcel Service of America, Inc.*, 380 F.3d 459, 470 (8th Cir. 2004) ("Plaintiffs" only

[37] Federal courts disagree on whether the Equal Pay Act's standard of "substantial equality" applies to gender-based pay discrimination claims under Title VII, absent direct evidence of discrimination. See, e.g., *Conti* v. *Universal Enter., Inc.*, 50 Fed. Appx. 690, 2002 WL 31108827, at *7 (6th Cir. Sept. 20, 2002); *Clark* v. *Johnson & Higgins*, 181 F.3d 100, 1999 WL 357804, at *3–*4 (6th Cir. May 28, 1999) (Text in Westlaw); *Loyd* v. *Phillips Bros., Inc.*, 25 F.3d 518, 525 (7th Cir. 1994); *EEOC* v. *Sears, Roebuck & Co.*, 839 F.2d 302, 243–53 (7th Cir. 1988); *Merrill* v. *S. Methodist Univ.*, 806 F.2d 600, 606 (5th Cir. 1986); *McKee* v. *Bi-State Dev. Agency*, 801 F.2d 1014, 1019 (8th Cir. 1986); *Plemer* v. *Parsons-Gilbane*, 713 F.2d 1127, 1133–34 (5th Cir. 1983); see also CMCD, at 10–6 n.18. Because an OFCCP enforcement action may be subject to APA review in a federal court that does not adopt the "similarly situated" standard, the Department will address this issue on a case by case basis.

[38] In this respect, OFCCP will not rely on the grade theory assumptions discussed supra., at Sections IIIC and IIID.

evidence of discrimination in past pay is the apparent correlation between race and center-manager base pay during the class period. But that correlation is what Plaintiffs have evidence of only by omitting past pay. They have no evidence, statistical or otherwise, that past pay disparities were racially discriminatory. This sort of bootstrapping cannot create an inference of discrimination with regard to either class-period base pay or past pay."); *Smith* v. *Xerox Corp.*, 196 F.3d 358, 371 n. 11 (2d Cir. 1999) ("Absent evidence tending to show that the CAF scores were tainted they should have been included in a multiple regression analysis in an effort to eliminate a relatively poor performance compared to coworkers as a cause of each plaintiff's termination. Certainly, performance is a factor Xerox was permitted to consider in deciding whom to retain."); *Ottaviani* v. *State Univ. of New York*, 875 F.2d 365, 375 (2d Cir. 1988) ("The question to be resolved, then, in cases involving the use of academic rank factors, is whether rank is tainted by discrimination at the particular institution charged with violating Title VII. Although appellants reiterate on appeal their claim that rank at New Paltz was tainted, it is clear that the district judge accepted and considered evidence from the parties on both sides of this issue, and that she rejected the plaintiffs' contentions on this point. At trial, the plaintiffs failed to adduce any significant statistical evidence of discrimination as to rank. As the district court stated in its opinion, the plaintiffs' studies of rank, rank at hire, and waiting time for promotion 'were mere compilations of data' which neither accounted for important factors relevant to assignment of rank and promotion, 'nor demonstrated that observed differences were statistically significant.' Ottaviani, 679 F.Supp. at 306. The defendants, on the other hand, offered persuasive objective evidence to demonstrate that there was no discrimination in either placement into initial rank or promotion at New Paltz between 1973 and 1984, and the district court chose to credit the defendants' evidence. Upon review of the record, we cannot state that the court's rulings in this regard were clearly erroneous."); CMCD, at 10–18 (discussing use of performance rating in multiple regression analysis for assessing systemic compensation discrimination).

