



# Federal Register

3-21-06

Vol. 71 No. 54

Tuesday

Mar. 21, 2006

United States  
Government  
Printing Office

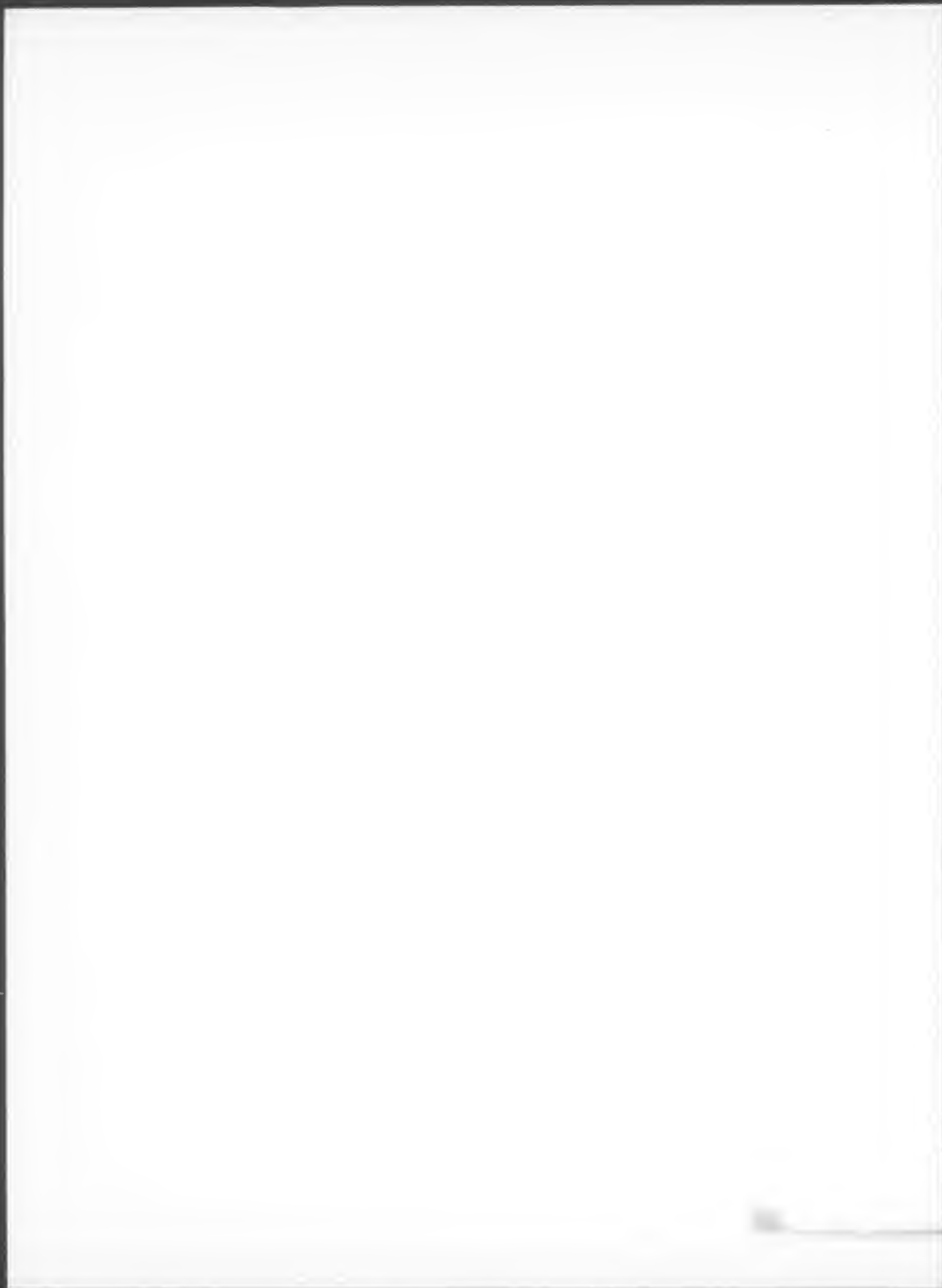
SUPERINTENDENT  
OF DOCUMENTS  
Washington, DC 20402

OFFICIAL BUSINESS  
Penalty for Private Use, \$300

\*\*\*\*\*3-DIGIT 481  
A FR BONN1346B MAR 07 R  
BONNIE COLVIN  
PROQUEST I & L  
PO BOX 1346  
ANN ARBOR MI 48106

PERIODICALS

Postage and Fees Paid  
U.S. Government Printing Office  
(ISSN 0097-6326)





# Federal Register

---

3-21-06

Vol. 71 No. 54

Tuesday

Mar. 21, 2006

Pages 14089-14354



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see [www.archives.gov](http://www.archives.gov).

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the Federal Register shall be judicially noticed.

The Federal Register is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the Federal Register [www.gpoaccess.gov/nara](http://www.gpoaccess.gov/nara), available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the Federal Register is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or vid e-mail at [gpoaccess@gpo.gov](mailto:gpoaccess@gpo.gov). The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday-Friday, except official holidays.

The annual subscription price for the Federal Register paper edition is \$749 plus postage, or \$808, plus postage, for a combined Federal Register, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the Federal Register including the Federal Register Index and LSA is \$165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily Federal Register, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see [bookstore.gpo.gov](http://bookstore.gpo.gov).

There are no restrictions on the republication of material appearing in the Federal Register.

**How To Cite This Publication:** Use the volume number and the page number. Example: 71 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

### PUBLIC

#### Subscriptions:

Paper or fiche 202-512-1800  
Assistance with public subscriptions 202-512-1806

**General online information** 202-512-1530; 1-888-293-6498

#### Single copies/back copies:

Paper or fiche 202-512-1800  
Assistance with public single copies 1-866-512-1800  
(Toll-Free)

### FEDERAL AGENCIES

#### Subscriptions:

Paper or fiche 202-741-6005  
Assistance with Federal agency subscriptions 202-741-6005

### FEDERAL REGISTER WORKSHOP

#### THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.
- WHEN:** Tuesday, April 4, 2006  
9:00 a.m.-Noon
- WHERE:** Office of the Federal Register  
Conference Room, Suite 700  
800 North Capitol Street, NW.  
Washington, DC 20002
- RESERVATIONS:** (202) 741-6008



Printed on recycled paper.



# Contents

Federal Register

Vol. 71, No. 54

Tuesday, March 21, 2006

## Agriculture Department

See Federal Crop Insurance Corporation

See Forest Service

See Rural Housing Service

See Rural Utilities Service

## Centers for Disease Control and Prevention

### NOTICES

Meetings:

National Center for Environmental Health/Agency for  
Toxic Substances and Disease Registry—  
Scientific Counselors Board, 14220–14221

Patent licenses; non-exclusive, exclusive, or partially  
exclusive:

Inviragen, LLC, 14221–14222

## Civil Rights Commission

### NOTICES

Meetings; State advisory committees:

Hawaii, 14169–14170

Washington, 14170

## Coast Guard

### PROPOSED RULES

Regattas and marine parades:

Dragon Boat Races, 14132–14134

### NOTICES

Environmental statements; notice of intent:

Pacific area operations changes, 14233–14236

## Commerce Department

See Industry and Security Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

## Defense Acquisition Regulations System

### RULES

Acquisition regulations:

Ball and roller bearings acquisition, 14110–14112

Capital assets manufactured in United States; purchase  
incentive program, 14108–14110

Component breakout, 14101–14102

Contractor performance of acquisition functions closely  
associated with inherently governmental functions,  
14100–14101

Contract requirements; consolidation, 14104–14106

Federal supply schedules and multiple award contracts;  
competition requirements, 14106–14108

Service contracts and task and delivery orders approval,  
14102–14104

Technical amendments, 14099–14100

### PROPOSED RULES

Acquisition regulations:

Government property reports, 14151–14152

Payment requests; electronic submission and processing,  
14149–14151

## Defense Department

See Defense Acquisition Regulations System

See Defense Information Systems Agency

### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 14179

Privacy Act; systems of records, 14179–14187

## Defense Information Systems Agency

### NOTICES

Privacy Act; systems of records, 14187–14188

## Education Department

### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 14188

## Energy Department

See Federal Energy Regulatory Commission

## Environmental Protection Agency

### NOTICES

Meetings:

Nanotechnology White Paper External Review Draft;  
independent expert external peer review, 14205–  
14206

Scientific Counselors Board Executive Committee, 14206–  
14207

Reports and guidance documents; availability, etc.:

EPA assistance recipients administering environmental  
permitting programs; final Title VI public  
involvement guidance, 14207–14217

Solid waste:

Municipal solid waste landfill permit programs—  
Wisconsin, 14217–14218

Water supply:

Public water system supervision program—  
Virginia, 14218

## Federal Aviation Administration

### RULES

Airworthiness directives:

General Electric Co., 14092–14094

Class B airspace

Correction, 14094–14096

Class E airspace, 14097

### PROPOSED RULES

Airworthiness directives:

Boeing, 14126–14129

Gulfstream, 14123–14126

Airworthiness standards:

Transport category airplanes—

Fuel tank flammability reduction, 14122–14123

### NOTICES

Advisory circulars; availability, etc.:

Fuel tank flammability, 14281

Aeronautical land-use assurance; waivers:

Faribault Municipal Airport, MN, 14281–14282

Sedona Airport, AZ, 14282

Airport noise compatibility program:

Noise exposure maps—

Detroit Metropolitan Wayne County Airport, MI,  
14282–14283

Santa Barbara Airport, CA, 14283–14284

Aviation Rulemaking Advisory Committee; task  
assignments, 14284–14286

Meetings:

Research, Engineering and Development Advisory  
Committee, 14287

Reports and guidance documents; availability, etc.:  
Environmental qualification; application standardization  
and clarification; policy statement, 14287

#### Federal Contract Compliance Programs Office

##### PROPOSED RULES

Affirmative action and nondiscrimination obligations of  
contractors and subcontractors:  
Disabled veterans, recently separated veterans, etc.  
Correction, 14135  
Equal opportunity survey  
Correction, 14134-14135

#### Federal Crop Insurance Corporation

##### PROPOSED RULES

Crop insurance regulations:  
Almond and walnut provisions, 14119-14120

#### Federal Election Commission

##### NOTICES

Expenditure and contribution limits; price index increase,  
14218-14219

#### Federal Energy Regulatory Commission

##### NOTICES

Complaint filings:  
Norstar Operating, LLC, 14194-14195  
Electric rate and corporate regulation combined filings,  
14195-14196  
Environmental statements; notice of intent:  
Downeast LNG, Inc., 14196-14198  
Enbridge Pipelines L.L.C. (Midla), 14198-14200  
Quoddy Bay, LLC, 14200-14203  
Hydroelectric applications, 14203-14205  
Meetings:  
Electric Quarterly Reports Users Group, 14205  
*Applications, hearings, determinations, etc.:*  
Algonquin Gas Transmission, LLC, 14189  
Caledonia Energy Partners, L.L.C., 14189-14190  
Consolidated Energy Holdings LLC, 14190  
Dominion Transmission, Inc., 14190  
DTE Energy Co., 14190-14191  
Duke Energy Marketing America, LLC, et al., 14191  
East Tennessee Natural Gas, LLC, 14191-14192  
Egan Hub Storage, LLC, 14192  
NewCorp Resources Electric Cooperative, Inc, 14192-  
14193  
NorthWestern Corp., 14193  
Northwest Pipeline Corp., 14193  
RGC Resources, Inc., 14194  
Southern Star Central Gas Pipeline, Inc., 14194

#### Federal Reserve System

##### NOTICES

Banks and bank holding companies:  
Change in bank control; correction, 14219-14220  
Formations, acquisitions, and mergers, 14220  
Meetings; Sunshine Act, 14220

#### Federal Transit Administration

##### RULES

Buy America requirements; definitions and waiver  
procedures amendments, 14112-14118

#### Fish and Wildlife Service

##### NOTICES

Comprehensive conservation plans; availability, etc.:  
Theodore Roosevelt National Wildlife Refuge Complex,  
MS, 14246-14247

#### Forest Service

##### NOTICES

##### Meetings:

Resource Advisory Committees—  
Ravalli County, 14164  
Southwest Washington Provincial Advisory Committee,  
14164

#### Health and Human Services Department

See Centers for Disease Control and Prevention

See Health Resources and Services Administration

See National Institutes of Health

#### Health Resources and Services Administration

##### PROPOSED RULES

National practitioner data bank for adverse information on  
physicians and other health care practitioners; adverse  
and negative actions reporting, 14135-14149

#### Homeland Security Department

See Coast Guard

#### Housing and Urban Development Department

##### RULES

##### Low-income housing:

Public housing developments—  
Required and voluntary conversion to tenant-based  
assistance; cost methodology, 14328-14353

##### NOTICES

Grant and cooperative agreement awards:

Housing Counseling Program, 14236-14246

#### Industry and Security Bureau

##### RULES

Export administration regulations:

Corrections and clarifications, 14097-14099

#### Interior Department

See Fish and Wildlife Service

See Land Management Bureau

See National Park Service

See Surface Mining Reclamation and Enforcement Office

#### Internal Revenue Service

##### RULES

##### Income taxes:

American Samoa, Guam, Northern Mariana Islands,  
Puerto Rico, and United States Virgin Islands;  
residency and income derivation  
Correction, 14099

##### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 14292-14293

##### Meetings:

Taxpayer Advocacy Panels, 14293

#### International Trade Administration

##### NOTICES

##### Antidumping:

Frozen fish fillets from—

Vietnam, 14170-14173

Preserved mushrooms from—

China, 14173-14174

##### Countervailing duties:

Dynamic random access memory semiconductors from—

Korea, 14174-14176

##### Meetings:

United States Travel and Tourism Advisory Board, 14176

North American Free Trade Agreement (NAFTA); binational panel reviews:  
 Durum and hard red spring wheat from—  
 Canada; correction, 14176  
 Reports and guidance documents; availability, etc.:  
 Antidumping proceedings involving non-market economy countries; market economy inputs practice, 14176–14179

#### Justice Department

See Justice Programs Office

#### Justice Programs Office

##### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 14252–14253

#### Labor Department

See Federal Contract Compliance Programs Office

#### Land Management Bureau

##### NOTICES

Meetings:

North Slope Science Initiative Science Technical Group, 14247

Resource Advisory Councils—  
 Central Montana, 14247

Oil and gas leases:

Wyoming, 14247–14248

Realty actions; sales, leases, etc.:

Nevada, 14248–14250

#### Maritime Administration

##### NOTICES

Coastwise trade laws; administrative waivers;  
 PROTECTOR, 14287–14288

#### Millennium Challenge Corporation

##### NOTICES

Millennium Challenge Act:

Vanuatu compact, 14296–14326

#### National Highway Traffic Safety Administration

##### NOTICES

Motor vehicle safety standards; exemption petitions, etc.:

Continental Tire North America, Inc., 14288

Pacific Coast Retreaders, Inc., 14288

#### National Institutes of Health

##### NOTICES

Inventions, Government-owned; availability for licensing, 14222–14223

Meetings:

AIDS Research Office Advisory Council, 14223

National Cancer Institute, 14223–14224

National Institute of Child Health and Human Development, 14224–14225, 14228

National Institute of Diabetes and Digestive and Kidney Diseases, 14227–14228

National Institute of Environmental Health Sciences, 14228–14229

National Institute of General Medical Sciences, 14226

National Institute of Mental Health, 14227

National Institute of Neurological Disorders and Stroke, 14226

National Institute on Aging, 14226–14227

National Institute on Drug Abuse, 14224

National Library of Medicine, 14229

#### National Toxicology Program—

In vitro testing methods for estimating starting doses for acute oral systemic toxicity tests; independent scientific peer review, 14229–14231

Scientific Review Center, 14231

Patent licenses; non-exclusive, exclusive, or partially exclusive:

Nascent Oncology, Inc., 14231–14232

NeoPharm, Inc., 14232–14233

#### National Oceanic and Atmospheric Administration

##### PROPOSED RULES

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands king and tanner crabs, 14153–14163

#### National Park Service

##### NOTICES

Meetings:

Gettysburg National Military Park Advisory Commission, 14250

White House Preservation Committee, 14250

National Register of Historic Places; pending nominations, 14250–14251

#### National Science Foundation

##### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 14253–14254

#### Nuclear Regulatory Commission

##### RULES

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list, 14089–14092

##### PROPOSED RULES

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list, 14120–14122

##### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 14254

Meetings:

Reactor Safeguards Advisory Committee, 14254–14255

Meetings; Sunshine Act, 14255

#### Pension Benefit Guaranty Corporation

##### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 14255–14256

#### Railroad Retirement Board

##### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 14256

#### Rural Housing Service

##### NOTICES

Grants and cooperative agreements; availability, etc.:

Choctaw Intermediate Relending Fund Demonstration Program, 14164–14169

#### Rural Utilities Service

##### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 14169

**Securities and Exchange Commission****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 14256-14257

Meetings; Sunshine Act, 14257-14258

Self-regulatory organizations; proposed rule changes:

American Stock Exchange LLC, 14258-14259

Board of Trade of the City of Chicago, Inc., 14259-14265

Chicago Stock Exchange, Inc., 14265-14267

International Securities Exchange, Inc., 14268-14272

National Association of Securities Dealers, Inc., 14272-14275

New York Stock Exchange, Inc., 14275-14278

New York Stock Exchange LLC, 14278-14279

**Social Security Administration****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 14279-14280

**State Department****NOTICES**

Committees; establishment, renewal, termination, etc.:  
Defense Trade Advisory Group, 14280-14281

**Surface Mining Reclamation and Enforcement Office****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 14251-14252

**Transportation Department**

See Federal Aviation Administration

See Federal Transit Administration

See Maritime Administration

See National Highway Traffic Safety Administration

**Treasury Department**

See Internal Revenue Service

**PROPOSED RULES**

Currency and foreign transactions; financial reporting and recordkeeping requirements:

Bank Secrecy Act; implementation—

Casinos; reportable currency transactions; exclusions, 14129-14132

**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 14289-14291

Reports and guidance documents; availability, etc.:

International and exchange rate policies; report to Congress, 14291-14292

**Separate Parts in This Issue****Part II**

Millennium Challenge Corporation, 14296-14326

**Part III**

Housing and Urban Development Department, 14328-14353

**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

**CFR PARTS AFFECTED IN THIS ISSUE**

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR****Proposed Rules:**

457.....14119

**10 CFR**

72.....14089

**Proposed Rules:**

72.....14120

**14 CFR**

39.....14092

71 (2 documents) .....14094,  
14097**Proposed Rules:**

25.....14122

39 (2 documents) .....14123,  
14126

91.....14122

121.....14122

125.....14122

129.....14122

**15 CFR**

740 0970

744.....14097

766.....14097

770.....14097

**24 CFR**

972.....14328

**26 CFR**

1.....14099

602.....14099

**31 CFR****Proposed Rules:**

103.....14129

**33 CFR****Proposed Rules:**

100.....14132

**41 CFR****Proposed Rules:**

60-2.....14134

60-300.....14135

**45 CFR****Proposed Rules:**

60.....14135

**48 CFR**

Ch 2.....14101

203.....14099

207 (5 documents) .....14099,  
14100, 14101, 14102, 14104208 (2 documents) .....14102,  
14106