The factors that influence pay decisions may not bear the same relationship to compensation for all categories of jobs in the employer's workforce. For example, performance may have a more significant influence on compensation for a high-level executive, than for technicians or service workers. This issue must be addressed through either of two methods. One method is to perform separate regressions for each category of jobs in which the relationship between the factors and compensation is similar (while including category factors in each regression that control for groupings of employees who are similarly situated based on work performed, responsibility level, and skills and qualifications). If separate regressions by categories of jobs would not permit OFCCP to assess the way the contractor's compensation practices impact on a significant number of employees, OFCCP may perform a "pooled" regression, which combines these categories of jobs into a single regression (while including an OFCCP-developed category factor in the "pooled" regression that controls for groupings of employees who are similarly situated based on work performed, responsibility level, and skills and qualifications). However, if a pooled regression is used, the regression must include appropriate "interaction terms" [39] in the pooled regression to account for differences in the effects of certain factors by job category. OFCCP will run statistical tests generally accepted in the statistics profession (e.g., the "Chow test"), to determine which interaction terms should be included in the pooled regression analysis.

Systemic compensation discrimination under Executive Order 11246 must be based on disparities that are "statistically significant," i.e., those that could not be expected to have occurred by chance. "While not intending to suggest that 'precise calculations of statistical significance are necessary in employing statistical proof,' the Supreme Court has stated that 'a fluctuation of more than two or three standard deviations would undercut the hypothesis that decisions were being made randomly with respect to [a protected trait].' *Hazelwood Sch. Dist.* v. *United States*, 433 U.S. 299, 311 n.17 (1977)." CMCD, at 10–14 n.32. To ensure uniformity and predictability, OFCCP will conclude that a compensation disparity is statistically significant under these final standards if it is significant at a level of two or more standard deviations, based on measures of statistical significance that are generally accepted in the statistics profession.

OFCCP will seldom make a finding of systemic discrimination based on statistical analysis alone, but will obtain anecdotal evidence to support the statistical evidence. See, e.g., *Teamsters*, 431 U.S. at 338–39 ("The Government bolstered its statistical evidence with the testimony of individuals who recounted over 40 specific instances of discrimination * * *. The individuals who testified about their personal experiences with the company brought the cold numbers convincingly to life."); Bazemore, 478 U.S. at 473 (noting that statistics were supported by "evidence consisting of individual comparisons between salaries of blacks and whites similarly situated"); Morgan, 380 F.3d at 471 ("One of the most important flaws in Plaintiffs' case is that they adduced no individual testimony regarding intentional discrimination. As mentioned above, Plaintiffs' purported anecdotal evidence was insufficient for the working-conditions claim, and we see none with regard to pay. Although such evidence is not required, the failure to adduce it 'reinforces the doubt arising from the questions about validity of the statistical evidence.' *EEOC* v. *Sears, Roebuck & Co.*, 839 F.2d 302, 311 (7th Cir.1988) (quoting *Griffin* v. *Board of Regents*, 795 F.2d 1281, 1292 (7th Cir.1986))"); *Dukes* v. *Wal-Mart Stores, Inc.*, 22 F.R.D. 137, 165–66 (N.D. Cal. 2004) ("[P]laintiffs have submitted * * * 114 declarations from class members around the country * * *. [who will] testify to being paid less than similarly situated men, * * *, and being subjected to various individual sexist acts."); *Bakewell* v. *Stephen F. Austin Univ.*, 975 F. Supp. 858, 905–06 (E.D. Tex. 1996) ("The paucity of anecdotal evidence of discrimination severely diminishes plaintiffs' contention that a pattern or practice of salary discrimination against female faculty members prevails at SFA."); see also CMCD, at 10–13 n.30 ("A cause finding of systemic discrimination should rarely be based on statistics alone.").

[39] An "interaction term" is a factor used in the regression model whose value is the result of a combination of subfactors, which allows the factor to vary based on the combined effect of the subfactors. For example, a performance by job level interaction term would allow performance to have a different impact on compensation depending on the job level.

IV. Standards

Standards for Systemic Compensation Discrimination Under Executive Order 11246

1. As used herein, "systemic compensation discrimination" is discrimination under a pattern or practice theory of disparate treatment.

2. Employees are similarly situated under these standards if they are similar with respect to the work they perform, their responsibility level, and the skills and qualifications involved in their positions. In determining whether employees are similarly situated under these standards, actual facts regarding employees' work activities, responsibility, and skills and qualifications are determinative. Preexisting groupings, such as pay grades or Affirmative Action Program (AAP) job groups, are not controlling; rather, such groupings may be relevant only to the extent that they do in fact group employees with similar work, skills and qualifications and responsibility levels. To determine whether such preexisting groups are relevant one must evaluate and compare information obtained from job descriptions and from employee interviews. The determination that employees are similarly situated may not be based on the fact that the contractor or subcontractor has grouped employees into a particular grouping, such as a pay grade or pay range, or that employees' pay can progress to the top of the pay grade or range based on performance or without changing jobs. Rather, such preexisting groupings may only be used if employees within the group perform similar work, and occupy positions involving similar skills, qualifications, and responsibility levels, which may be determined only by understanding employees' actual work activities. In addition to work performed, responsibility level, and skills/qualifications involved in the positions, other factors may have a significant bearing on whether employees are similarly situated. Such additional factors may include, for example, department or other functional unit of the employer, employment status (e.g., full-time versus part-time), compensation status (e.g., union versus non-union, hourly versus salaried versus commissions), etc.

3. Systemic compensation discrimination exists where there are statistically significant compensation disparities between similarly situated employees (as defined in Paragraph 2, above), after taking into account legitimate factors which influence compensation. Such legitimate factors may include education, experience, performance, productivity, location, etc. The determination of whether there are statistically significant compensation disparities between similarly situated employees after taking into account such legitimate factors must be based on a multiple regression analysis. However, legitimate factors that influence compensation may be qualitative or otherwise unquantifiable, in which case non-statistical methods must be used to explain the multiple regression analyses.

4. A compensation disparity is statistically significant under these standards if it is significant at a level of two or more standard deviations, based on measures of statistical significance that are generally accepted in the statistics profession.

5. If a pooled regression model is used, this must be accompanied by statistical tests generally accepted in the statistics profession (e.g., the "Chow test"), to determine which interaction terms should be included in the pooled regression model. Any pooled regression model must contain category factors defined in such a way as to group only similarly situated employees (as defined in Paragraph 2, above).

Standards for OFCCP Evaluation of Contractors' Compensation Practices

1. OFCCP will investigate contractors' and subcontractors' compensation practices to determine whether the contractor or subcontractor has engaged in systemic compensation discrimination under these standards. OFCCP will issue a Notice of Violations alleging systemic discrimination with respect to compensation practices based only on these standards.

2. OFCCP will make a finding of systemic compensation discrimination in those cases where there is anecdotal evidence of discrimination (as discussed in Paragraph 6, below, which notes that, except in unusual cases, OFCCP will not issue a Notice of Violation (NOV) alleging systemic compensation discrimination without providing anecdotal evidence to support OFCCP's statistical analysis) and where there exists a statistically significant (as defined in Paragraph 4, below) compensation disparity based on a multiple regression analysis that compares similarly situated employees (as defined in Paragraph 3, below) and controls for factors that OFCCP's investigation reveals influenced employees' compensation. OFCCP may reject inclusion of such a factor upon proof that the factor was actually tainted by the employer's discrimination. OFCCP will attach the regression analyses and results to, and summarize the anecdotal evidence in, the Notice of Violations issued to the contractor or subcontractor.