209.....14099

210.....14104

215.....14108

216 (3 documents) .....14102,  
14106, 14108

217.....14102

219.....14104

225.....14110

229.....14099

237.....14102

252 (2 documents) .....14099,  
14110**Proposed Rules:**

232.....14149

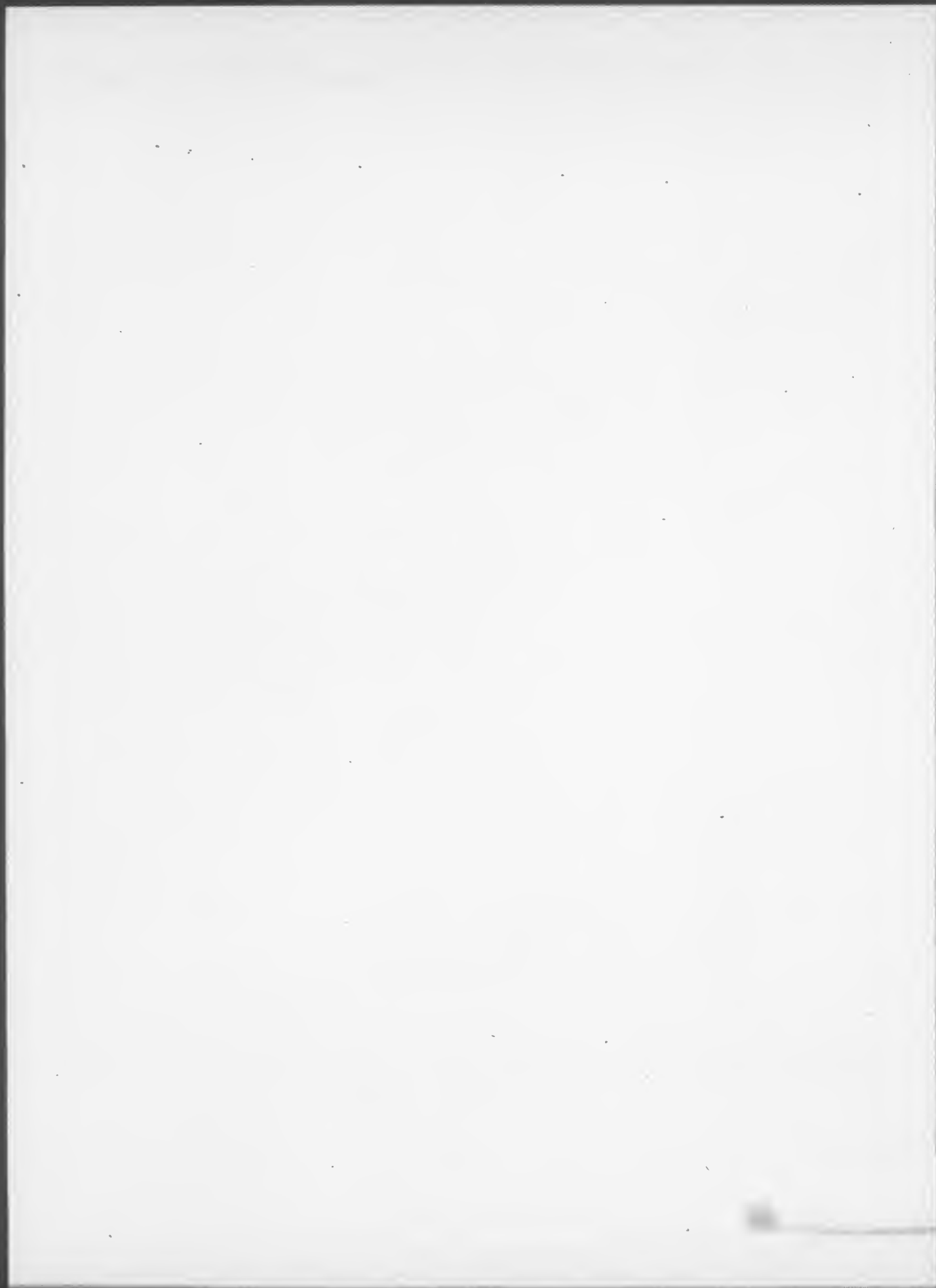
252 (2 documents) .....14149,  
14151**49 CFR**

661.....14112

663.....14112

**50 CFR****Proposed Rules:**

680.....14153



# Rules and Regulations

Federal Register

Vol. 71, No. 54

Tuesday, March 21, 2006

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

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

RIN 3150-AH87

#### List of Approved Spent Fuel Storage Casks: VSC-24 Revision 6

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations revising the BNG Fuel Solutions Corporation VSC-24 cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 6 to Certificate of Compliance Number 1007. Amendment No. 6 will modify the present cask system design to revise the Technical Specification (TS) requirements related to periodic monitoring during storage operation under a general license. Specifically, the amendment will eliminate TS 1.3.4 that requires daily temperature measurement of the cask. The daily temperature measurement is not required because the daily visual inspection of the cask inlet and outlet vent screens, required by TS 1.3.1, provides the capability to determine when corrective action needs to be taken to maintain safe storage conditions under the requirements that govern general design criteria for spent fuel storage casks. This is because the visual inspection would determine if the cask inlets and outlets were blocked (the focus of the thermal analysis submitted by the CoC holder). The amendment will also revise TS 1.2.3 to correspond with TS 1.3.1 by revising the method of thermal performance evaluation to allow for daily temperature surveillance after the cask has reached thermal equilibrium. In addition, the amendment updates editorial changes associated with the

company name change from BNFL Fuel Solutions Corporation to BNG Fuel Solutions Corporation.

**DATES:** The final rule is effective June 5, 2006, unless significant adverse comments are received by April 20, 2006. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the Federal Register.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AH87) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comment will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail [cag@nrc.gov](mailto:cag@nrc.gov). Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays [telephone (301) 415-1966].

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and

downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). An electronic copy of the proposed Certificate of Compliance (CoC), TS, and preliminary safety evaluation report (SER) can be found under ADAMS Accession Nos. ML053330269, ML053340113, and ML053330282, respectively.

CoC No. 1007, the revised TS, the underlying SER for Amendment No. 6, and the Environmental Assessment (EA), are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPAA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector; for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by



the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks," containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 7, 1993 (58 FR 17948) that approved the VSC-24 cask design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1007.

#### Discussion

On June 30, 2005, and as supplemented on October 12, 2005, the certificate holder, BNG Fuel Solutions Corporation, submitted an application to the NRC to amend CoC No. 1007 to modify the TS requirements related to periodic monitoring during storage operation. The application requested that TS 1.3.4, which requires daily temperature measurement of the cask, be eliminated. The daily temperature measurement is not required because the daily visual inspection of the cask inlet and outlet vent screens, required by TS 1.3.1, provides the capability to determine when corrective action needs to be taken to maintain safe storage conditions under the requirements in 10 CFR 72.122(h)(4). This is because the visual inspection would determine if the cask inlets and outlets were blocked (the focus of the thermal analysis submitted by the CoC holder). The application also requested a revision to TS 1.2.3 to change the method of thermal performance evaluation to allow for daily temperature surveillance after the cask has reached thermal equilibrium. In addition, the application requested editorial changes associated with the company name change from BNFL Fuel Solutions Corporation to BNG Fuel Solutions Corporation. No other changes to the VSC-24 cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. The NRC staff also

determined that there continues to be reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the VSC-24 cask design listing in 10 CFR 72.214 by adding Amendment No. 6 to CoC No. 1007. The amendment consists of changes to the requirements related to periodic monitoring during storage operation by eliminating TS requirements that require daily temperature measurement of the cask. The particular TS which are changed are identified in the NRC staff's SER for Amendment No. 6.

The amended VSC-24 cask system, when used under the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of part 72; thus, adequate protection of public health and safety will continue to be ensured.

#### Discussion of Amendments by Section

##### *Section 72.214 List of Approved Spent Fuel Storage Casks*

Certificate No. 1007 is revised by adding the effective date of Amendment Number 6.

#### Procedural Background

This rule is limited to the changes contained in Amendment No. 6 to CoC No. 1007 and does not include other aspects of the VSC-24 cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on June 5, 2006. However, if the NRC receives significant adverse comments by April 20, 2006, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments, published elsewhere in this issue of the *Federal Register*, in a subsequent final rule. The NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

#### Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the VSC-24 cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

#### Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the *Federal Register* on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

#### Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments



on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

#### **Finding of No Significant Environmental Impact: Availability**

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule will amend the CoC for the VSC-24 cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present cask system design to revise the TS requirements related to periodic monitoring during storage operation, under a general license. Specifically, the amendment will eliminate TS 1.3.4 that requires daily temperature measurement of the cask. The daily temperature measurement is not required because the daily visual inspection of the cask inlet and outlet vent screens, required by TS 1.3.1, provides the capability to determine when corrective action needs to be taken to maintain safe storage conditions under the requirements in 10 CFR 72.122(h)(4). This is because the visual inspection will determine if the cask inlets and outlets were blocked (the focus of the thermal analysis submitted by the CoC holder). The amendment will also revise TS 1.2.3 to correspond with TS 1.3.1 by revising the method of thermal performance evaluation to allow for daily temperature surveillance after the cask has reached thermal equilibrium. In addition, the amendment will update editorial changes associated with the company name change from BNFL Fuel Solutions Corporation to BNG Fuel Solutions Corporation. The EA and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the EA and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

#### **Paperwork Reduction Act Statement**

This direct final rule does not contain a new or amended information

collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150-0132.

#### **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

#### **Regulatory Analysis**

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On April 7, 1993 (58 FR 17948), the NRC issued an amendment to part 72 that approved the VSC-24 cask design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214. On June 30, 2005, and as supplemented on October 12, 2005, the certificate holder, BNG Fuel Solutions Corporation, submitted an application to the NRC to amend CoC No. 1007 to revise the TS requirements related to periodic monitoring during storage operation. Specifically, the amendment will eliminate TS 1.3.4 that requires daily temperature measurement of the cask. The daily temperature measurement is not required because the daily visual inspection of the cask inlet and outlet vent screens, required by TS 1.3.1, provides the capability to determine when corrective action needs to be taken to maintain safe storage conditions under the requirements in 10 CFR 72.122(h)(4). This is because the visual inspection will determine if the cask inlets and outlets were blocked (the focus of the thermal analysis submitted by the CoC holder). The amendment will also revise TS 1.2.3 to correspond with TS 1.3.1 by revising the method of thermal performance evaluation to allow for daily temperature surveillance after the cask has reached thermal equilibrium. In addition, the amendment updates editorial changes associated with the company name change from BNFL Fuel Solutions Corporation to BNG Fuel Solutions Corporation. The alternative to this

action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

#### **Regulatory Flexibility Certification**

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and BNG Fuel Solutions Corporation. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

#### **Backfit Analysis**

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

#### **Congressional Review Act**

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

#### **List of Subjects in 10 CFR Part 72**

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping

requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

**PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE**

■ 1. The authority citation for part 72 is revised to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109-58, 119 Stat. 806-10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1007 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

\* \* \* \* \*

Certificate Number: 1007.

Initial Certificate Effective Date: May 7, 1993.

Amendment Number 1 Effective Date: May 30, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: May 21, 2001.

Amendment Number 4 Effective Date: February 3, 2003.

Amendment Number 5 Effective Date: September 13, 2005.

Amendment Number 6 Effective Date: June 5, 2006.

SAR Submitted by: BNG Fuel Solutions Corporation.

SAR Title: Final Safety Analysis Report for the Ventilated Storage Cask System.

Docket Number: 72-1007.

Certificate Expiration Date: May 7, 2013.

Model Number: VSC-24.

\* \* \* \* \*

Dated at Rockville, Maryland, this 3rd day of March 2006.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 06-2715 Filed 3-20-06; 8:45 am]

BILLING CODE 7590-01-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2005-22055; Directorate Identifier 2005-NE-31-AD; Amendment 39-14517; AD 2006-06-08]

RIN 2120-AA64

**Airworthiness Directives; General Electric Company Model CF6-80C2D1F Turbofan Engines**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) Model CF6-80C2D1F turbofan engines. This AD requires modifying the latching system of the fan reverser. This AD results from 13 reports of released thrust reverser hardware. We are issuing this AD to prevent release of the thrust reverser cascade on landing, which could result in runway debris and a possible hazard to other aircraft.

**DATES:** This AD becomes effective April 25, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 25, 2006.

**ADDRESSES:** You can get the service information identified in this AD from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza,

Baltimore, MD, 21220-4295, telephone: (410) 682-0094; fax: (410) 682-0100.

You may examine the AD docket on the Internet at <http://dms.dot.gov> or in Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238-7176; fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to GE Model CF6-80C2D1F turbofan engines. We published the proposed AD in the *Federal Register* on October 24, 2005 (70 FR 61398). That action proposed to require modifying the latching system of the fan reverser.

**Examining the AD Docket**

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

**Comments**

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

**Clarify the Service Bulletin Incorporations**

One commenter states that the AD should clarify that if Middle River Aircraft Systems (MRAS) Service Bulletin (SB) No. CF6-80C2 S/B 78-1077 is incorporated, incorporating MRAS SB No. CF6-80C2 S/B 78-1068 is not necessary. Likewise, if MRAS SB No. CF6-80C2 S/B 78-1068 is incorporated, incorporating MRAS SB No. CF6-80C2 S/B 78-1077 is not necessary.

We agree. We changed compliance paragraph (f)(2) in this AD to state "Use the Accomplishment Instructions of either MRAS SB No. CF6-80C2 S/B 78-1068, Revision 2, dated May 16, 2005, or SB No. CF6-80C2 S/B 78-1077, Revision 1, dated May 16, 2005, (but not both SBs) to modify the latch assembly."

### Request for Incorporating by Reference the SBs

One commenter requests that we incorporate by reference the required SBs in the proposed AD, to make them available through the Office of the Federal Register. We agree that the SBs should be incorporated by reference, but only in the final rule AD. The proposed AD cannot incorporate by reference any service information, because the document is only a proposal. This AD incorporates by reference the applicable SBs.

### Request for Referencing the Defective Part or Assembly by Part Number

One commenter requests that we reference the defective part or assembly by part number in the AD. Without specific part numbers, it is impossible to determine if part manufacturer approval (PMA) equivalent parts or assemblies exist, either for defective parts or assemblies or the new-and-improved parts or assemblies.

We do not agree. The affected part numbers are identified in the appropriate Service Bulletins and do not need to be repeated in the AD.

### In Compliance With Older Versions of the Required SBs

One commenter states they have complied with older versions of all the required Service Bulletins and believes that this should satisfy the intent of the AD. We agree. We changed applicability paragraph (c) to read "This AD applies to the following General Electric Company (GE) Model CF6-80C2D1F turbofan engines:

(1) Engines that have not incorporated either Middle River Aircraft Systems (MRAS) Service Bulletin (SB) No. CF6-80C2 S/B 78-1068, Revision 2, dated May 16, 2005, any earlier revision, or original issue, or SB No. CF6-80C2 S/B 78-1077, Revision 1, dated May 16, 2005, or original issue; and

(2) Engines that have not incorporated MRAS SB No. CF6-80C2 S/B 78-1078, Revision 1, dated May 16, 2005, or original issue; and

(3) Engines that have not incorporated MRAS SB No. CF6-80C2 S/B 78-1088, Revision 5, dated May 24, 2005, any earlier revision, or original issue."

Also, for clarification, we changed paragraphs (f), (g), and (h) to generally read "If MRAS SB No. CF6-80C2 S/B 78-10(X), Revision (X), dated May 16, 2005, any earlier revision, or original issue, has not been incorporated, do the following:"

### Request for Compliance Time Changes

One commenter requests we change the compliance time in paragraph (f)

from 1,200 flight hours to 1,600 flight hours, and the compliance time in paragraphs (g) and (h) from 6,000 flight hours to "not to exceed 7,500 flight hours". The commenter states that these changes would make the AD coincide with their A-Checks and C-Checks.

We do not agree. We worked closely with GE to establish compliance times that would help ensure the AD requirements get done within about a one-and-a-half year timeframe. The first event of released thrust reverser hardware occurred in January 1997. GE issued SBs to address the problem shortly afterward. However, several MD-11 operators have not incorporated those SBs, and as a result, three more events of released thrust reverser hardware occurred since March 2004. These events could result in runway debris and a possible hazard to other aircraft.

### Conclusion

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

### Costs of Compliance

We estimate that this AD will affect 138 engines installed on airplanes of U.S. registry. We also estimate that it will take approximately 19 work hours per engine to perform the proposed actions, and that the average labor rate is \$65 per work hour. Required parts will cost approximately \$6,644 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be \$1,087,302.

### 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 at the address listed under ADDRESSES.

### 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 adding the following new airworthiness directive:

**2006-06-08 General Electric Company:**  
Amendment 39-14517. Docket No. FAA-2005-22055; Directorate Identifier. 2005-NE-31-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective April 25, 2006.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to the following General Electric Company (GE) Model CF6-80C2D1F turbofan engines:

(1) Engines that have not incorporated either Middle River Aircraft Systems (MRAS)

Service Bulletin (SB) No. CF6-80C2 S/B 78-1068, Revision 2, dated May 16, 2005, any earlier revision, or original issue, or SB No. CF6-80C2 S/B 78-1077, Revision 1, dated May 16, 2005, or original issue; and

(2) Engines that have not incorporated MRAS SB No. CF6-80C2 S/B 78-1078, Revision 1, dated May 16, 2005, or original issue; and

(3) Engines that have not incorporated MRAS SB No. CF6-80C2 S/B 78-1088, Revision 5, dated May 24, 2005, any earlier revision, or original issue. These engines are installed on, but not limited to, McDonnell Douglas Corporation MD-11 airplanes.

#### Unsafe Condition

(d) This AD results from 13 reports of released thrust reverser hardware. We are issuing this AD to prevent release of the thrust reverser cascade on landing, which could result in runway debris and a possible hazard to other aircraft.

#### 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.

#### Modifying the Latching System of the Fan Reverser

(f) If MRAS SB No. CF6-80C2 S/B 78-1068, Revision 2, dated May 16, 2005, any earlier revision, or original issue, or SB No. CF6-80C2 S/B 78-1077, Revision 1, dated May 16, 2005, or original issue, has not been incorporated, do the following:

(1) At the next normally scheduled maintenance period or within 1,200 flight

hours time-in-service (TIS) after the effective date of this AD, whichever occurs first, modify the latching system of the fan reverser.

(2) Use the Accomplishment Instructions of either MRAS SB No. CF6-80C2 S/B 78-1068, Revision 2, dated May 16, 2005, or SB No. CF6-80C2 S/B 78-1077, Revision 1, dated May 16, 2005, (but not both SBs) to modify the latch assembly.

#### Replacing the L-Shaped Support Brackets

(g) If MRAS SB No. CF6-80C2 S/B 78-1078, Revision 1, dated May 16, 2005, or original issue, has not been incorporated, do the following:

(1) At the next normally scheduled maintenance period or within 6,000 flight hours TIS after the effective date of this AD, whichever occurs first, replace the existing L-shaped support brackets of the upper and lower ends of the upper latch operating cable with improved T-shaped support brackets.

(2) Use the Accomplishment Instructions of MRAS SB CF6-80C2 S/B 78-1078, Revision 1, dated May 16, 2005, to replace the support brackets.

#### Installing the Improved Upper Latch of the Fan Reverser

(h) If MRAS SB No. CF6-80C2 S/B 78-1088, Revision 5, dated May 24, 2005, any earlier revision, or original issue, has not been incorporated, do the following:

(1) At the next normally scheduled maintenance period or within 6,000 flight hours TIS after the effective date of this AD, whichever occurs first, install the improved upper latch of the fan reverser.

(2) Use the Accomplishment Instructions of MRAS SB CF6-80C2 S/B 78-1088, Revision 5, dated May 24, 2005, to install the upper latch.

#### 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) None.

#### Material Incorporated by Reference

(k) You must use the Middle River Aircraft Systems (MRAS) Service Bulletins specified in Table 1 of this AD to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD 21220-4295, telephone: (410) 682-0094; fax: (410) 682-0100 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., Nassif Building, Room PL-401, Washington, DC 20590-0001, 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 NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

TABLE 1.—INCORPORATION BY REFERENCE

MRAS Service Bulletin No.	Page	Revision	Date
CF6-80C2 S/B 78-1068 Total Pages: 16	ALL	2	May 16, 2005.
CF6-80C2 S/B 78-1077 Total Pages: 19	ALL	1	May 16, 2005.
CF6-80C2 S/B 78-1078 Total Pages: 29	ALL	1	May 16, 2005.
CF6-80C2 S/B 78-1088 Total Pages: 51	ALL	5	May 24, 2005.

Issued in Burlington, Massachusetts, on March 13, 2006.

Peter A. White,

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

[FR Doc. 06-2648 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2005-22509; Airspace Docket No. 03-AWA-2]

RIN 2120-AA66

#### Modification of the St. Louis Class B Airspace Area; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the Federal Register on February 15, 2006 (71 FR 7848),

Airspace Docket No. 03-AWA-2, FAA Docket No. FAA-2005-22509. In that rule, inadvertent errors were made in the graphic depicting the modified St. Louis Class B airspace area. This action corrects those errors.

DATES: Effective Date: 0901 UTC, March 21, 2006.

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:

### History

On February 15, 2006, a final rule was published in the **Federal Register** modifying the St. Louis Class B airspace area (71 FR 7848), Airspace Docket No. 03-AWA-2, FAA Docket No. FAA-2005-22509. In that final rule, inadvertent errors were made in area A of the attached graphic of the St. Louis Class B airspace area. Specifically, the altitudes for Area A were depicted as extending from the surface to and including 5,000 feet MSL (50/SFC) rather than from the surface to and

including 8,000 feet MSL (80/SFC). Also, the 1.5 NM radius exclusion around Creve Coeur Airport was not depicted. This action replaces the graphic reflecting the correct altitudes for area A and the exclusion around the Creve Coeur Airport.

### Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the graphic for the St. Louis Class B Airspace Area, as published in the **Federal Register** on February 15, 2006 (71 FR 7848), Airspace Docket No. 03-AWA-2, FAA

Docket No. FAA-2005-22509, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

### §71.1 [Amended]

*Paragraph 3000 Class B Airspace*

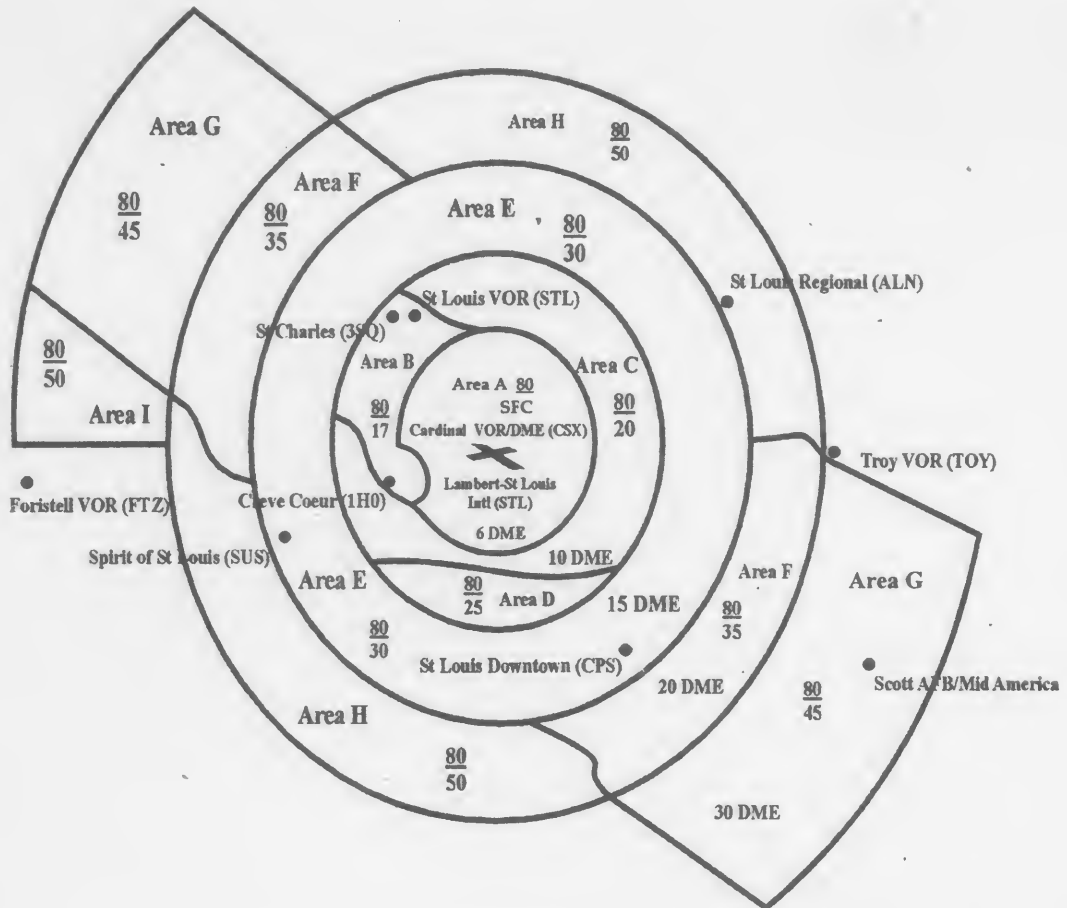
\* \* \* \* \*

### ACE MO B St. Louis, MO [Corrected]

■ On page 7851, Area A, delete the graphic of the St. Louis, MO Class B Airspace Area, and insert the corrected graphic.

- BILLING CODE 4910-13-P

# ST. LOUIS, MO CLASS B AIRSPACE AREA



**NOT TO BE USED FOR NAVIGATION**

**ASD 03-AWA-2**

\* \* \* \* \*

Issued in Washington, DC, on March 10, 2006.

**Edith V. Parish,**  
Manager, Airspace and Rules.

[FR Doc. 06-2672 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-13-C



## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Docket No. 23545; Airspace Docket No. 06-ACE-1]

**Modification of Class E Airspace; Gothenburg, Quinn Field, NE**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Gothenburg, Quinn Field, NE.

**DATES:** *Effective Date:* 0901 UTC, June 8, 2006.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE-520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kanasa City, MO 64106; telephone: (816) 329-2525.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the *Federal Register* on January 26, 2006 (71 FR 4242). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 8, 2006. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 8, 2006.

**Donna R. McCord,**

*Acting Area Director, Western Flight Services Operations.*

[FR Doc. 06-2667 Filed 3-20-06; 8:45 am]

**BILLING CODE** 4925-13-M

## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

## 15 CFR Parts 740, 744, 766, and 770

[Docket No. 060109005-6005-01]

RIN 0694-AD67

**Corrections and Clarifications to the Export Administration Regulations**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the Export Administration Regulations (EAR) to clarify certain provisions or to update technical information. The Bureau of Industry and Security identified these revisions through internal review or questions from the public.

**DATES:** This rule is effective March 21, 2006.

**ADDRESSES:** Send comments regarding the Paperwork Reduction Act burden estimates or any other aspect of the collection of information affected by this rule to David Rostker, OMB Desk Officer, by e-mail at [david\\_rostker@omb.eop.gov](mailto:david_rostker@omb.eop.gov) or by fax to 202 395 7285; with a copy to the Regulatory Policy Division, Bureau of Industry and Security at one of the addresses below. Send comments concerning any other aspect of this rule via e-mail to [rpd2@bis.doc.gov](mailto:rpd2@bis.doc.gov), via fax to 202 482 3355 or to the Regulatory Policy Division, Bureau of Industry and Security, Room H2017, U.S. Department of Commerce, Washington, DC 20230. Please refer to RIN 0694-AD67 in all comments.

**FOR FURTHER INFORMATION CONTACT:** William Arvin, Regulatory Policy Division, [warvin@bis.doc.gov](mailto:warvin@bis.doc.gov), tel. (202) 482-2440.

**SUPPLEMENTARY INFORMATION:**

**Background**

BIS reviews the EAR to identify provisions that contain incorrect citations, are obsolete, or that otherwise need correcting. In addition, members of the public sometimes point out provisions that need revising. This rule makes several such revisions as more fully described below.

**Clarification of Country Group Restrictions on Use of Certain License Exceptions**

Section 740.9(b) of the Export Administration Regulations provides an exception to export license requirements for items temporarily in the United States under certain

circumstances. Two of those circumstances are: Items traveling through the United States, and items imported into the United States for display at exhibitions or trade fairs. If such items are listed on the Commerce Control List for national security, nuclear nonproliferation, chemical or biological weapons proliferation or missile technology reasons, the License Exception provisions that govern these two circumstances do not authorize exports to certain destinations in Country Group D (Supp. No. 1 to Part 740) because of national security, nuclear nonproliferation, chemical or biological weapons, or missile technology concerns.

*Clarification of Country Group Restrictions on Use of License Exception TMP for Items Moving Through the United States*

Prior to publication of this rule, § 740.9(b)(1)(i), which relates to items moving in transit through the United States, transposed terms in a way that could appear to restrict items controlled for missile technology reasons from being sent to countries of concern for chemical and biological weapons reasons and to restrict items controlled for chemical and biological reasons to countries of concern regarding missiles. Specifically, the phrase "Items controlled for national security, nuclear proliferation, missile technology, or chemical and biological weapons reasons may not be exported to Country Group D:1, 2, 3, or 4 \* \* \* respectively \* \* \*" appeared to restrict items controlled for missile technology reasons from Country Group D:3, although Country Group D:3 lists countries of concern for chemical and biological weapons reasons, and to restrict items controlled for chemical or biological weapons proliferation reasons from Country Group D:4, although Country Group D:4 of the EAR, lists countries of concern for missile technology reasons. This rule transposes the phrases "missile technology" and "chemical or biological weapons" in § 740.9(b)(1)(i) to match them to their relevant country groups.

*Clarification of Country Group Restrictions on Use of License Exception TMP for Items Imported Into the United States for Exhibitions or Trade Fairs*

Prior to publication of this rule, § 740.9(b)(2)(ii)(C), which relates to items imported for display at exhibitions or trade fairs and being exported to a destination other than that from which imported, transposed terms in a way that could appear to restrict items controlled for missile technology

reasons from being sent to countries of concern for nuclear proliferation reasons and to restrict items controlled for nuclear proliferation reasons from being sent to countries of concern for missile proliferation reasons. Specifically, the phrase "Exports to Country Group D:1, 2, 3, or 4 \* \* \* of items controlled for national security, missile technology, chemical or biological weapons reasons or nuclear proliferation, respectively" illogically appeared to restrict items controlled for missile technology reasons from Country Group D:2 although Country Group D:2 lists countries of concern for nuclear proliferation reasons and to restrict items controlled for nuclear nonproliferation reasons from Country Group D:4 although Country Group D:4 lists countries of concern for missile proliferation reasons. This rule transposes the phrases "missile technology" and "nuclear proliferation" in § 740.9(b)(2)(ii)(C) to match them to their relevant country groups.

**Correction of Citations in Statement of Licensing Policy Regarding Entities Sanctioned Pursuant to Section 11B(1)(B) of the Export Administration Act**

Section 744.19 of the EAR describes BIS's licensing policy regarding certain sanctioned entities, including entities sanctioned pursuant to section 11B(1)(B) of the Export Administration Act of 1979 as amended. Prior to publication of this rule, paragraph (c) of § 744.19 incorrectly cited section 11B(1)(B)(i) of the EAA as the section providing for denial of items controlled pursuant to the Export Administration Act of 1979 and paragraph (d) incorrectly cited section 11B(1)(B)(ii) as the section providing for denial of items on the MTCR Annex. The citations should be reversed. This rule replaces the "(i)" in the citation in paragraph (c) with a "(ii)" and the "(ii)" in the citation in paragraph (d) with a "(i)" thereby correcting the citations.

**Revision of Administrative Law Judge Address**

This rule revises the address of the Administrative Law Judge in § 766.24 to reflect the address currently in use.

**Removal of Obsolete Interpretation**

This rule removes and reserves § 770.1(c)—Interpretation 3—because the commodities to which it applies are no longer on the Commerce Control List. That interpretation first appeared in the regulations in 1966, when metallic wire and cable were listed on the antecedent of the Commerce Control List. No such

entry has appeared on the Commerce Control List in several years.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 2, 2005, 70 FR 45273 (August 5, 2005), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

**Rulemaking Requirements**

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

2. 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 Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by Office of Management and Budget under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes for a manual or electronic submission. BIS believes that this rule will not materially affect the burden imposed by this collection.

3. This rule does not contain policies with federalism implications as that term is defined under E.O. 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because it is unnecessary. The changes made by this rule correct inadvertent drafting errors. Therefore it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule.

Because notice of proposed rulemaking and opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

**List of Subjects**

**15 CFR Part 740**

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

**15 CFR Part 744**

Exports, Reporting and recordkeeping requirements, Terrorism.

**15 CFR Part 766**

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties.

**15 CFR Part 770**

Exports.

■ Accordingly, parts 740, 744, 766 and 770 of the Export Administration Regulations (15 CFR 770-799) are amended as follows:

**PART 740—LICENSE EXCEPTIONS**

■ 1. The authority citation for part 740 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901-911, Pub. L. 106-387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 2. In § 740.9, revise paragraphs (b)(1)(i) and (b)(2)(ii)(C) to read as follows:

**§ 740.9 Temporary imports, exports, and reexports (TMP).**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Items controlled for national security reasons, nuclear nonproliferation reasons, chemical and biological weapons reasons or missile technology reasons may not be exported to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740), respectively, under this paragraph (b)(1).

\* \* \* \* \*

(2) \* \* \*

(ii) \* \* \*

(C) Exports to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740) of items controlled for national security reasons, nuclear nonproliferation reasons, chemical and biological weapons reasons or missile technology reasons, respectively.

\* \* \* \* \*

**PART 744—CONTROL POLICY: END-USER AND END-USE BASED**

■ 3. The authority citation for part 744 continues to read as follows:



**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005); Notice of October 25, 2005, 70 FR 62027 (October 27, 2005).

■ 4. In § 744.19, revise paragraphs (c) and (d) to read as follows:

**§ 744.19 Licensing policy regarding persons sanctioned pursuant to specified statutes.**

\* \* \* \* \*

(c) A sanction issued pursuant to section 11B(b)(1)(B)(ii) of the Export Administration Act of 1979, as amended, and as carried out by Executive Order 13222 of August 17, 2001, that prohibits the issuance of new licenses for exports to the sanctioned entity of items controlled pursuant to the Export Administration Act of 1979.

(d) A sanction issued pursuant to section 11B(b)(1)(B)(i) of the Export Administration Act of 1979, as amended (Missile Technology Control Act of 1990), and as carried out by an Executive Order 13222 of August 17, 2001, that prohibits the issuance of new licenses for exports to the sanctioned entity of MTCR Annex equipment or technology controlled pursuant to the Export Administration Act of 1979.

**PART 766—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS**

■ 5. The authority citation for part 766 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 6. In § 766.24, revise the second sentence of paragraph (e)(3) to read as follows:

**§ 766.24 Temporary denials.**

\* \* \* \* \*

(e) \* \* \*

(3) *Appeal Procedure.*

\* \* \* Service on the administrative law judge shall be addressed to U.S. Coast Guard, ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland, 21202-4022. \* \* \*

\* \* \* \* \*

**PART 770—INTERPRETATIONS**

■ 7. The authority citation for part 770 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

**§ 770.2 [Amended]**

■ 8. In § 770.2, remove and reserve paragraph (c).

Dated: March 14, 2006.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 06-2685 Filed 3-20-06; 8:45 am]

BILLING CODE 3510-33-P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 602**

[TD 9248]

RIN 1545-BC86

**Residence Rules Involving U.S. Possessions; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains a correction to final regulations that were published in the *Federal Register* on Tuesday, January 31, 2006 (71 FR 4996) that provide rules for determining bona fide residency in the following U.S. possessions: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands under sections 937(a) and 881(b) of the Internal Revenue Code (Code).

**DATES:** This correction is effective January 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** J. David Varley, (202) 435-5262 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations (TD 9248) that are the subject of this correction are under sections 937(a) and 881(b) of the Internal Revenue Code.

**Need for Correction**

As published, the final regulations (TD 9248) contains an error that may prove to be misleading and is in need of clarification.

**Correction of Publication**

Accordingly, the publication of the final regulations (TD 9248), which were

the subject of FR Doc. 06-818, is corrected as follows:

1. On page 4997, column 2, in the preamble under the paragraph heading "Explanation of Provisions and Summary of Comments", first paragraph, fourth line from the bottom, the language "tax and closer connection tests is the" is corrected to read "tax home and closer connection test is the".

**LaNita VanDyke,**

*Federal Register Liaison Officer, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 06-2664 Filed 3-20-06; 8:45 am]

BILLING CODE 4830-01-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 203, 207, 209, 229, and 252**

**Defense Federal Acquisition Regulation Supplement; Technical Amendments**

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

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to add references to the DFARS companion resource, Procedures, Guidance, and Information (PGI).

**DATES:** Effective Date: March 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350.

**List of Subjects in 48 CFR Parts 203, 207, 209, 229, and 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 203, 207, 209, 229, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 203, 207, 209, 229, and 252 continues to read as follows:

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

### PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

- 2. Section 203.570-1 is revised to read as follows:

#### 203.570-1 Scope.

This subpart implements 10 U.S.C. 2408. For information on 10 U.S.C. 2408, see PGI 203.570-1.

### PART 207—ACQUISITION PLANNING

- 3. Section 207.105 is amended by adding paragraph (b)(19)(F) to read as follows:

#### 207.105 Contents of written acquisition plans.

\* \* \* \* \*

(b) \* \* \*  
(19) \* \* \*

(F) *CONUS Antiterrorism Considerations*. Follow the procedures at PGI 207.105(b)(19)(F) for consideration of antiterrorism measures in acquisition planning.

### PART 209—CONTRACTOR QUALIFICATIONS

- 4. Section 209.105-1 is added to read as follows:

#### 209.105-1 Obtaining information.

For guidance on using the Excluded Parties List System, see PGI 209.105-1.

### PART 229—TAXES

- 5. Section 229.101 is amended by revising paragraph (a) and adding paragraph (b) to read as follows:

#### 229.101 Resolving tax problems.

(a) Within DoD, the agency-designated legal counsels are the defense agency General Counsels, the General Counsels of the Navy and Air Force, and for the Army, the Chief, Contract Law Division, Office of the Judge Advocate General. For additional information on the designated legal counsels, see PGI 229.101(a).

(b) For information on fuel excise taxes, see PGI 229.101(b).

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 252.225-7043 [Amended]

- 6. Section 252.225-7043 is amended as follows:
  - a. By revising the clause date to read "(Mar 2006)"; and

- b. In paragraph (d), by removing "225.7401" and adding in its place "PGI 225.7403-1".

[FR Doc. 06-2639 Filed 3-20-06; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 207

[DFARS Case 2004-D021]

#### Defense Federal Acquisition Regulation Supplement; Contractor Performance of Acquisition Functions Closely Associated With Inherently Governmental Functions

**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 Section 804 of the National Defense Authorization Act for Fiscal Year 2005. Section 804 places limitations on the award of contracts for the performance of acquisition functions closely associated with inherently governmental functions.

**DATES:** Effective March 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326, facsimile (703) 602-0350. Please cite DFARS Case 2004-D021.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 70 FR 14572 on March 23, 2005, to implement Section 804 of the National Defense Authorization Act for Fiscal Year 2005. Section 804 places limitations on the award of contracts for the performance of acquisition functions closely associated with inherently governmental functions.

Three sources submitted comments on the interim rule. A discussion of the comments is provided below.

1. *Comment:* One respondent recommended revision of the text at 207.503(S-70)(1) to replace the phrase "functions closely associated with inherently governmental functions that are listed at FAR 7.503(d)" with the phrase "services and actions that are

listed at FAR 7.503(d)." Since 10 U.S.C. 2383(b)(3) states that the phrase "functions closely associated with inherently governmental functions" means those functions described in FAR 7.503(d), use of the FAR reference would meet the letter of the law and would avoid introducing a new phrase in the DFARS.

*DoD Response:* DoD believes that use of the phrase "functions closely associated with inherently governmental functions," along with the reference to FAR 7.503(d), more clearly describes the requirements of the rule. Therefore, DoD has made no change to the rule as a result of this comment.

2. *Comment:* One respondent recommended amending the text at 207.503(S-70)(1)(i)(B) to remove the word "supervise" and replace it with the phrase "provide oversight to" to prevent a conflict with Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, Inherently Governmental Functions. The respondent stated that OFPP Policy Letter 92-1 cautions against exercising "such control over contractor activities to convert the contract \* \* \* to a personal services contract," and that use of the word "supervise," could be understood by Federal officials that they are to interact with contractor employees in the same way they supervise Federal employees.

*DoD Response:* It should be noted that OMB Circular No. A-76 dated May 29, 2003, supersedes OFPP Policy Letter 92-1. However, DoD agrees that the term "supervise" could be subject to differing interpretations and could lead to an inappropriate contract relationship. Therefore, DoD has amended the rule to replace the term "supervise" with the term "oversee."

3. *Comment:* One respondent stated that, given the importance of this issue, DoD should provide further guidance concerning the circumstances under which contracting officers may make a determination under 207.503(S-70)(1)(i)(A), that appropriate DoD personnel cannot reasonably be made available to perform the functions.

*DoD Response:* DoD does not believe that additional guidance is necessary. The availability decision must be made on a case-by-case basis, and DoD contracting officers should retain the flexibility to make informed decisions to meet mission needs.

4. *Comment:* One respondent expressed support for the rule, since the rule places some controls on the award of contracts for the performance of jobs closely associated with the Federal Government's purchases of goods and services. The respondent believes that the Government should protect

inherently governmental functions, and recommended that DoD require contracting officers to provide written justifications of decisions made under this DFARS rule and that those justifications be made publicly available on the World Wide Web.