3. Employees are similarly situated under these standards if they are similar with respect to the work they perform, their responsibility level, and the skills and qualifications involved in their positions. In determining whether employees are similarly situated under these standards, OFCCP will collect and rely on actual facts regarding employees' work activities, responsibility, and skills and qualifications. In addition, OFCCP will investigate whether preexisting groupings, such as pay grades or AAP job groups, do in fact group employees with similar work, skills and qualifications and responsibility levels, by evaluating and comparing information obtained from job descriptions and from employee interviews. OFCCP will not base its determination that employees are similarly situated on the fact that the contractor or subcontractor has grouped employees into a particular grouping, such as a pay grade or pay range, or that employees' pay can progress to the top of the pay grade or range based on performance or without changing jobs. Rather, OFCCP will investigate whether such preexisting groupings do in fact group employees who perform similar work, and who occupy positions involving similar skills, qualifications, and responsibility levels, by looking at job descriptions and conducting employee interviews. In addition to work performed, responsibility level, and skills/qualifications involved in the positions, other factors may have a significant bearing on whether employees are similarly situated. Such additional factors may include, for example, department or other functional unit of the employer, employment status (e.g., full-time versus part-time), compensation status (e.g., union versus non-union, hourly versus salaried versus commissions), etc. OFCCP will consider the applicability of these additional factors in each case and make a determination based on the facts of the particular case.

4. A compensation disparity is statistically significant under these standards if it is significant at a level of two or more standard deviations, based on measures of statistical significance that are generally accepted in the statistics profession.

5. OFCCP will determine whether a pooled regression model is appropriate based on two factors: (a) the objective to include at least 80% of the employees (in the workforce subject to OFCCP's compliance review) in some regression analysis; and (b) whether there are enough incumbent employees in a particular regression to produce statistically meaningful results. If a pooled regression is required, OFCCP will conduct statistical tests generally accepted in the statistics profession

(*e.g.*, the "Chow test"), to determine which interaction terms should be included in the pooled regression model. In any pooled regression model, OFCCP will include category factors defined in such a way as to group only similarly situated employees (as defined in Paragraph 3, above).

6. In determining whether a violation has occurred, OFCCP will consider whether there is anecdotal evidence of compensation discrimination, in addition to statistically significant compensation disparities. Except in unusual cases, OFCCP will not issue a Notice of Violation (NOV) alleging systemic compensation discrimination without providing anecdotal evidence to support OFCCP's statistical analysis. In unusual cases, OFCCP may assert a systemic discrimination violation based only on anecdotal evidence, if such evidence presents a pattern or practice of compensation discrimination.

7. OFCCP will also assert a compensation discrimination violation if the contractor establishes compensation rates for jobs (not for particular employees) that are occupied predominantly by women or minorities that are significantly lower than rates established for jobs occupied predominantly by men or non-minorities, where the evidence establishes that the contractor made the job wage-rate decisions based on the sex, race or ethnicity of the incumbent employees that predominate in each job. Such evidence of discriminatory intent may consist of the fact that the contractor adopted a market survey to determine the wage rate for the jobs, but established the wage rate for the predominantly female or minority job lower than what that market survey specified for that job, while establishing for the predominantly male or non-minority job the full market rate specified under the same market survey.[40]

[40] See *County of Washington* v. *Gunther*, 452 U.S. 161, 166, 180–81 (1981) ("We emphasize at the outset the narrowness of the question before us in this case. Respondents' claim is not based on the controversial concept of "comparable worth," under which plaintiffs might claim increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community. Rather, respondents seek to prove, by direct evidence, that their wages were depressed because of intentional sex discrimination, consisting of setting the wage scale for female guards, but not for male guards, at a level lower than its own survey of outside markets and the worth of the jobs warranted.").

8. OFCCP will treat compensation and other personnel information provided by the contractor to OFCCP during a systemic compensation investigation as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552. It is the practice of OFCCP not to release data where the contractor is still in business, and the contractor indicates, and through the Department of Labor review process it is determined, that the data are confidential and sensitive and that the release of data would subject the contractor to commercial harm.

Signed at Washington, DC, this 12th day of June, 2006.

Victoria A. Lipnic,

Assistant Secretary for the Employment Standards,

Charles E. James, Sr.,

Deputy Assistant Secretary for Federal Contract Compliance.

[FR Doc. 06–5458 Filed 6–15–06; 8:45 am]

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