**DoD Response:** In accordance with FAR Subpart 4.8, the Government contract file should document the basis for an acquisition and the relevant decisions made by the contracting officer. DoD does not believe it is necessary to post the determinations made in accordance with this rule on the World Wide Web.

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:

The objective of the rule is to ensure proper management and oversight of contracts for functions that generally are not considered to be inherently governmental, but may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. The impact of the rule on small entities is unknown at this time. DoD agencies will implement the requirements of the rule in making decisions whether to enter into, and in the administration of, contracts for performance of the acquisition functions closely associated with inherently governmental functions that are listed in section 7.503(d) of the Federal Acquisition Regulation. DoD received no comments on the initial regulatory flexibility analysis. As a result of comments received on the interim rule, the final rule contains a minor change to clarify that Government personnel "oversee" but do not "supervise" contractor personnel.

### 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 207

Government procurement.

**Michele P. Peterson,**  
*Editor, Defense Acquisition Regulations System.*

■ Accordingly, the interim rule amending 48 CFR part 207, which was published at 70 FR 14572 on March 23, 2005, is adopted as a final rule with the following change:

#### PART 207—ACQUISITION PLANNING

■ 1. The authority citation for 48 CFR part 207 continues to read as follows:

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

#### 207.503 [Amended]

■ 2. Section 207.503 is amended in paragraph (S-70)(1)(i)(B) by removing "supervise" and adding in its place "oversee".

[FR Doc. 06-2643 Filed 3-20-06; 8:45 am]

BILLING CODE 5001-08-P

### DEPARTMENT OF DEFENSE

#### Defense Acquisition Regulations System

#### 48 CFR Part 207 and Appendix D to Chapter 2

[DFARS Case 2003-D071]

#### Defense Federal Acquisition Regulation Supplement; Component Breakout

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove procedures for breaking out components of end items for future acquisitions. These procedures have been relocated to the new DFARS companion resource, Procedures, Guidance, and Information. This final rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** *Effective Date:* March 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Euclides Barrera, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0296; facsimile (703) 602-0350. Please cite DFARS Case 2003-D071.

### 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 final rule is a result of the DFARS Transformation initiative. The rule removes DFARS Appendix D, which contains DoD policy and procedures for breakout of components of end items for future acquisitions. The portions of Appendix D containing DoD policy on component breakout have been relocated to a new section at DFARS 207.171. The portions of Appendix D containing internal DoD procedures for component breakout have been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 70 FR 14623 on March 23, 2005. One industry association submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* Relocation of component breakout requirements to a guidance document is not appropriate, because it would provide DoD with the option to unilaterally eliminate the breakout requirement in its entirety, without affording the public an opportunity to object.

*DoD Response:* Although PGI is more than a guidance document, DoD agrees that portions of Appendix D are more appropriate for retention in the DFARS. Therefore, the portions of Appendix D containing DoD policy for component breakout have been relocated to a new section at DFARS 207.171. The portions of Appendix D that have been relocated to PGI are limited to internal DoD procedures for conducting breakout reviews, documenting breakout decisions, and maintaining breakout records. These procedures are still

mandatory for use, in accordance with 207.171(d) of this final rule.

2. *Comment:* Transfer of the component breakout requirements to a guidance document, as opposed to maintaining a regulatory requirement, would de-emphasize the importance of tracking this type of information. Without such information, DoD would not be able to ensure its compliance with existing domestic source laws and regulations. In addition, de-emphasizing the importance of this information would be inconsistent with the on-going U.S. initiative on limiting the adverse effects of offsets in defense procurement. Since the issue of offsets is integrally entwined with foreign and domestic sources of major weapons systems and components, the ability to establish a baseline for components would be impaired by de-emphasizing the requirement to track the breakout of components.

*DoD Response:* DoD believes that the final rule actually emphasizes the importance of component breakout since, prior to this rule, there was no reference to component breakout or Appendix D in any of the numbered sections of the DFARS. In addition, DoD's ability to ensure compliance with existing domestic source laws and regulations, or to track the effect of offsets, is not related to component breakout procedures. Appendix D does not require any breaking out of data, nor does it require tracking of data on components. While unrelated to component breakout, DFARS 225.7307 specifies that DoD does not encourage, enter into, or commit U.S. firms to foreign military sales offset arrangements. The only discernable connection between component breakout policy and offsets is that U.S. industry would not be able to offer components for manufacture in a foreign country under offset arrangements if DoD breaks out the component for direct procurement by DoD. This connection in no way affects DoD's component breakout policy or the decision regarding placement of breakout procedures in PGI.

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 certifies that this final rule will not 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 rule makes no significant change to DoD policy for breakout of

components of end items for future acquisitions.

### 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 207

Government procurement.

Michele P. Peterson,  
*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 207 and Appendix D to Chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR part 207 and Appendix D to subchapter I continues to read as follows:

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

### PART 207—ACQUISITION PLANNING

■ 2. Sections 207.171 through 207.171-4 are added to read as follows:

#### 207.171 Component breakout.

##### 207.171-1 Scope.

(a) This section provides policy for breaking out components of end items for future acquisitions so that the Government can purchase the components directly from the manufacturer or supplier and furnish them to the end item manufacturer as Government-furnished material.

(b) This section does not apply to—

- (1) The initial decisions on Government-furnished equipment or contractor-furnished equipment that are made at the inception of an acquisition program; or
- (2) Breakout of parts for replenishment (see Appendix E).

##### 207.171-2 Definition.

*Component*, as used in this section, includes subsystems, assemblies, subassemblies, and other major elements of an end item; it does not include elements of relatively small annual acquisition value.

##### 207.171-3 Policy.

DoD policy is to break out components of weapons systems or other major end items under certain circumstances.

(a) When it is anticipated that a prime contract will be awarded without adequate price competition, and the prime contractor is expected to acquire any component without adequate price competition, the agency shall break out that component if—

(1) Substantial net cost savings probably will be achieved; and

(2) Breakout action will not jeopardize the quality, reliability, performance, or timely delivery of the end item.

(b) Even when either or both the prime contract and the component will be acquired with adequate price competition, the agency shall consider breakout of the component if substantial net cost savings will result from—

- (1) Greater quantity acquisitions; or
- (2) Such factors as improved logistics support (through reduction in varieties of spare parts) and economies in operations and training (through standardization of design).

(c) Breakout normally is not justified for a component that is not expected to exceed \$1 million for the current year's requirement.

#### 207.171-4 Procedures.

Agencies shall follow the procedures at PGI 207.171-4 for component breakout.

Appendix D to Chapter 2 [Removed and Reserved]

■ 3. Appendix D to Chapter 2 is removed and reserved.

[FR Doc. 06-2642 Filed 3-20-06; 8:45 am]  
BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 207, 208, 216, 217, and 237

[DFARS Case 2002-D024]

### Defense Federal Acquisition Regulation Supplement; Approval of Service Contracts and Task and Delivery Orders

**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 Section 801(b) of the National Defense Authorization Act for Fiscal Year 2002 and Section 854 of the National Defense Authorization Act for Fiscal Year 2005. Section 801(b) requires DoD to establish and implement a management structure for the procurement of services. Section 854 requires DoD agencies to comply with certain review and approval requirements before using a non-DoD

contract to procure supplies or services in amounts exceeding the simplified acquisition threshold.

**DATES:** Effective March 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2002-D024.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DoD published an interim rule at 68 FR 56563 on October 1, 2003, to implement Section 801(b) of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107). The rule established requirements for DoD to obtain certain approvals before acquiring services through use of a DoD contract or task order that is not performance based, or through any contract or task order that is awarded by an agency other than DoD.

Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375) placed additional restrictions on the use of contracts awarded by an agency other than DoD in amounts exceeding the simplified acquisition threshold. DoD published a second interim rule at 70 FR 29640 on May 24, 2005, containing changes resulting from public comments received on the interim rule published on October 1, 2003; changes implementing Section 854 of Public Law 108-375; and changes implementing the requirements of a DoD policy memorandum dated October 29, 2004, on the proper use of non-DoD contracts for the acquisition of supplies and services.

One industry association submitted comments on the interim rule published on May 24, 2005. The association supported the rule, but provided additional comments containing suggestions for improvement. A discussion of the comments is provided below.

1. *Comment:* DoD should extend the requirements of the rule to task and delivery orders placed by DoD under another defense agency's contract.

*DoD Response:* The rule is intended to resolve specific systemic problems regarding the use of non-DoD contracts, i.e., orders placed under non-DoD contracts were not consistent with DoD-unique statutory and regulatory requirements. DoD is not aware of any similar problems for direct or assisted buys under DoD contracts. DoD believes that the existing controls and

procedures are adequate to ensure that orders placed by DoD under DoD contracts are consistent with DoD-unique statutory and regulatory requirements.

2. *Comment:* The rule would be stronger if the requirement at DFARS 207.105(b)(4), to document in the acquisition plan the method to be used to ensure that orders under non-DoD contracts are consistent with DoD-unique statutory and regulatory requirements, also said "including the review and approval requirements of Subpart 217.78."

*DoD Response:* DFARS Subpart 217.78 requires agencies to establish and maintain procedures for reviewing and approving orders under non-DoD contracts. It does not contain the specific review and approval requirements, which vary by department and agency. This DFARS rule requires contracting officers to address the method of ensuring that statutory and regulatory requirements will be met, which should be consistent with the agency procedures established in accordance with Subpart 217.78.

3. *Comment:* DoD should promptly create accompanying Procedures, Guidance, and Information (PGI) coverage, particularly for the data collection elements required by DFARS 217.7802(e).

*DoD Response:* DoD has established corresponding PGI coverage at <http://www.acq.osd.mil/dpap/dars/pgi/index.htm> (PGI 217.7802(e)) to address requirements for reporting of data on the use of assisted acquisition. In addition, DoD has amended the DFARS rule at 208.404(a)(i), 216.505(1), 217.7802(e), and 237.170-2(b) to add references to these reporting requirements.

4. *Comment:* The supplementary information accompanying the final rule should address the memorandum issued by the Director of Defense Procurement and Acquisition Policy on June 17, 2005, entitled "Proper Use of Non-DoD Contracts," and the supplemental memoranda issued by the military departments and defense agencies.

*DoD Response:* The new PGI coverage contains a link to the Defense Procurement and Acquisition Policy Web site on Proper Use of Non-DoD Contract Vehicles at <http://www.acq.osd.mil/dpap/specifcpolicy/index.htm>. This Web site contains links to the referenced memoranda and other relevant information.

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 certifies that this final rule will not 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 contains internal DoD approval requirements, intended to ensure that acquisitions of supplies and services are accomplished in accordance with existing statutes and regulations.

**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 Parts 207, 208, 216, 217, and 237**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Accordingly, the interim rule amending 48 CFR part 237, which was published at 68 FR 56563 on October 1, 2003, and the interim rule amending 48 CFR parts 207, 208, 216, 217, and 237, which was published at 70 FR 29640 on May 24, 2005, are adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 207, 208, 216, 217, and 237 continues to read as follows:

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

**PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

■ 2. Section 208.404 is amended by revising the section heading and paragraph (a)(i) to read as follows:

**208.404 Use of Federal Supply Schedules.**

(a)(i) Departments and agencies shall comply with the review, approval, and reporting requirements established in accordance with subpart 217.78 when placing orders for supplies or services in amounts exceeding the simplified acquisition threshold.

\* \* \* \* \*

**PART 216—TYPES OF CONTRACTS**

■ 3. Section 216.505 is amended by revising paragraph (1) to read as follows:

**216.505 Ordering.**

(1) Departments and agencies shall comply with the review, approval, and reporting requirements established in accordance with Subpart 217.78 when placing orders under non-DoD contracts



in amounts exceeding the simplified acquisition threshold.

\* \* \* \* \*

#### PART 217—SPECIAL CONTRACTING METHODS

■ 4. Section 217.7802 is amended by revising paragraph (e) to read as follows:

##### 217.7802 Policy.

\* \* \* \* \*

(e) Collecting and reporting data on the use of assisted acquisition for analysis. Follow the reporting requirements at PGI 217.7802.

#### PART 237—SERVICE CONTRACTING

■ 5. Section 237.170-2 is amended by revising paragraph (b) to read as follows:

##### 237.170-2 Approval requirements.

\* \* \* \* \*

(b) *Acquisition of services through use of a contract or task order issued by a non-DoD agency.* Comply with the review, approval, and reporting requirements established in accordance with Subpart 217.78 when acquiring services through use of a contract or task order issued by a non-DoD agency.

[FR Doc. 06-2644 Filed 3-20-06; 8:45 am]

BILLING CODE 5001-08-P

### DEPARTMENT OF DEFENSE

#### Defense Acquisition Regulations System

#### 48 CFR Parts 207, 210, and 219

[DFARS Case 2003-D109]

#### Defense Federal Acquisition Regulation Supplement; Consolidation of Contract Requirements

**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 Section 801 of the National Defense Authorization Act for Fiscal Year 2004. Section 801 places restrictions on the consolidation of two or more requirements of a DoD department, agency, or activity into a single solicitation and contract with a total value exceeding \$5,000,000.

**DATES:** Effective March 21, 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 2003-D109.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 69 FR 55986 on September 17, 2004, to implement 10 U.S.C. 2382, as added by Section 801 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). 10 U.S.C. 2382 places restrictions on the consolidation of two or more requirements of a DoD department, agency, or activity into a single solicitation and contract with a total value exceeding \$5,000,000. Twenty-two respondents submitted comments on the interim rule. A discussion of the comments is provided below.

1. *Comment:* Four respondents indicated that the difference between consolidation of contract requirements and contract bundling is unclear.

*DoD Response:* The definitions of the two terms are similar, because all bundles are consolidations. However, not all consolidations are bundles. The definition of "bundle" requires that previous contracts for the item were either performed by small business concerns or were suitable for small business concerns, whereas the definition of "consolidation" does not contain this requirement.

2. *Comment:* One respondent requested clarification regarding the definition of "consolidation." The respondent interpreted the phrase "two or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited" to mean that, if the cost of one contract for two or more requirements is less than the cost of two or more separate contracts, the acquisition would be outside the definition of consolidation.

*DoD Response:* Agree that the phrase could lead to multiple interpretations. To ensure that the rule is applied where appropriate, the phrase has been excluded from the final rule.

3. *Comment:* One respondent stated that the rule does not consider varying quantities between the previous buy and the current acquisition; and does not consider when the previous buys were made, i.e., a year ago or five years ago. This could make a big difference in comparing costs.

*DoD Response:* The definition included in the final rule eliminates the need for cost comparisons.

4. *Comment:* Four respondents stated that the term "consolidation of contract requirements" is not clear with regard to what is meant by "requirements" and

whether or not a different acquisition strategy would be considered a new requirement, such as combining sustaining engineering with system maintenance of the same system.

*DoD Response:* The DFARS rule follows the legislative definition for consolidation of contract requirements, which addresses a single award covering requirements previously provided under more than one award. DoD believes that the definition is clear, but exercise of judgment may be necessary in some cases to determine whether the requirement has previously been provided.

5. *Comment:* One respondent asked for clarification regarding whether the rule applies to orders.

*DoD Response:* Under GSA Schedules, DoD activities place orders, but the actual contract (Schedule) is put in place by GSA. A literal reading of the interim rule would be that the DoD senior procurement executive's determination must be made when the Schedule itself is awarded. The final rule clarifies that the rule applies to orders placed under GSA Schedules.

6. *Comment:* One respondent asked who the senior procurement official is.

*DoD Response:* The rule uses the term "senior procurement executive." This term is defined at DFARS 202.101, which specifies the department/agency officials that hold this title.

7. *Comment:* Seven respondents recommended delegation of the senior procurement executive's authority to determine that contract consolidation is necessary and justified.

*DoD Response:* The rule does not prohibit delegation of this authority. Therefore, in accordance with FAR 1.108(b), departments and agencies may delegate this authority as deemed appropriate.

8. *Comment:* One respondent stated that the requirement to file the determination in the contract file is unnecessary and should be deleted, because the contracting officer would do this without having it be required.

*DoD Response:* Due to the specific requirement of 10 U.S.C. 2382 to ensure that decisions regarding consolidation are necessary and justified, DoD believes it is appropriate for this DFARS rule to address the need for supporting documentation.

9. *Comment:* One respondent requested that the requirement for inclusion of the senior procurement executive's determination in the contract file be satisfied by including the determination in the acquisition plan.

*DoD Response:* The senior procurement executive may, if desired,

document and sign the acquisition plan to satisfy the requirement for the determination, provided it addresses all the elements in DFARS 207.170-3.

10. *Comment:* One respondent requested additional guidance with respect to permissible contents of the determination. Absent such guidance, the regulation should at least make clear that the scenario identified in 207.170-3(a)(i), i.e., "the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches" is simply an example of an adequate determination.

*DoD Response:* The DFARS language is sufficiently clear. However, a possible source for additional guidance is the DoD Office of the Small and Disadvantaged Business Utilization Benefit Analysis Guidebook—Reference to Assist Department of Defense Acquisition Strategy Teams in Performing a Benefit Analysis before Bundling Contract Requirements. Although this guidebook's focus is on bundling, there are some similarities to the measurably substantial benefits descriptions that may be helpful. A copy of this guidebook is available at <http://www.acq.osd.mil/sadbu/news/guidebook.htm>. DoD will be revising this guidebook to address consolidation.

11. *Comment:* One respondent recommended that market research requirements for consolidation be added to DFARS 210.001.

*DoD Response:* The final rule adds a new section at DFARS 210.001 to address market research requirements.

12. *Comment:* Nine respondents recommended a higher dollar threshold for application of the rule.

*DoD Response:* DoD is unable to increase this threshold, as the \$5 million threshold is specified in 10 U.S.C. 2382(b).

13. *Comment:* Five respondents indicated that the DFARS rule is in conflict with acquisition reform initiatives that include such tools as strategic sourcing, corporate contracts, and commodity councils.

*DoD Response:* The DFARS rule may make it more administratively burdensome to pursue such strategies; however, the rule does not preclude pursuing acquisition strategies that involve consolidation when it is determined that such consolidation is necessary and justified.

14. *Comment:* One respondent indicated that consolidation limits competitive opportunities and that DoD should not impede competition.

*DoD Response:* DoD agrees that competition should not be impeded. The rule is intended to ensure that

consolidation decisions are made with a view toward providing small business concerns with appropriate opportunities to participate in DoD procurements at both the prime and subcontract level. It is noted, however, that consolidation will not in all cases result in a less competitive situation than what previously existed. There may be instances where firms that competed for previous separate contracts can still compete for the consolidated contract. In addition, when two contracts that were previously awarded on a sole source basis result in a new contract that is also sole source, competition has not been affected.

15. *Comment:* One respondent stated that the requirements of this rule could result in additional workload to the Government, since it could result in two or three procurements instead of one procurement.

*DoD Response:* Agree that the rule could increase the number of DoD procurement actions. However, the intent of the rule is to ensure that small business concerns are provided with appropriate opportunities to participate in DoD procurements.

16. *Comment:* One respondent stated that the rule could burden small businesses by requiring them to respond to multiple solicitations instead of just one.

*DoD Response:* As required by the statute, the application of the rule will preclude the issuance of consolidated acquisitions that cannot be justified, thus protecting the interests of small businesses. The appropriate issuance of multiple solicitations will provide multiple opportunities for small business concerns to compete.

17. *Comment:* Four respondents indicated that there are no exceptions to the rule for small business set-asides, sole source awards, foreign military sales, etc., and suggests there should be exceptions.

*DoD Response:* 10 U.S.C. 2382 does not provide for any exceptions to the policy stated in the rule.

18. *Comment:* One respondent recommended the removal of the DFARS rule based on the fact that contracting officers are trained in and evaluated on properly applying small business rules to ensure small businesses get appropriate opportunities. In addition, the contracting officer is already required, in some cases, to provide all information relevant to the justification of contract bundling, including the acquisition plan, and to address bundling if applicable.

*DoD Response:* This DFARS rule is necessary to implement the

requirements of 10 U.S.C. 2382, which are separate from the requirements applicable to bundling at 15 U.S.C. 644(e)(2).

19. *Comment:* One respondent stated that an annual review and assessment of contract consolidations is an undue administrative burden.

*DoD Response:* In accordance with FAR 19.201(d)(11), the Office of Small and Disadvantaged Business Utilization is already required to conduct annual reviews regarding contract bundling actions. The consolidation review will be a part of this annual review process, and is needed to comply with Section 801(b) of Public Law 108-136, which requires DoD to conduct periodic reviews to determine the extent of consolidation and the impact on small business concerns.

20. *Comment:* One respondent recommended adding a threshold to the review requirement at DFARS 219.201(d)(11), since no documentation requirements exist for contract consolidations valued at less than \$5 million.

*DoD Response:* DoD does not believe it is necessary to restate the documentation threshold at 219.201(d)(11).

21. *Comment:* One respondent suggested modification of the DD Form 350 to collect information on consolidations.

*DoD Response:* The DD Form 350 data collection system has been revised to identify procurements involving consolidation of contract requirements.

22. *Comment:* One respondent asked if the rule applies to acquisitions already in process as of the effective date of the rule, September 17, 2004.

*DoD Response:* In accordance with FAR 1.108(d), the rule applies to solicitations issued on or after September 17, 2004.

23. *Comment:* Two respondents requested clarification as to whether the rule would apply to a procurement that was under the \$5 million threshold initially, but exceeded the threshold after offers were received.

*DoD Response:* The determination occurs before the solicitation is released, based on the estimated total value of the contract. If the value exceeded \$5 million after offers were received, no further documentation and approval would be necessary at that time. The DFARS rule has been amended at 207.170-3(a) to clarify that application of the rule is based on estimated dollar value.

24. *Comment:* One respondent stated that, if the previous contract contained two or more requirements, the follow-on

contract action for the same requirement would not be considered consolidation.

*DoD Response:* If two or more items were previously acquired under a single contract, and the follow-on acquisition is for the same requirement, the follow-on acquisition would not meet the definition of consolidation, unless it is further combined with other requirements.

25. *Comment:* One respondent asked whether a contract for support services at a dining facility that includes mess attendant services and full food (cooking) is covered by the DFARS rule.

*DoD Response:* Whether this situation is covered depends upon how the requirements were previously performed. The DFARS rule applies when the required supplies or services previously were acquired under two or more separate contracts, but now will be acquired under one.

26. *Comment:* Two respondents recommended that coverage be included in the DoD 5000 series publications as to what an acquisition strategy must include before contracts with a total value exceeding \$5,000,000 can be consolidated.

*DoD Response:* DoD considers the comment to be outside the scope of this DFARS rule. However, this recommendation has been forwarded to the Defense Acquisition Policy Working Group for consideration.

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 final rule amends the DFARS to implement Section 801 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Section 801 added 10 U.S.C. 2382, which places restrictions on the consolidation of two or more requirements of a DoD department, agency, or activity into a single solicitation and contract, when the total value of the requirements exceeds \$5,000,000. The objective of the rule is to ensure that decisions regarding consolidation of contract requirements are made with a view toward providing small business concerns with appropriate opportunities to participate in DoD procurements as prime contractors and subcontractors. DoD received no public comments in response to the initial regulatory flexibility analysis. As a result of public

comments received on the interim rule, the final rule contains changes that clarify the applicability of the rule and the requirements for market research. The rule will apply to small entities that are interested in providing supplies or services under DoD contracts or subcontracts. There are no known alternatives that would accomplish the objectives of 10 U.S.C. 2382. The impact on small entities is expected to be positive.

### 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 Parts 207, 210, and 219

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 207 and 219, which was published at 69 FR 55986 on September 17, 2004, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 207 and 219 continues to read as follows:

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

#### PART 207—ACQUISITION PLANNING

■ 2. Section 207.170-2 is revised to read as follows:

##### 207.170-2 Definitions.

As used in this section—  
*Consolidation of contract requirements* means the use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy two or more requirements of a department, agency, or activity for supplies or services that previously have been provided to, or performed for, that department, agency, or activity under two or more separate contracts.

*Multiple award contract* means—

(1) Orders placed using a multiple award schedule issued by the General Services Administration as described in FAR Subpart 8.4;

(2) A multiple award task order or delivery order contract issued in accordance with FAR Subpart 16.5; or

(3) Any other indefinite-delivery, indefinite-quantity contract that an agency enters into with two or more sources for the same line item under the same solicitation.

■ 3. Section 207.170-3 is amended by revising paragraph (a) introductory text and paragraph (a)(3)(i) introductory text to read as follows:

##### 207.170-3 Policy and procedures.

(a) Agencies shall not consolidate contract requirements with an estimated total value exceeding \$5,000,000 unless the acquisition strategy includes—

\* \* \* \* \*

(3) \* \* \*  
(i) Market research may indicate that consolidation of contract requirements is necessary and justified if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches. Benefits may include costs and, regardless of whether quantifiable in dollar amounts—

\* \* \* \* \*

■ 4. Part 210 is added to read as follows:

#### PART 210—MARKET RESEARCH

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

##### 210.001 Policy.

(a) In addition to the requirements of FAR 10.001(a), agencies shall—

(i) Conduct market research appropriate to the circumstances before soliciting offers for acquisitions that could lead to a consolidation of contract requirements as defined in 207.170-2; and

(ii) Use the results of market research to determine whether consolidation of contract requirements is necessary and justified in accordance with 207.170-3.

[FR Doc. 06-2646 Filed 3-20-06; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 208 and 216

[DFARS Case 2004-D009]

### Defense Federal Acquisition Regulation Supplement; Competition Requirements for Federal Supply Schedules and Multiple Award Contracts

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update and clarify



requirements for competition in the placement of orders under Federal Supply Schedules and multiple award contracts.

**DATES:** *Effective Date:* March 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2004-D009.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule revises procedures for use of Federal Supply Schedules and multiple award contracts to promote competition in the placement of orders for supplies or services. The final rule—

- Revises approval requirements for placement of noncompetitive orders exceeding \$100,000 under Federal Supply Schedules for consistency with those at FAR 8.405-6, and extends those requirements to orders under multiple award contracts;

- Applies the same ordering procedures to both supplies and services; and

- Makes additional changes to DFARS Subpart 208.4 for consistency with the policy in FAR Subpart 8.4.

DoD published a proposed rule at 70 FR 32280 on June 2, 2005. Four sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* Recommend relocating the last sentence of 208.405-70(c)(2), which references the General Services Administration's electronic quote system "e-Buy", to DoD's Procedures, Guidance, and Information (PGI) resource, to be consistent with DFARS Transformation.

*DoD Response:* DoD agrees and has relocated the referenced text to PGI, at <http://www.acq.osd.mil/dpap/dars/pgi>.

2. *Comment:* Recommend removing the requirement to obtain three proposals when ordering supplies under GSA's Federal Supply Schedule program, because the requirement is unduly burdensome and administratively wasteful.

*DoD Response:* Do not agree. DoD has adopted this policy to place the appropriate emphasis on competition and to ensure that DoD can continue to use Federal Supply Schedules to meet future requirements.

3. *Comment:* The requirement at FAR 8.405-6 for the senior procurement executive to approve proposed orders exceeding \$50,000,000 for DoD, NASA, and the Coast Guard is different from

the policy at FAR 6.304(a)(4) for non-schedule buys, which only requires senior procurement executive approval for orders exceeding \$75,000,000.

*DoD Response:* Federal Acquisition Circular 2005-05 dated July 27, 2005 (70 FR 43576), amended the FAR to make the thresholds at 8.405-6 consistent with those at 6.304(a)(4).

4. *Comment:* Recommend clarifying the justification approval level for waivers of competition when establishing blanket purchase agreements (BPAs), because BPAs may have no estimated value, and the existing requirements are based on estimated dollar value.

*DoD Response:* An estimated value should be established for a BPA as part of acquisition planning, and the approval level for the BPA should be based on that estimated value.

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 certifies that this final rule will not 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 strengthens and clarifies existing requirements for competition in the placement of orders under Federal Supply Schedules and multiple award contracts.

**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 Parts 208 and 216**

Government procurement.

Michele P. Peterson,  
*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 208 and 216 are amended as follows:

■ 1. The authority citation for 48 CFR parts 208 and 216 continues to read as follows:

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

**PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

**208.404 [Amended]**

■ 2. Section 208.404 is amended by removing paragraphs (b) and (S-70).

**208.404-1 through 208.405-2 [Removed]**

■ 3. Sections 208.404-1, 208.404-2, 208.404-70, 208.405, and 208.405-2 are removed.

■ 4. Sections 208.405-70, 208.406, and 208.406-1 are added to read as follows:

**208.405-70 Additional ordering procedures.**

(a) This subsection—

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107) for the acquisition of services, and establishes similar policy for the acquisition of supplies;

(2) Applies to orders for supplies or services under Federal Supply Schedules, including orders under blanket purchase agreements established under Federal Supply Schedules; and

(3) Also applies to orders placed by non-DoD agencies on behalf of DoD.

(b) Each order exceeding \$100,000 shall be placed on a competitive basis in accordance with paragraph (c) of this subsection, unless this requirement is waived on the basis of a justification that is prepared and approved in accordance with FAR 8.405-6 and includes a written determination that—

(1) A statute expressly authorizes or requires that the purchase be made from a specified source; or

(2) One of the circumstances described at FAR 16.505(b)(2)(i) through (iii) applies to the order. Follow the procedures at PGI 216.505-70 if FAR 16.505(b)(2)(ii) or (iii) is deemed to apply.

(c) An order exceeding \$100,000 is placed on a competitive basis only if the contracting officer provides a fair notice of the intent to make the purchase, including a description of the supplies to be delivered or the services to be performed and the basis upon which the contracting officer will make the selection, to—

(1) As many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that offers will be received from at least three contractors that can fulfill the requirements, and the contracting officer—

(i)(A) Receives offers from at least three contractors that can fulfill the requirements; or

(B) Determines in writing that no additional contractors that can fulfill the requirements could be identified despite reasonable efforts to do so (documentation should clearly explain efforts made to obtain offers from at least three contractors); and

(ii) Ensures all offers received are fairly considered; or

(2) All contractors offering the required supplies or services under the applicable multiple award schedule, and affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(d) See PGI 208.405-70 for additional information regarding fair notice to contractors and requirements relating to the establishment of blanket purchase agreements under Federal Supply Schedules.

**§ 208.406 Ordering activity responsibilities.**

**§ 208.406-1 Order placement.**

Follow the procedures at PGI 208.406-1 when ordering from schedules.

**PART 216—TYPES OF CONTRACTS**

■ 5. Section 216.505-70 is revised to read as follows:

**§ 216.505-70 Orders under multiple award contracts.**

(a) This subsection—

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107) for the acquisition of services, and establishes similar policy for the acquisition of supplies;

(2) Applies to orders for supplies or services exceeding \$100,000 placed under multiple award contracts;

(3) Also applies to orders placed by non-DoD agencies on behalf of DoD; and

(4) Does not apply to orders for architect-engineer services, which shall be placed in accordance with the procedures in FAR Subpart 36.6.

(b) Each order exceeding \$100,000 shall be placed on a competitive basis in accordance with paragraph (c) of this subsection, unless this requirement is waived on the basis of a justification that is prepared and approved in accordance with FAR 8.405-6 and includes a written determination that—

(1) A statute expressly authorizes or requires that the purchase be made from a specified source; or

(2) One of the circumstances described at FAR 16.505(b)(2)(i) through (iv) applies to the order. Follow the procedures at PGI 216.505-70 if FAR 16.505(b)(2)(ii) or (iii) is deemed to apply.

(c) An order exceeding \$100,000 is placed on a competitive basis only if the contracting officer—

(1) Provides a fair notice of the intent to make the purchase, including a

description of the supplies to be delivered or the services to be performed and the basis upon which the contracting officer will make the selection, to all contractors offering the required supplies or services under the multiple award contract; and

(2) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(d) When using the procedures in this subsection—

(1) The contracting officer should keep contractor submission requirements to a minimum;

(2) The contracting officer may use streamlined procedures, including oral presentations;

(3) The competition requirements in FAR part 6 and the policies in FAR Subpart 15.3 do not apply to the ordering process, but the contracting officer shall consider price or cost under each order as one of the factors in the selection decision; and

(4) The contracting officer should consider past performance on earlier orders under the contract, including quality, timeliness, and cost control.

[FR Doc. 06-2640 Filed 3-20-06; 8:45 am]

BILLING CODE 5001-08-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 215 and 216**

[DFARS Case 2005-D003]

**Defense Federal Acquisition Regulation Supplement; Incentive Program for Purchase of Capital Assets Manufactured in the United States**

**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 Section 822 of the National Defense Authorization Act for Fiscal Year 2004. Section 822 requires the Secretary of Defense to establish an incentive program for contractors to purchase capital assets manufactured in the United States, and to provide consideration for offerors with eligible capital assets in source selections for major defense acquisition programs.

**DATES:** Effective March 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2005-D003.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DoD published an interim rule at 70 FR 29643 on May 24, 2005, to implement Section 822 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Section 822 added 10 U.S.C. 2436, which requires the Secretary of Defense to (1) establish an incentive program for contractors to purchase capital assets manufactured in the United States under contracts for major defense acquisition programs; and (2) provide consideration for offerors with eligible capital assets in source selections for major defense acquisition programs.

Six respondents submitted comments on the interim rule. A discussion of the comments is provided below.

1. *Comment:* Some respondents expressed concern about the future of the U.S. machine tool industry and its ability to help in the defense of the United States. They discussed the severe pressure from foreign competition and asserted that the machine tool industry in particular is essential to the military industrial and critical infrastructure base of the United States.

*DoD Response:* DoD recognizes these concerns and considers that the incentive program in this DFARS rule provides sufficient motivation for vendors to consider the purchase of U.S. machine tools for major defense acquisition programs as well as for other defense requirements.

2. *Comment:* One respondent stated that the use of U.S. machine tools for fulfilling defense contracts should be mandatory.

*DoD Response:* The mandatory use of U.S. machine tools would severely affect DoD's ability to manage its contracts in terms of cost, schedule, and performance and would negatively impact DoD's ability to meet warfighter needs. Such an approach could deny DoD the ability to select the contractor that is most likely to provide the most effective solution to DoD needs, simply because that contractor did not possess all U.S. machine tools. Further, if defense contractors were forced to acquire U.S. machine tools in order to be responsive to DoD's needs, the expense of acquiring those tools (estimated to be in the billions) would

be passed on to DoD and would diminish resources available to meet defense requirements.

3. *Comment:* One respondent stated that, at a minimum, the U.S. machine suppliers should be given the opportunity to match any competitive quote for foreign machine tools being procured by a defense contractor.

*DoD Response:* In most instances, defense contractors already have the tooling required to fulfill DoD's requirements. In those instances where additional tooling is required, the consideration to be provided during source selection/evaluation and the use of award fees should provide ample incentive to the contractor to consider U.S.-made machine tooling instead of foreign tooling and give U.S. machine tool makers the opportunity to match offers of foreign manufacturers.

4. *Comment:* Several respondents objected to the inclusion of the phrase "when pertinent to the best value determination" in the direction to consider the purchase and use of capital assets (including machine tools) manufactured in the United States, believing that the phrase is too vague and leaves too much discretion to the contractor or the DoD evaluator in deciding whether there is an advantage to purchasing U.S. machine tools. The respondents stated that such consideration should be an integral part of the evaluation.

*DoD Response:* The phrase "when pertinent to the best value determination" has been excluded from the final rule.

5. *Comment:* One respondent requested that the scope of the benefit be clarified, i.e., better defined for prospective purchasers of machine tools.

*DoD Response:* DoD's defense suppliers are aware of the concerns expressed by the U.S. machine tool industry and the provisions of Section 822 of the National Defense Authorization Act for Fiscal Year 2004. DoD has structured the incentive program so that the purchase of capital assets (including machine tools) is an integral part of the evaluation and source selection. The benefit of purchasing U.S.-made tooling has been made evident to DoD's suppliers by including U.S. tooling purchase as a consideration in source selection. Additionally, the Government's desire to motivate and reward a contractor for purchase of capital assets (including machine tools) is unmistakable in the wording of the award fee application in DFARS 216.470(a). The financial benefit associated with an award fee is clear.

6. *Comment:* Several respondents wanted DoD to assign objective, quantifiable, and meaningful credits or points, or measurable standards, for the evaluation of capital assets (including machine tooling) in source selection.

*DoD Response:* The factors and subfactors used in evaluating offerors during source selection reflect the specific procurement being undertaken and, therefore, vary from procurement to procurement. Specific credits or points are not assigned to any of these factors/subfactors. Rather, they are weighted to reflect their importance.

As stated in FAR 15.101, Best value continuum:

"An agency can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection."

In major weapons systems acquisition, past performance will obviously be a factor, as will technical expertise, cost, and schedule. Other elements such as small business goals and purchase of U.S. machine tools will also be factors for consideration. The relative weights for these factors will vary. None will be assigned a specific "credit" or "measurable standard."

In addition to the change described in the response to Comment 4, the final rule excludes the phrase "and use" from the text at 215.304(c)(ii) and 216.470(a)(1) to more closely conform to the language of Section 822 of the National Defense Authorization Act for Fiscal Year 2004.

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:

The objective of the rule is to increase the purchase of capital assets (including machine tools) manufactured in the United States. The rule implements 10 U.S.C. 2436, as added by Section 822 of the National Defense Authorization Act for Fiscal Year 2004. Most prime

contractors for major defense acquisition programs are large business concerns. However, the rule is expected to have a positive impact on small business manufacturers of machine tools and other capital assets used in major defense acquisition programs, as their sales to DoD prime contractors should increase. There were no issues raised by the public comments in response to the initial regulatory flexibility analysis. As a result of public comments received in response to the interim rule, the final rule contains changes that strengthen the requirement for consideration of the purchase of capital assets manufactured in the United States under contracts for major defense acquisition programs.

#### 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 Parts 215 and 216

Government procurement.

Michele P. Peterson,  
Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 215 and 216, which was published at 70 FR 29643 on May 24, 2005, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 215 and 216 continues to read as follows:

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

#### PART 215—CONTRACTING BY NEGOTIATION

■ 2. Section 215.304 is amended by revising paragraph (c)(ii) to read as follows:

#### 215.304 Evaluation factors and significant subfactors.

(c) \* \* \*

(ii) In accordance with 10 U.S.C. 2436, consider the purchase of capital assets (including machine tools) manufactured in the United States, in source selections for all major defense acquisition programs as defined in 10 U.S.C. 2430.

#### PART 216—TYPES OF CONTRACTS

■ 3. Section 216.470 is amended by revising paragraph (a)(1) to read as follows:

**216.470 Other applications of award fees.**

\* \* \* \* \*

(a) \* \* \*

(1) Purchase of capital assets (including machine tools) manufactured in the United States, on major defense acquisition programs; or

\* \* \* \* \*

[FR Doc. 06-2645 Filed 3-20-06; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 225 and 252**

[DFARS Case 2003-D021]

**Defense Federal Acquisition Regulation Supplement; Acquisition of Ball and Roller Bearings**

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update requirements pertaining to the acquisition of ball and roller bearings from domestic sources. This final rule addresses the requirements of annual DoD appropriations acts and eliminates text addressing obsolete statutory requirements.

**DATES:** *Effective Date:* March 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2003-D021.

**SUPPLEMENTARY INFORMATION:****A. Background**

DoD published a proposed rule at 70 FR 8560 on February 22, 2005. The rule proposed amendments to the restrictions on the acquisition of ball and roller bearings at DFARS 225.7009 and 252.225-7016 to (1) address only the exceptions, waivers, and waiver authority available to the contracting officer under current law; and (2) apply the exceptions to 10 U.S.C. 2534, authorized by Section 8003 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355; 41 U.S.C. 430), as implemented at DFARS 212.504(a)(xviii), to bearings that are

commercial components of non-commercial end items or components.

The restriction of 10 U.S.C. 2534(a)(5) expired on October 1, 2005. This does not substantively change the DFARS rule, but provides further support for the rule.

Eight respondents submitted comments on the proposed rule. A discussion of the comments, grouped by subject category, is provided below.

1. *Increased acquisition of nondomestic bearings.* The proposed rule expanded the exception for acquisition of nondomestic bearings by allowing the purchase of nondomestic bearings that are commercial components of a noncommercial end product in acquisitions not using simplified acquisition procedures.

a. *Comment:* One respondent supports the rule as long as small businesses are allowed to sell nondomestic bearings that are approved.

*DoD Response:* The DFARS rule applies equally to all businesses, large and small.

b. *Comment:* Another respondent is concerned that we are not supporting our troops, because it is still too difficult to purchase replacement ball and roller bearings for DoD weapon systems when those replacement bearings are of a nondomestic origin. This respondent states that few domestic companies can comply or produce a truly domestic bearing, and that the DFARS rule still prevents procuring activities from readily supporting the military as thousands of bearings are turning foreign.

*DoD Response:* Although DoD acknowledges the identified problems, the rule cannot allow additional purchase of nondomestic bearings due to the restrictions of annual DoD appropriations acts.

c. *Comment:* Three respondents are concerned that the rule will have a negative impact on the bearing industry and national security, by allowing Government contractors to incorporate nondomestic commercial ball and roller bearings into noncommercial end products. They fear loss of domestic capacity and are concerned that the supply of components critical to the national security of the United States may become dependent on manufacturers controlled by governments with interests that are opposed to those of the United States. They object that areas vital to our national security should not be compromised, despite the benefits of global trade.

*DoD Response:* With the expiration of 10 U.S.C. 2534(a)(5), there is no longer a statutory basis for restricting the

acquisition of bearings that are commercial components of noncommercial end products. DoD will continue to restrict the acquisition of nondomestic noncommercial ball and roller bearings and commercial ball and roller bearings that are purchased as end products, in accordance with the annual DoD appropriations acts.

d. *Comment:* One respondent expresses concern that the acquisition of nondomestic bearings (most likely from China) will stretch the supply chain, introducing instability into the process and extending lead times.

*DoD Response:* Acquiring bearings even from distant places probably adds only 2 or 3 days to the supply chain.

2. *Waiver process.*

*Comment:* Several respondents believe that the rule makes the waiver process more difficult and time-consuming and will cause delays in the acquisition of ball and roller bearings.

*DoD Response:* The rule does not impose new or higher level waiver requirements, but clarifies existing requirements of annual DoD appropriations acts. Heads of agencies can redelegate the waiver authority as appropriate.

3. *Structure and clarity of the regulation.*

a. *Comment:* One respondent recommends maintaining the current distinctions between the restrictions, exceptions, and waiver authority of 10 U.S.C. 2534 and annual DoD appropriations acts, because of a legal distinction between the limit on contracting authority (10 U.S.C. 2534) and the fiscal restrictions on expending funds (annual DoD appropriations acts). The respondent acknowledges that these restrictions largely overlap and have the same result, except for differences in the waiver process.

*DoD Response:* This comment is no longer applicable, since the restriction on ball and roller bearings at 10 U.S.C. 2534(a)(5) has expired.

b. *Comment:* One respondent states that the existing exception at DFARS 225.7009-2(a)(4) is necessary to acquire bearings for use overseas.

*DoD Response:* This comment demonstrates the need for clarification of this section. DFARS 225.7009-2(a)(4) only provided an exception to the restrictions of 10 U.S.C. 2534. The annual DoD appropriations act restrictions still applied, unless the exception at 225.7009-2(b) applied, or a waiver was granted in accordance with 225.7009-3(c). Such confusion could result in acquisitions that are not in compliance with the DoD appropriations act restrictions. However, expiration of the restriction at



10 U.S.C. 2534(a)(5), as reflected in this final rule, should eliminate such confusion.

c. *Comment:* One respondent believes that the language in the rule is unclear and, at times, seemingly contradictory. The respondent compares the commercial item exception at 225.7009-3 to the commercial item exception in the clause at 252.225-7016(c). The respondent considers that the clause may be interpreted many different ways and will add expense and time to those attempting to comply.

*DoD Response:* Although DoD finds that, upon careful reading, the text and clause are compatible, DoD has added a definition of "component" to the clause at DFARS 252.225-7016 and has revised paragraph (c) of the clause to more explicitly state the exceptions. This clause is used only in DoD solicitations and contracts in accordance with the prescription at DFARS 225.7009-5. It is not used if the items being acquired are commercial items other than ball or roller bearings. The exceptions to the clause apply only to ball or roller bearings that are acquired as components. Therefore, the clause requires compliance if the bearing is the end product (whether commercial or noncommercial) or the bearing is a noncommercial component of a noncommercial end product.

#### 4. Potential legislative changes.

*Comment:* One respondent is concerned that, if Congress extends the restriction of 10 U.S.C. 2534 but does not impose the annual appropriations act restriction, the contracting officer would be left with an unnecessary requirement. The respondent also raises the issue that it might be better to introduce this change after there is confirmation that there are no Congressional efforts to extend the restriction at 10 U.S.C. 2534(a)(5) and the statutory limitation on contracting authority lapses in October 2005.

*DoD Response:* The expiration of 10 U.S.C. 2534(a)(5) is reflected in the final rule.

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 final rule amends the DFARS to update requirements relating to the acquisition of ball and roller bearings from domestic sources. The rule

removes DFARS text relating to the requirements of 10 U.S.C. 2534(a)(5), which expired on October 1, 2005. As a result, the exceptions to domestic source requirements are expanded to permit the purchase of nondomestic bearings that are commercial components of a noncommercial end product, regardless of the dollar value of the acquisition. The rule retains other restrictions on the acquisition of ball and roller bearings, as required by annual DoD appropriations acts. There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis. As a result of comments received on the proposed rule, the final rule contains additional changes to clarify the requirements of the rule. The rule applies to manufacturers of commercial bearings, and manufacturers of noncommercial products that incorporate commercial bearings. Manufacturers of domestic commercial bearings may face increased competition from foreign commercial bearing manufacturers, but manufacturers of noncommercial products incorporating bearings will be relieved of extensive administrative burdens in tracking the source of commercial bearings and requesting waivers from domestic source requirements. All entities will benefit from the increased simplicity and clarity of the regulations.

## C. Paperwork Reduction Act

The information collection and record keeping requirements of the clause at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings, are approved for use through March 31, 2007, under Office of Management and Budget Clearance 0704-0229. The final rule reduces the estimated annual burden for contractors under the clause by 301,600 hours.

## List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

**Michele P. Peterson,**  
*Editor, Defense Acquisition Regulations System.*

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

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

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

## PART 225—FOREIGN ACQUISITION

■ 2. Section 225.7001 is amended by revising paragraphs (a) and (b) to read as follows:

## 225.7001 Definitions.

\* \* \* \* \*

(a) *Bearing components* is defined in the clause at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings.

(b) *Component* is defined in the clauses at 252.225-7012, Preference for Certain Domestic Commodities, and 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings.

\* \* \* \* \*

■ 3. Section 225.7003 is amended by revising paragraph (b) introductory text to read as follows:

## 225.7003 Waiver of restrictions of 10 U.S.C. 2534.

\* \* \* \* \*

(b) In accordance with the provisions of paragraphs (a)(1)(i) through (iii) of this section, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom, including air circuit breakers for naval vessels (see 225.7006). This waiver applies to—

\* \* \* \* \*

■ 4. Sections 225.7009 through 225.7009-4 are revised to read as follows:

## 225.7009 Restriction on ball and roller bearings.

### 225.7009-1 Scope.

This section implements Section 8065 of the Fiscal Year 2002 DoD Appropriations Act (Pub. L. 107-117) and the same restriction in subsequent DoD appropriations acts.

### 225.7009-2 Restriction.

Do not acquire ball and roller bearings or bearing components unless the bearings and bearing components are manufactured in the United States or Canada.

### 225.7009-3 Exception.

The restriction in 225.7009-2 does not apply to contracts or subcontracts for the acquisition of commercial items, except for commercial ball and roller bearings acquired as end items.

### 225.7009-4 Waiver.

The Secretary of the department responsible for acquisition or, for the Defense Logistics Agency, the Component Acquisition Executive, may waive the restriction in 225.7009-2, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

■ 5. Section 225.7009-5 is added to read as follows:

**225.7009-5 Contract clause.**

Use the clause at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, unless—

(a) The items being acquired are commercial items other than ball or roller bearings acquired as end items;

(b) The items being acquired do not contain ball and roller bearings; or

(c) A waiver has been granted in accordance with 225.7009-4.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 6. Section 252.212-7001 is amended by revising the clause date and, in paragraph (b), by revising entry "252.225-7016" to read as follows:

**252.212-7001 Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.**

\* \* \* \* \*

Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (Mar 2006)

\* \* \* \* \*

(b) \* \* \*  
—252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (MAR 2006) (Section 8065 of Public Law 107-117 and the same restriction in subsequent DoD appropriations acts).

\* \* \* \* \*

■ 7. Section 252.225-7016 is revised to read as follows:

**252.225-7016 Restriction on Acquisition of Ball and Roller Bearings.**

As prescribed in 225.7009-5, use the following clause:

Restriction on Acquisition of Ball and Roller Bearings (Mar 2006)

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

(1) *Bearing components* means the bearing element, retainer, inner race, or outer race.

(2) *Component*, other than bearing components, means any item supplied to the Government as part of an end product or of another component.

(3) *End product* means supplies delivered under a line item of this contract.

(b) Except as provided in paragraph (c) of this clause, all ball and roller

bearings and ball and roller bearing components delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States, its outlying areas, or Canada. Unless otherwise specified in this contract, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States, its outlying areas, or Canada.

(c) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as—

(1) Commercial components of a noncommercial end product; or  
(2) Commercial or noncommercial components of a commercial component of a noncommercial end product.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7009-4 of the Defense Federal Acquisition Regulation Supplement.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts, except those for—

(1) Commercial items; or  
(2) Items that do not contain ball or roller bearings. (End of clause)

[FR Doc. 06-2644 Filed 3-20-06; 8:45 am]

BILLING CODE 5001-08-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**49 CFR Parts 661 and 663**

[Docket No. FTA-2005-23082]

RIN 2132-AA80

**Buy America Requirements; Amendments to Definitions**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends 49 CFR Parts 661 and 663 as required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) [Pub. L. 109-59, August 10, 2005]. The Federal Transit Administration (FTA) proposed certain changes to the Buy America requirements on November 21, 2005 (70 FR 71246). This final rule addresses fewer issues than were proposed in the Notice of Proposed Rulemaking (NPRM) because of the complexity of a number of recommendations and issues presented during the comment period. Thus, FTA

is publishing a final rule on those issues that received little or no public comment. FTA will publish a new NPRM in the **Federal Register** and hold a public meeting to address the issues raised in the NPRM published on November 21, 2005, but not addressed herein. Thereafter, FTA will publish a final rule with respect to such issues.

**DATES:** *Effective Date:* The effective date of this rule is March 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Joseph Pixley, Chief Counsel's Office, Federal Transit Administration, 400 Seventh Street, SW., Room 9316, Washington, DC 20590, (202) 366-4011 or [Joseph.Pixley@fta.dot.gov](mailto:Joseph.Pixley@fta.dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Availability of the Final Rule and Comments**

A copy of this rule and comments and material received from the public, as well as any documents indicated in the preamble as being available in the docket, are part of docket FTA-2005-23082 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may retrieve the rule and comments online through the Document Management System (DMS) at: <http://dms.dot.gov>. Enter docket number 23082 in the search field. 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 also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may also reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's Web page at: <http://www.gpoaccess.gov/fr/index.html>.

**I. Background**

On November 28, 2005, FTA published an NPRM in the **Federal Register** (70 FR 71246) discussing a number of proposals as mandated by SAFETEA-LU and to provide further clarification of existing FTA decisions on Buy America. Due to the complexity of many of the Buy America issues addressed in the NPRM, the divergence of opinion on important areas, and the

potential for "unintended consequences" to affected industries and grantees, several commenters recommended that FTA issue an "interim final rule" to allow commenters and FTA more time to consider the potential impact of the proposed changes. FTA acknowledges these concerns. Therefore, this final rule addresses fewer issues than proposed in the NPRM. FTA identified several subject areas that represent the more routine issues proposed in the NPRM. These topics include: (1) Administrative review; (2) the definition of "negotiated procurement;" (3) the definition of "contractor;" (4) repeal of the general waiver for Chrysler vehicles; (5) certification under negotiated procurements; (6) preaward and postaward review of rolling stock purchases; and (7) miscellaneous corrections and clarifications to the Buy America regulations. Accordingly, this final rule addresses the above subject areas only.

FTA will issue a new NPRM this calendar year to address the following issues: (1) Justification for public interest waiver; (2) microprocessor and post-award waivers; (3) definition of "final assembly;" (4) proposed changes to "communication equipment;" and (5) the definition of "end product" and a representative list of end products. In addition to the new NPRM, FTA will hold a public meeting in Washington, DC to discuss its new proposal. The meeting date and location will be contained in the **Federal Register** notice for the new NPRM.

#### *Administrative Review*

In the NPRM, FTA requested comments on its proposal to implement the SAFETEA-LU requirement that parties adversely affected by an agency action may seek judicial review under the Administrative Procedure Act (APA), 5 U.S.C. 702 *et seq.* FTA received four comments on this issue, two of which concurred with FTA's proposed change to the regulation. The other two comments, which were identical, expressed the view that administrative review without remedies such as injunctions, damages or cancellations was essentially "meaningless."

*FTA Response:* The comments that express disagreement with FTA's proposal appear to misunderstand the requirements of SAFETEA-LU, which merely state that "[a] party adversely affected by an agency action under this subsection shall have the right to seek judicial review" under the APA. As the other two commenters recognized, FTA's proposed wording to section

661.20, fully implements the requirement that FTA's Buy America decisions are subject to judicial review.

The two adverse commenters also appear to misinterpret the proposed language in § 661.20 as implying that FTA will not take action if it finds that a grantee has "awarded business based on an improperly justified Buy America waiver." To the contrary, under the Agency's existing regulations at 49 CFR 661.17, "[i]f a successful bidder fails to demonstrate that it is in compliance with its certification, it will be required to take the necessary steps in order to achieve compliance" without changing its bid price. Furthermore, "[a] willful refusal to comply with a certification by a successful bidder may lead to the initiation of debarment or suspension proceedings under part 29 of this title." See 49 CFR 661.19. In short, FTA already has a full range of administrative tools at its disposal to enforce Buy America compliance to include possible cancellation of Federal funding of a project, and suspension and debarment actions for willful violations. Any further "enforcement" language in the proposed new rule in section 661.20 is, therefore, unnecessary.

Accordingly, FTA adopts as final the changes proposed in the NPRM with respect to administrative review.

#### *Repeal of General Waiver for Chrysler Vans*

In the NPRM, FTA sought comment on the repeal of two general waivers for Chrysler vehicles from the Buy America regulations, as mandated by SAFETEA-LU. None of the commenters opposed this change. Accordingly, FTA adopts as final the changes proposed in the NPRM with respect to general waivers for Chrysler vehicles.

#### *Definition of Negotiated Procurement*

In the NPRM, FTA requested comments on its proposal to adopt a "flexible" definition of negotiated contracts used in the Federal Acquisition Regulation (FAR) part 15. The proposed definition states: "Negotiated Procurement means a contract awarded using other than sealed bidding procedures." Of the twelve comments received on this issue, five agreed with FTA's proposed definition.

Two commenters proposed an alternative definition of negotiated procurements as \* \* \* "a contract in which (a) potentially differing proposals from offerors are evaluated, (b) the evaluations are based on more factors than the two normally used in a sealed bidding procurement (specification

compliance and price), and (c) the evaluation process could include discussions or negotiations between the buyer and seller, amended specification and revised proposals, before a final award is made."

Three other commenters offered individual definitions, as follows:

"A negotiated procurement means a contract awarded under selection procedures that allow the Contracting Officer to conduct discussions or negotiations;"

"A negotiated procurement means a solicitation issued or contract awarded using other than sealed bidding procedures;" and,

"A negotiated procurement means a contract awarded on a best value basis using other than sealed bidding procedures."

The final commenter recommended that FTA include a definition of sealed bidding.

*FTA Response:* A number of comments recommend alternative definitions of the term "negotiated procurement" to reflect standard practices in a particular industry or personal preference and to include such terms as "best value," "discussions," "revised proposals," among other terms. However, FTA believes that its proposed definition is broad enough to incorporate all of these recommended definitions. In addition, to the extent possible, FTA prefers to base any proposed definition on existing precedents in public contracting law and practice. FTA believes that basing the definition of "negotiated procurement" on the example in FAR part 15 serves this purpose.

Furthermore, in keeping with the requirements of 49 CFR 18.36(b), which states that FTA grantees and subgrantees "will use their own procurement procedures which reflect applicable State and local laws and regulations" in third party contracts, FTA prefers a broad, flexible definition of "negotiated procurement," which will not conflict with or limit specific local practices.

FTA disagrees with the comment that the Agency should also define the term "sealed bidding" on the grounds that such defined term is unnecessary. The Department's regulations on third party contracting requirements already provide descriptions of "Procurement by sealed bids" and "Procurement by competitive proposals." See 49 CFR 18.36(d)(2) and (3) (emphasis in original). FTA believes that these regulatory descriptions of sealed bidding and negotiated procurement methods suffice for purposes of the Agency's Buy America practices. Accordingly, FTA adopts as final the

changes proposed in the NPRM with respect to the definition of "negotiated procurement."

#### Definition of Contractor

In the NPRM, FTA sought comments on two alternative definitions of the term "contractor." The first proposed definition comes from the definition of contractor in FAR 9.403 (suspension & debarment section). FTA's proposed definition states:

Contractor means any individual or other legal entity that directly or indirectly (e.g., through an affiliate) submits bids or offers for or is awarded, or reasonably may be expected to submit bids or offers for or be awarded, a federally funded third party contract or subcontract under a federally funded third party contract; or, conducts business, or reasonably may be expected to conduct business, with an FTA grantee, as an agent or representative of another contractor.

The second proposed definition is based on the definition of "contractor" in the Contract Disputes Act (CDA), 41 U.S.C. 601(4) which states: "Contractor means any party to a third party government contract other than the government."

FTA received eight comments on this issue. Only one of the commenters supported the first proposed definition based on FAR 9.403. Four commenters believed that the proposed FAR definition is worded too broadly and includes parties to whom a contract has not yet been issued, or has no business relationship with a grantee. As an alternative, one commenter suggested that FTA adopt a definition from FAR 33.102(e) which defines "interested party" as "an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract."

Two commenters supported FTA's other proposed definition of "contractor" adopted from the Contract Disputes Act. Six commenters believed that the Contract Disputes Act definition lacks clarity, as it does not contain a definition of the term "contract," or confuses the term "any party" with "third party." One commenter noted that some grantee contracts are entered into with other governments, acting as a contractor. Four of the commenters proposed an alternative definition which defines a contractor as "any entity engaged in a federally assisted agreement with an FTA grantee under authority of Title 49, Code of Federal Regulation, Section 18.36 or similar authority. This term does not encompass entities based on their engagement in grants, sub-grants, or cooperative agreements, nor does it

encompass prospective contractors such as bidders or offerors."

The remaining commenter recommended defining a contractor as "a party entering into an agreement for the provision of goods or performance of services with a FTA grantee, other than grant agreements or subgrant agreements."

**FTA Response:** FTA concurs with the commenters who advise against adopting a definition of "contractor" from FAR 9.403. Accordingly, FTA will not do so. Moreover, FTA will not implement the recommended alternative definition from FAR 33.102(e), "interested party," as this term refers to disappointed bidders and offerors "wishing to protest" a contract award. Indeed, FAR 33.102(e) pertains to Federal agency bid protest procedures. FTA agrees with those commenters who stated that the proposed definition of "contractor" should not include prospective contractors such as bidders or offerors.

FTA will, therefore, adopt a definition of "contractor" based on the Contract Disputes Act. FTA agrees with one commenter who stated that the proposed definition has the benefit of simplicity. As stated earlier, to the extent possible, FTA prefers to base any proposed definitions and regulatory requirements on existing precedents in public contracting law and practice. For example, contrary to the comments that the CDA-based definition "lacks clarity" or does not exclude "potential contractors" such as bidders or offerors, Federal courts have long defined the term "contractor," e.g., a party to a government contract other than the government, as a party in privity of contract with the government; the term "contractor" does not include bidders, offerors, subcontractors, or performance bond and prime contractor's sureties. See generally *Johnson Controls v. U.S.*, 44 Fed. Cl. 334, 340 (1999) (cited cases omitted); *Monchamp Corp. v. U.S.*, 19 Cl.Ct. 797 (1990). Under the plain meaning of the CDA usage, a contractor is simply the party that executes a government contract with the government. Thus, there is a large body of Federal law on which the FTA may rely on to clarify the term "contractor" in the unlikely event that should be necessary. [Note: To date, FTA has not formally addressed the definition of "contractor" as a substantive matter in Buy America practice, other than in the instant rulemaking. In fact, the Buy America provisions at 49 U.S.C. 5323(j) and 49 CFR part 661, heretofore, do not include the term "contractor." FTA's Buy America regulations refer to "bidders, offerors, and suppliers."]

Moreover, FTA does not believe it is necessary to define the term "contract," as some commenters have suggested. FTA has already defined that term in several guidance documents. In particular, FTA Circular 4220.1E "Third Party Contracting Requirements," dated June 19, 2003, defines "third party contract," which is the Federally-assisted procurement applicable to Buy America, as follows: "'Third party contract' refers to any purchase order or contract awarded by a grantee to a vendor or contractor using Federal financial assistance awarded by FTA." In another instance, FTA has stated that "[c]ontracts do not include grants and cooperative agreements." See FTA's Best Practices Procurement Manual, dated November 6, 2001, para. 1.2 "Identifying a Contract." FTA believes that these definitions of "contract" suffice for purposes of its Buy America practices.

FTA agrees with one commenter who noted that the proposed CDA-based definition of contractor as "a party to a government contract other than the government" may create some confusion as "some grantee contracts are entered into with another government, acting as a contractor." However, the term "other than the government" in the CDA definition does not mean "any government," but rather, in the context of a direct Federal procurement, the United States Government, the entity which issued the solicitation and is the other party to the contract. See *Serra v. GSA*, 667 F. Supp. 1042, 1048 (S.D.N.Y. 1987). Indeed, the FAR expressly recognizes that agencies of the United States may contract with other State, local, and tribal governments. See FAR 31.107.

Nevertheless, to avoid confusion and to make the term "contractor" more applicable to the scenario of third party contracts, FTA will substitute the terms "any" with "a" and "other than the government" with "other than the grantee"; FTA will also delete the term "government" from "third party government contract." These changes should make clear that a "contractor" for Buy America purposes is a party in privity of contract with the grantee, on an FTA-funded procurement. Accordingly, FTA adopts as final the following definition at § 661.3:

Contractor means a party to a third party contract other than the grantee.

#### Certification Under Negotiated Procurement

In the NPRM, FTA sought comments on its proposal to implement the SAFETEA-LU requirement that "in any case in which a negotiated procurement



is used, compliance with the Buy America requirements shall be determined on the basis of the certification submitted with the final offer." FTA proposed the following language to the Buy America regulations:

In the case of a negotiated procurement, a certification submitted as part of an initial proposal may be superseded by a subsequent certification(s) submitted with a revised proposal or offer. Compliance with the Buy America requirements shall be determined on the basis of the certification submitted with the final offer or final revised proposal. However, where a grantee awards on the basis of initial proposals without discussion, the certification submitted with the initial proposal shall control.

FTA received six comments on this issue, two of which favored the language proposed by FTA. The four remaining comments recommended simplifying FTA's proposal. Two commenters suggested the following language: "In the case of a negotiated procurement, compliance with the Buy America requirements shall be determined on the basis of the certification submitted with the final offer or final revised proposal. However, where a grantee awards on the basis of initial proposals without discussion, the certification submitted with the initial proposal shall control." One of these commenters stated that this proposed language will permit cases, in which, during a negotiated procurement, a certification is not submitted with initial offers, but no award is made on the basis of initial offers.

Two other commenters made similar suggestions that FTA's proposed language should recognize circumstances where an initial offer fails to include any Buy America certification. Both of these commenters agreed that in an award made on initial proposals, a grantee could not award a contract to an offeror that failed to include a Buy America certification with its initial proposal. However, both commenters stated that where a grantee reserved the right to conduct discussions with offerors, the grantee need not eliminate a proposal from the competitive range simply because there was no Buy America certification. Another commenter suggested that language on "initial proposals" may be eliminated entirely because "the initial offer becomes the final offer when a grantee awards on the basis of initial proposals. Thus, it is not necessary to restate this fact."

One commenter recommended that the language on certification under negotiated procurements be expanded to include design-build contracts. In such

cases, the commenter suggested that "the governing certificate shall be the one submitted with the final offer or final revised proposal; after 70% design the contractor would be eligible for a Post Award Non-Availability Waiver by providing evidence demonstrating that the material has become unavailable or compliance is impracticable due to cost."

**FTA Response:** FTA agrees with the commenters who suggest that the Agency's proposed language in the NPRM should be simplified as follows:

In the case of a negotiated procurement, compliance with the Buy America requirements shall be determined on the basis of the certification submitted with the final offer or final revised proposal. However, where a grantee awards on the basis of initial proposals without discussion, the certification submitted with the initial proposal shall control.

Regarding the comment that language on "initial proposals" may be eliminated as unnecessary, FTA agrees that in an award made on the basis of initial proposals, "initial" and "final" offers are one and the same, technically speaking. However, FTA believes that the additional language on "initial proposals" puts grantees and suppliers squarely on notice of the absolute necessity of submitting Buy America certifications with any final offer or final revised proposal, in any type of negotiated procurement.

As to the commenters who expressed concern that the proposed language should be modified to address situations where an initial proposal does not include any Buy America certification, FTA does not believe this is necessary. FTA agrees with one commenter who states that the simplified version of the regulation "will permit cases, in which, during a negotiated procurement, a certification is not submitted with initial offers, but no award is made on the basis of initial offers." In other words, the proposed rule makes clear that proposers must include certifications with final offers and final revised proposals. Offerors will not be excluded for failing to include certifications with initial proposals, where grantees do not award on the basis of initial proposals. This is consistent with current FTA guidance on this issue. See FTA Buy America decision in "Palm Beach County," July 27, 2004 [if a grantee "enters into discussions requiring submission of final offers, any offeror could change its original proposal to include a Buy America certification, or change the original certification," prior to submission of best and final offers].

Similarly, FTA does not share the concern of the commenter who stated that some grantees may unfairly eliminate proposals from the competitive range "simply because there was no Buy America certification." Again, FTA has issued guidance on this specific issue. See "Palm Beach County," *supra* [failure to include certificate with initial proposal does not affect grantees' obligation to perform some form of technical evaluation]. FTA believes that further clarification of the rule on this point is unnecessary.

As to the comment which recommends that the proposed rule should include language pertaining to design-build contracts, FTA finds this is non-responsive and beyond the scope of the present rulemaking. Although FTA's administrative decisions have addressed design-build contracts, the current Buy America regulations at 49 CFR part 661 do not mention design-build contracts. Implementation of rules specifically for design-build contracts may be appropriate at a later date.

Accordingly, the final rule at § 661.13(b)(2) will read as follows:

For negotiated procurements, compliance with the Buy America requirements shall be determined on the basis of the certification submitted with the final offer or final revised proposal. However, where a grantee awards on the basis of initial proposals without discussion, the certification submitted with the initial proposal shall control.

FTA inadvertently omitted § 661.13(b)(3) in the NPRM's proposed regulatory text. This section remains unchanged and is brought forward in the final rule.

#### *Preaward and Postdelivery Review of Rolling Stock Purchases*

SAFETEA-LU amends 49 U.S.C. 5323(m) by mandating that rolling stock procurements of 20 vehicles or fewer that serve rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer, are subject to the same post-delivery certification requirements that apply to procurements of "10 or fewer buses," i.e. no resident factory inspector is required. In the NPRM, FTA proposed the following language and sought comment on this proposed change.

For procurements of (1) Ten or fewer buses; or (2) procurements of 20 vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.

FTA received five comments on this issue, three of which concurred with FTA's proposed modification. One commenter suggested that the language be expanded to include "not just the requirement for a resident inspector, but the post-delivery audit requirement as well." The final commenter supported the proposed language but requested clarification as to the nature and time within which the "20 vehicles or fewer" requirement is calculated.

**FTA Response:** FTA considers the SAFETEA-LU requirement to be self-explanatory and limited in scope. FTA does not understand the comment which recommends that the language of FTA's proposed rule be expanded "to include not just the requirement for a resident inspector, but the post-delivery audit requirement as well." To the extent that the commenter is recommending that FTA eliminate the requirement for post-delivery audits in this type of smaller procurement, FTA disagrees. In particular, 49 U.S.C. 5323(m) states, in part, that the "Secretary of Transportation shall prescribe regulations requiring a preaward and postdelivery review \* \* \* Under this subsection, independent inspections and review are required." (emphasis added). Historically, FTA has interpreted Congressional intent, here, as requiring preaward and postaward audits in all cases. FTA does not believe that SAFETEA-LU provides authority to eliminate either of the audit requirements.

In response to the comment which raised questions concerning the length of time the "20 vehicles or fewer" requirement is calculated, FTA believes that such questions are best addressed through FTA's existing administrative process of providing guidance on Buy America issues on a case-by-case basis, consistent with current practice.

Accordingly, FTA adopts the changes addressed in the NPRM (see 70 FR 71253, (November 28, 2005)). The NPRM addressed this subject in the preamble which generated comments; however, FTA inadvertently omitted a § 663.37 in the NPRM's proposed regulatory text. FTA has considered the comments received and is adopting regulatory text for § 663.37 in the final rule.

#### *Miscellaneous—Corrections and Clarifications*

In the NPRM, FTA proposed minor corrections and clarifications to the Buy America regulations in the following areas: (1) Deleting references to an older version of FTA's implementing statute, and replacing them with references to

SAFETEA-LU; (2) Adding the word "iron," after the word "steel" in the certification requirement for procurement of steel or manufactured products; and (3) adding the term "offeror" and "offer" where appropriate throughout the regulations, to reflect the use of negotiated procurement methods in FTA funded projects.

FTA received three comments on this issue, all of whom supported FTA's proposed changes. However, one commenter recommended that FTA also define the terms "bidder," "offeror" and "proposer," rather than continue to state that these are "terms of art." FTA declines to define these additional terms in the regulation, as unnecessary. These terms have generally recognized meanings in the public contracting realm. It is self-evident that a "bidder" refers to a party that participates in a sealed bidding procurement. "Offeror" and "proposer" are generally synonymous terms referring to parties that participate in negotiated procurements.

## **II. Regulatory Analyses and Notices**

### *Statutory/Legal Authority for This Rulemaking*

This rule is authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59) amended Section 5323(j) and (m) of Title 49, United States Code and requires FTA to revise its regulations with respect to Buy America requirements.

### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This rule is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is also nonsignificant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This rule imposes no new compliance costs on the regulated industry; it merely clarifies terms existing in the Buy America regulations and adds terms consistent with SAFETEA-LU.

### *Executive Order 13132*

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This rule does not include any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various

levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

### *Executive Order 13175*

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

### *Regulatory Flexibility Act and Executive Order 13272*

The Regulatory Flexibility Act (5 U.S.C. 601-611) requires each agency to analyze regulations and proposals to assess their impact on small businesses and other small entities to determine whether the rule or proposal will have a significant economic impact on a substantial number of small entities. This rule imposes no new costs. Therefore, FTA certifies that this proposal does not require further analysis under the Regulatory Flexibility Act.

### *Unfunded Mandates Reform Act of 1995*

This rule does not propose unfunded mandates under the Unfunded Mandates Reform Act of 1995. If the proposals are adopted into a final rule, it will not result in costs of \$100 million or more (adjusted annually for inflation), in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

### *Paperwork Reduction Act*

This rule proposes no new information collection requirements.

### *Environmental Assessment*

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321-4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this rule.

### *Privacy Act*

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (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>.

#### List of Subjects in 49 CFR Parts 661 and 663

Grant programs—transportation, Public transportation, Reporting and recordkeeping requirements.

■ For the reasons described in the preamble, parts 661 and 663 of Title 49 of the Code of Federal Regulations are amended as follows:

#### PART 661—[AMENDED]

■ 1. The authority citation for part 661 is revised to read as follows:

**Authority:** 49 U.S.C. 5323(j) (formerly sec. 165, Pub. L. 97-424; as amended by sec. 337, Pub. L. 100-17, sec. 1048, Pub. L. 102-240, sec. 3020(b), Pub. L. 105-178, and sec. 3023(i) and (k), Pub. L. 109-59); 49 CFR 1.51.

■ 2. Revise § 661.3 to read as follows:

#### § 661.3 Definitions.

As used in this part:

**Act** means the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424), as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59).

**Administrator** means the Administrator of FTA, or designee.

**Component** means any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location.

**Contractor** means a party to a third party contract other than the grantee.

**FTA** means the Federal Transit Administration.

**Grantee** means any entity that is a recipient of FTA funds.

**Manufactured product** means an item produced as a result of the manufacturing process.

**Manufacturing process** means the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials.

**Negotiated procurement** means a contract awarded using other than sealed bidding procedures.

**Rolling stock** means transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services.

**SAFETEA-LU** means the Safe, Accountable, Flexible, Efficient

Transportation Equity Act: A Legacy for Users (Pub. L. 109-59).

**United States** means the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

■ 3. Revise 661.6 to read as follows:

#### § 661.6 Certification requirements for procurement of steel or manufactured products.

If steel, iron, or manufactured products (as defined in §§ 661.3 and 661.5 of this part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in § 661.13(b) of this part.

#### Certificate of Compliance With Section 165(a)

The bidder or offeror hereby certifies that it will comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR part 661.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

#### Certificate for Non-Compliance With Section 165(a)

The bidder or offeror hereby certifies that it cannot comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, but it may qualify for an exception to the requirement pursuant to section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR 661.7.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

#### § 661.7 [Amended]

■ 4. In § 661.7, Appendix A, remove paragraphs (b) and (c) and redesignate paragraphs (d) and (e) as paragraphs (b) and (c), respectively.

■ 5. In § 661.9, revise paragraphs (b) and (d) to read as follows:

#### § 661.9 Application for waivers.

(b) A bidder or offeror who seeks to establish grounds for an exception must seek the exception, in a timely manner, through the grantee.

\* \* \* \* \*

(d) FTA will consider a request for a waiver from a potential bidder, offeror, or supplier only if the waiver is being sought under § 661.7 (f) or (g) of this part.

\* \* \* \* \*

■ 6. Revise § 661.12 to read as follows:

#### § 661.12 Certification requirement for procurement of buses, other rolling stock and associated equipment.

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in § 661.13(b) of this part.

#### Certificate of Compliance With Section 165(b)(3)

The bidder or offeror hereby certifies that it will comply with the requirements of section 165(b)(3), of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations of 49 CFR 661.11.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

#### Certificate for Non-Compliance with Section 165(b)(3)

The bidder or offeror hereby certifies that it cannot comply with the requirements of section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirement consistent with section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and the applicable regulations in 49 CFR 661.7.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

■ 7. In § 661.13, revise paragraphs (b) introductory text (b)(1), (b)(2), and (c), add new paragraph (b)(1)(i), and add and reserve paragraph (b)(1)(ii) to read as follows:

#### § 661.13 Grantee responsibility.

\* \* \* \* \*

(b) The grantee shall include in its bid or request for proposal (RFP) specification for procurement within the scope of this part an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed Buy America

certificate in accordance with §§ 661.6 or 661.12 of this part, as appropriate.

(1) A bidder or offeror who has submitted an incomplete Buy America certificate or an incorrect certificate of noncompliance through inadvertent or clerical error (but not including failure to sign the certificate, submission of certificates of both compliance and non-compliance, or failure to submit any certification), may submit to the FTA Chief Counsel within ten (10) days of bid opening or submission or a final offer, a written explanation of the circumstances surrounding the submission of the incomplete or incorrect certification in accordance with 28 U.S.C. 1746, sworn under penalty of perjury, stating that the submission resulted from inadvertent or clerical error. The bidder or offeror will also submit evidence of intent, such as information about the origin of the product, invoices, or other working documents. The bidder or offeror will simultaneously send a copy of this information to the FTA grantee.

(i) The FTA Chief Counsel may request additional information from the bidder or offeror, if necessary. The grantee may not make a contract award until the FTA Chief Counsel issues his/her determination, except as provided in § 661.15(m).

(ii) [reserved]

(2) For negotiated procurements, compliance with the Buy America requirements shall be determined on the basis of the certification submitted with the final offer or final revised proposal. However, where a grantee awards on the basis of initial proposals without discussion, the certification submitted with the initial proposal shall control.

(3) \* \* \*

(c) Whether or not a bidder or offeror certifies that it will comply with the applicable requirement, such bidder or offeror is bound by its original certification (in the case of a sealed bidding procurement) or its certification submitted with its final offer (in the case of a negotiated procurement) and is not permitted to change its certification after bid opening or submission of a final offer. Where a bidder or offeror certifies that it will comply with the applicable Buy America requirements, the bidder, offeror, or grantee is not eligible for a waiver of those requirements.

■ 8. In § 661.15, revise paragraphs (a), (b), (d), and (g) to read as follows:

**§ 661.15 Investigation procedures.**

(a) It is presumed that a bidder or offeror who has submitted the required Buy America certificate is complying with the Buy America provision. A false certification is a criminal act in violation of 18 U.S.C. 1001.

(b) Any party may petition FTA to investigate the compliance of a successful bidder or offeror with the bidder's or offeror's certification. That party ("the petitioner") must include in the petition a statement of the grounds of the petition and any supporting documentation. If FTA determines that the information presented in the petition indicates that the presumption in paragraph (a) of this section has been overcome, FTA will initiate an investigation.

\* \* \* \* \*

(d) When FTA determines under paragraph (b) or (c) of this section to conduct an investigation, it requests that the grantee require the successful bidder or offeror to document its compliance with its Buy America certificate. The successful bidder or offeror has the burden of proof to establish that it is in compliance. Documentation of compliance is based on the specific circumstances of each investigation, and FTA will specify the documentation required in each case.

\* \* \* \* \*

(g) The grantee's reply (or that of the bidder or offeror) will be transmitted to the petitioner. The petitioner may submit comments on the reply to FTA within 10 working days after receipt of the reply. The grantee and the low bidder or offeror will be furnished with a copy of the petitioner's comments, and their comments must be received by FTA within 5 working days after receipt of the petitioner's comments.

\* \* \* \* \*

■ 9. Revise § 661.17 to read as follows:

**§ 661.17 Failure to comply with certification.**

If a successful bidder or offeror fails to demonstrate that it is in compliance with its certification, it will be required to take the necessary steps in order to achieve compliance. If a bidder or offeror takes these necessary steps, it will not be allowed to change its original bid price or the price of its final offer. If a bidder or offeror does not take the necessary steps, it will not be awarded the contract if the contract has not yet been awarded, and it is in breach

of contract if a contract has been awarded.

■ 10. Revise § 661.19 to read as follows:

**§ 661.19 Sanctions.**

A willful refusal to comply with a certification by a successful bidder or offeror may lead to the initiation of debarment or suspension proceedings under part 29 of this title.

■ 11. Revise § 661.20 to read as follows:

**§ 661.20 Rights of parties.**

(a) A party adversely affected by an FTA action under this subsection shall have the right to seek review under the Administrative Procedure Act (APA), 5 U.S.C. 702 *et seq.*

(b) Except as provided in paragraph (a) of this section, the sole right of any third party under the Buy America provision is to petition FTA under the provisions of § 661.15 of this part. No third party has any additional right, at law or equity, for any remedy including, but not limited to, injunctions, damages, or cancellation of the Federal grant or contracts of the grantee.

**PART 663—[AMENDED]**

■ 12. The authority citation for part 663 is revised to read as follows:

**Authority:** 49 U.S.C. 1608(j); 23 U.S.C. 103(e)(f); Pub. L. 96-184, 93 Stat. 1320; Pub. L. 101-551, 104 Stat. 2733; sec. 3023(m), Pub. L. 109-59; 49 CFR 1.51.

■ 13. In § 663.37, revise paragraph (c) to read as follows:

**§ 663.37 Post-delivery purchaser's requirements certification.**

\* \* \* \* \*

(c) For procurements of:

(1) Ten or fewer buses; or  
 (2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or

(3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.

Issued in Washington, DC this 14th day of March, 2006.

David Horner,  
 Chief Counsel.

[FR Doc. 06-2671 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-57-P

## Proposed Rules

Federal Register

Vol. 71, No. 54

Tuesday, March 21, 2006

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

### DEPARTMENT OF AGRICULTURE

#### Federal Crop Insurance Corporation

##### 7 CFR Part 457

RIN 0563-AC08

#### Common Crop Insurance Regulations; Walnut Crop Insurance Provisions; Almond Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Walnut Crop Insurance Provisions and Almond Crop Insurance Provisions. The intended effect of this action is to reduce the insurable age requirements for almonds and walnuts because of the new varieties available. These changes will be applicable for the 2007 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business on May 22, 2006, and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133-4676. Comments titled "Almond-Walnut Crop Insurance Provisions" may be sent via the Internet to [DirectorPDD@rma.usda.gov](mailto:DirectorPDD@rma.usda.gov), or the Federal eRulemaking Portal: <http://www.regulations.gov/>. Follow the online instructions for submitting comments. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., c.s.t., Monday through Friday except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** John McDonald, Risk Management Specialist, Research and Development, Product

Development Division, Risk Management Agency, at the Kansas City, MO address listed above, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

##### Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this proposed rule have been approved by (OMB) under control number 0563-0053 through November 30, 2007.

##### Government Paperwork Elimination Act (GPEA) Compliance

FCIC is committed to compliance with GPEA, which requires Government agencies, in general, to provide the public with the option of submitting information or transacting business electronically to the maximum extent possible. FCIC requires that all reinsured companies be in compliance with the Freedom to E-File Act and section 508 of the Rehabilitation Act.

##### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

##### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

#### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

##### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

##### Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the



crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR 400, subpart J for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

#### Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising § 457.122, Walnut Crop Insurance Provisions, and § 457.123, Almond Crop Insurance Provisions effective for the 2007 and succeeding crop years. Currently, the policy requires that almond trees reach the seventh growing season after set out before the almonds are eligible for insurance coverage. Walnut trees need to reach the ninth growing season after set out before the walnuts are eligible for insurance coverage. Set out occurs when the tree is transplanted into the orchard. This rule will reduce the age requirement for insurability of almond trees from the seventh to the sixth year after set out and reduce the age requirement for insurability of walnut trees from the ninth to the seventh year after set out.

This change is being made because newer varieties of almond and walnut trees are more vigorous, and produce at an earlier age. The newer varieties are planted more densely, achieve full canopy sooner, and come into full production earlier. The almond and walnut industries research of breeding programs and cultural practices shows that almonds and walnuts begin bearing production as early as third and fourth growing seasons respectively, and are at full production at the sixth and seventh growing season after set out. Therefore, there is no increased risk from allowing insurance to attach earlier.

#### List of Subjects in 7 CFR Part 457

Crop insurance, Almonds, Walnuts, Reporting and recordkeeping requirements.

#### Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 Common Crop Insurance Regulations, for the 2007 and

succeeding crops years, to read as follows:

#### PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Amend § 457.122 as follows:

A. Revise the first sentence of the introductory text.

B. Revise paragraph 6(d).

The revisions to § 457.122 read as follows:

#### § 457.122 Walnut crop insurance provisions.

The walnut crop insurance provisions for the 2007 and succeeding crop years are as follows:

\* \* \* \* \*

6. Insured Crop

\* \* \* \* \*

(d) On acreage where at least 90 percent of the trees have reached at least the seventh growing season after set out, unless otherwise provided in the Special Provisions or by a written agreement that coverage may be provided for trees not meeting this requirement.

\* \* \* \* \*

3. Amend § 457.123 as follows:

A. Revise the first sentence of the introductory text.

B. Revise paragraph 6(e).

The revision to section 457.123 to read as follows:

#### § 457.123 Almond crop insurance provisions.

The almond crop insurance provisions for the 2007 and succeeding crop years are as follows:

\* \* \* \* \*

6. Insured Crop

\* \* \* \* \*

(e) On acreage where at least 90 percent of the trees have reached at least the sixth growing season after set out, unless otherwise provided in the Special Provisions or by a written agreement that coverage may be provided for trees not meeting this requirement.

\* \* \* \* \*

Signed in Washington, DC, on February 28, 2006.

Byron Anderson,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 06-2074 Filed 3-20-06; 8:45 am]

BILLING CODE 3410-08-P

#### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Part 72

RIN 3150-AH87

#### List of Approved Spent Fuel Storage Casks: VSC-24 Revision 6

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the BNG Fuel Solutions Corporation VSC-24 cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 6 to the Certificate of Compliance. Amendment No. 6 would modify the present cask system design to revise the Technical Specification (TS) requirements related to periodic monitoring during storage operation. Specifically, the amendment would eliminate TS 1.3.4 that requires daily temperature measurement of the cask. The daily temperature measurement is not required because the daily visual inspection of the cask inlet and outlet vent screens, required by TS 1.3.1, provides the capability to determine when corrective action needs to be taken to maintain safe storage conditions under the requirements that govern general design criteria for spent fuel storage casks. This is because the visual inspection would determine if the cask inlets and outlets were blocked (the focus of the thermal analysis submitted by the CoC holder). The amendment would also revise TS 1.2.3 to correspond with TS 1.3.1 by revising the method of thermal performance evaluation to allow for daily temperature surveillance after the cask has reached thermal equilibrium. In addition, the amendment would update editorial changes associated with the company name change from BNFL Fuel Solutions Corporation to BNG Fuel Solutions Corporation.

**DATES:** Comments on the proposed rule must be received on or before April 20, 2006.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AH87) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comment will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social

security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail [cag@nrc.gov](mailto:cag@nrc.gov). Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays [telephone (301) 415-1966].

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers at the NRC's Public Document Room (PDR), O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdrc@nrc.gov](mailto:pdrc@nrc.gov). An electronic copy of the proposed Certificate of Compliance (CoC), TS, and preliminary safety evaluation report (SER) can be found under ADAMS Accession Nos. ML053330269, ML053340113, and ML053330282, respectively.

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

**SUPPLEMENTARY INFORMATION:** For additional information see the direct

final rule published in the final rules section of this Federal Register.

#### Procedural Background

This rule is limited to the changes contained in Amendment No. 6 to CoC No. 1007 and does not include other aspects of the VSC-24 cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on June 5, 2006. However, if the NRC receives significant adverse comments by April 20, 2006, then the NRC will publish a document that withdraws the direct final rule and will subsequently address the comments received in a final rule. The NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

#### List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended;

the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

#### PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for part 72 is revised to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109-58, 119 Stat. 806-10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1007 is revised to read as follows:

#### § 72.214 List of approved spent fuel storage casks.

\* \* \* \* \*

Certificate Number: 1007.

Initial Certificate Effective Date: May 7, 1993.

Amendment Number 1 Effective Date: May 30, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: May 21, 2001.

Amendment Number 4 Effective Date: February 3, 2003.

Amendment Number 5 Effective Date: September 13, 2005.



Amendment Number 6 Effective Date:  
June 5, 2006.  
SAR Submitted by: BNG Fuel Solutions  
Corporation.  
SAR Title: Final Safety Analysis Report  
for the Ventilated Storage Cask  
System.  
Docket Number: 72-1007.  
Certificate Expiration Date: May 7, 2013.  
Model Number: VSC-24.  
\* \* \* \* \*

Dated at Rockville, Maryland, this 3rd day  
of March, 2005.

For the Nuclear Regulatory Commission.  
Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E6-4083 Filed 3-20-06; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 25, 91, 121, 125, and 129

[Docket No. FAA-2005-22997; Notice No.  
05-14]

RIN 2120-A123

#### Reduction of Fuel Tank Flammability in Transport Category Airplanes

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking  
(NPRM); extension of comment period.

**SUMMARY:** This action extends the  
comment period for an NPRM published  
on November 23, 2005. In the NPRM,  
the FAA proposed new rules that would  
require operators and manufacturers of  
transport category airplanes to take  
steps that, in combination with other  
required actions, should greatly reduce  
the chance of a catastrophic fuel tank  
explosion. The extension of the  
comment period is a result of requests  
from a number of entities to allow  
public comment on new information  
that has recently been placed in the  
public docket.

**DATES:** Send your comments on or  
before May 8, 2006.

**ADDRESSES:** You may send comments on  
the NPRM, identified by Docket No. -  
FAA-2005-22997, using any of the  
following methods:

- DOT Docket Web site: Go to  
<http://dms.dot.gov> and follow the  
instructions for sending your comments  
electronically.

- Government-wide rulemaking Web  
site: Go to <http://www.regulations.gov>  
and follow the instructions for sending  
your comments electronically.

- Mail: Docket Management Facility;  
U.S. Department of Transportation, 400

Seventh Street, SW., Nassif Building,  
Room PL-401, Washington, DC 20590-  
0001.

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

For more information on the  
rulemaking process, see the  
**SUPPLEMENTARY INFORMATION** section of  
the NPRM.

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

**FOR FURTHER INFORMATION CONTACT:**  
Michael E. Dostert, FAA Propulsion/  
Mechanical Systems Branch, ANM-112,  
Transport Airplane Directorate, Aircraft  
Certification Service, 1601 Lind  
Avenue, SW., Renton, Washington  
98055-4056; telephone (425) 227-2132,  
facsimile (425-227-1320); e-mail:  
[mike.dostert@faa.gov](mailto:mike.dostert@faa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### Comments Invited

The FAA continues to invite  
interested persons to take part in this  
rulemaking by sending written  
comments, data, or views about the  
NPRM we issued on November 17,  
2005, Reduction of Fuel Tank  
Flammability in Transport Category  
Airplanes (70 FR 70922, November 23,  
2005). We also invite comments about  
the economic, environmental, energy, or  
federalism impacts that might result  
from adopting the proposals in the  
NPRM. The most helpful comments  
reference a specific portion of the  
NPRM, explain the reason for any  
recommended change, and include  
supporting data. We ask that you send  
us two copies of written comments.

##### Background

On November 17, 2005, the Federal  
Aviation Administration (FAA) issued  
Notice No. 05-14, Reduction of Fuel  
Tank Flammability in Transport  
Category Airplanes (70 FR 70922,  
November 23, 2005). The comment  
period for the NPRM ends on March 23,  
2006.

We received requests from a number  
of entities to extend the comment period  
on this NPRM by 60 days. These entities  
noted that information contained in a  
report prepared for the FAA by Sandia  
National Laboratories, that assesses the  
effectiveness of previous actions  
resulting from SFAR 88 at reducing the

occurrence of ignition sources and  
associated accident rate resulting from  
fuel tank explosions, has only recently  
been placed in the public docket and  
they requested additional time to  
consider this information in their  
comments. In addition, the FAA will  
include copies of independent peer  
reviews of the Sandia Report and the  
Fuel Tank Flammability Assessment  
User's Manual, in the public docket for  
the NPRM.

The FAA agrees with the petitioners'  
requests for an extension of the  
comment period. We recognize the  
NPRM's contents are significant and  
complex. Also, the original comment  
period is insufficient because the  
additional information was not available  
in the public docket earlier in the  
comment period. Further, we  
understand that additional requests for  
extensions will be filed shortly by some  
entities that will be directly affected by  
the proposals in the NPRM. We have  
determined that an additional 45 days  
will be sufficient to allow for all  
commenters to collect and send  
information they believe necessary for  
the FAA to understand their concerns  
on the proposed rules and the  
additional information recently added  
to the NPRM public docket as  
previously discussed. Absent unusual  
circumstances, the FAA does not  
anticipate any further extension of the  
comment period for the NPRM.

On November 18, 2005, we issued a  
Notice of availability of proposed AC  
25.981-2A, Fuel Tank Flammability,  
and request for comments (70 FR 71365;  
November 28, 2005). This Notice  
announced the availability of and  
requested comments on a proposed AC  
which sets forth an acceptable means,  
but not the only means, of  
demonstrating compliance with the  
provisions of the airworthiness  
standards in the NPRM. The comment  
period for the proposed AC ends on  
March 23, 2006 and is also being  
extended by 45 days. The extension of  
the comment period for the proposed  
AC is being published concurrently  
with this extension.

##### Extension of Comment Period

In accordance with 14 CFR 11.47(c),  
the FAA has reviewed the requests of a  
number of entities for an extension of  
the comment period to the NPRM. The  
FAA finds that an extension of the  
comment period for Notice No. 05-14 is  
consistent with the public interest, and  
that good cause exists for taking this  
action.

Accordingly, the comment period for  
Notice No. 05-14 is extended until May  
8, 2006.

Issued in Washington, DC, on March 14, 2006.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. E6-4025 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 96-NM-143-AD]

RIN 2120-AA64

#### Airworthiness Directives; Gulfstream Aerospace Corporation Model G-159 Airplanes

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

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** The FAA is revising an earlier proposed airworthiness directive (AD), applicable to all Gulfstream Aerospace Corporation Model G-159 airplanes. The original NPRM would have required repetitive non-destructive testing inspections to detect corrosion of the skin of certain structural assemblies, and corrective action if necessary. The original NPRM also would have required x-ray and ultrasonic inspections to detect corrosion and cracking of the splicing of certain structural assemblies, and repair if necessary. The original NPRM resulted from reports that exfoliation corrosion had been found in the lower layer of the lower wing plank splices. This action revises the original NPRM by expanding the inspection areas to include the wing lower plank splices, ailerons, flaps, elevators, vertical and horizontal stabilizers, rudder, rudder trim tab, and aft lower fuselage from fuselage station (FS)559 to FS669. The actions specified by this new proposed AD are intended to detect and correct corrosion and cracking of the lower wing plank splices and spot-welded skins of certain structural assemblies, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 17, 2006.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 96-NM-143-AD, 1601 Lind Avenue, SW.,

Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 96-NM-143-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D-25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Michael Cann, Aerospace Engineer, Airframe Branch, ACE-117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703-6038; fax (770) 703-6097.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-NM-143-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 96-NM-143-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Gulfstream Aerospace Corporation Model G-159 airplanes, was published as a notice of proposed rulemaking (NPRM) in the *Federal Register* on June 6, 2001 (66 FR 30343). That NPRM would have required repetitive non-destructive testing inspections to detect corrosion of the skin of certain structural assemblies, and corrective action if necessary. That NPRM also would have required x-ray and ultrasonic inspections to detect corrosion and cracking of the splicing of certain structural assemblies, and repair if necessary. That NPRM was prompted by reports that exfoliation corrosion had been found in the lower layer of the lower wing plank splices. That condition, if not corrected, could result in local instability failures of the wing under certain load conditions and result in degradation of wing capability.

#### Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, we have received additional reports indicating corrosion in a larger area of the wing than the area specified in the original NPRM. This condition, if not corrected, could cause cracking and corrosion of the lower wing plank splices and spot-welded skins of certain structural assemblies, which could result in reduced controllability of the airplane.

### Relevant Customer Bulletin

Gulfstream Aerospace Corporation has issued Gulfstream GI Customer Bulletin (CB) 337B, including Appendix A, dated August 17, 2005. The procedures in the CB describe non-destructive testing (NDT) inspections for corrosion and cracking of spot-welded skins of the elevators, aileron, rudder and rudder trim tab, flaps, aft lower fuselage, and vertical and horizontal stabilizers. The procedures in the CB also describe NDT inspections (e.g., x-ray and ultrasonic) for exfoliation corrosion and cracking for wing plank splices from wing station (WS) 40 to WS 310. Additionally, the procedures in the CB describe performing an eddy current or fluorescent penetrant inspection for evaluating any prior blending in the riser areas. The procedures in the CB also specify that if the blend-out exceeds the repair drawing specifications, contact the manufacturer. The procedures in the CB also request operators to send a report to the manufacturer specifying inspection results. Additionally, Appendix A provides corrosion repair schemes for certain structural repair removal thresholds in accordance with certain drawing numbers.

Gulfstream has also issued Gulfstream Tool No. ST905-377, an x-ray negative that is used as a chart to define corrosion levels. The tool describes specific levels of corrosion and contains criteria for determining certain levels of corrosion ("light," "moderate," and "severe").

### Comments

We have considered the following comments on the original NPRM.

#### Requests To Revise the Cost Impact Section

Two commenters request that the estimate for the Cost Impact section of the original NPRM, which was based on 80 work hours, be increased to reflect a more realistic cost. One commenter states that it has received price quotes from shops that range from \$11,000 to \$19,000 to perform the actions proposed in the original NPRM. The other commenter states that it has completed the inspections (excluding the x-rays and ultrasonic inspections) proposed in the original NPRM. The operator advises that its actual cost for each inspection, not including incidental and access costs, was \$18,000.

We agree that the estimated cost impact should be revised. Based on the latest information provided by the manufacturer in Gulfstream GI CB 337B, we estimate that the work hours

necessary for the inspections proposed in this supplemental NPRM would be between 300 and 450 work hours, depending on how many spot-welded skins have been replaced with bonded skin panels. We have revised the Cost Impact section to reflect the increase of the estimated work hours.

#### Request To Revise Initial Compliance Time

One commenter requests that the initial compliance times be revised. The commenter requests that the initial compliance time for the requirements of paragraph (a) of the original NPRM be changed to 18 months from the last inspection of Gulfstream GI CB 337 (referenced in the original NPRM as the appropriate source of service information) or 9 months from the effective date of this AD, whichever is later. The commenter states that operators who are currently in compliance with Gulfstream GI CB 337 would still be required to re-inspect within 9 months after the effective date of the AD. The commenter advises that this would cause unnecessary cost and airplane downtime, since CB 337 has an 18-month inspection time.

We do not agree that, in this case, the initial inspections required by paragraphs (a) and (c) of this supplemental NPRM can be revised for the convenience of the operators. The inspection areas have been expanded since the issuance of the original proposed NPRM, which referenced the original issuance of Gulfstream GI CB 337, dated December 10, 1993, as the appropriate source of service information. The expanded inspection areas are specified in Gulfstream GI CB 337B, including Appendix A, dated August 17, 2005, which is referenced in this supplemental NPRM as the appropriate source of service information. Operators who have accomplished the inspections specified in earlier revisions of the CB, may request approval of an extension of the compliance time in accordance with paragraph (h) of the supplemental NPRM. The repetitive inspections remain at intervals not to exceed 18 months. No change is necessary to the supplemental NPRM in this regard.

#### Request Not To Expand the Inspection Area

One commenter requests that we do not expand the inspection area unless it can be shown that those expanded areas have been found to have corrosion. The commenter advises that it has been informed by the manufacturer that a revision to Gulfstream GI CB 337 is going to be issued with additional

inspection areas of the wing plank. The commenter also states that it has not found corrosion in all of the areas specified in the original NPRM.

We do not agree. We have received several reports indicating that corrosion has occurred on the inspection areas discussed in this supplemental NPRM, including the wing planks. The source of corrosion was determined to be spot-welded skins for the flight controls and aft lower fuselage. Gulfstream GI CB 337B, as explained previously, describes the appropriate areas of inspection. We have determined that an unsafe condition exists and that Gulfstream GI CB 337B describes the methods of detection of corrosion and cracking, and correction if necessary. We have not changed the supplemental NPRM as a result of this request.

#### Request To Provide a Different Inspection Interval

That same commenter also requests that, if a sampling of airplanes indicates corrosion on other areas, those areas of inspection have a different inspection interval than the inboard wing.

We do not agree. The commenter did not provide a suggested "different inspection interval" or any technical justification for what a "different inspection interval" might be. However, under the provisions of paragraph (h) of the supplemental NPRM, we may approve requests for adjustments to the inspection interval if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. No change to the supplemental NPRM is necessary in this regard.

#### Request To Revise Compliance Times for Repairs

Two commenters request that the FAA allow more time to address repairs to the wing plank splices. The commenters also request that, if corrosion is seen on the x-ray, it may also be confirmed by another form of NDT, such as ultrasonic inspection. The commenters both point out that all the other inspection areas allow for either mild or moderate corrosion to be deferred. One of the commenters requests that the FAA allow a "trace" of corrosion in the wing plank splices to be re-inspected in 18 months to see if the suspect area has changed in size, shape, or density before any action must be taken. The commenter adds that it is a known fact in the x-ray industry that not all indications are corrosion, and the commenter quotes an Applied Technical Services report: "In some cases indications similar to those observed on the films provided for evaluation of the wing plank splices

may actually be attributed to conditions other than corrosion."

We do not agree. The loading conditions and magnitudes on the wing are different from the flight controls and the fuselage. "Trace" levels of corrosion on the flight controls and fuselage are not as critical as on the wing. No change to the supplemental NPRM is necessary in this regard.

#### **Request To Extend the Repetitive Inspection Interval**

One commenter requests that the repetitive inspection interval be changed from "at intervals not to exceed 18 months," to "at intervals not to exceed 36 months." The commenter notes that, although the first Gulfstream GI flew in August of 1958, there has never been a structural problem with the wing. The commenter also points out that, prior to 1994, there wasn't even a requirement to NDT the parts of the GI.

We do not agree with the commenter's request to extend the repetitive inspection interval. In developing an appropriate interval, we considered the safety implications, the service history of the airplane regarding corrosion of the wings, and normal maintenance schedules for timely accomplishment of the inspections. In light of these items, we have determined that a 18-month interval is appropriate. However, paragraph (h) of the supplemental NPRM provides affected operators the opportunity to apply for an adjustment of the repetitive inspection interval if the operator also presents data that justify the adjustment.

#### **Request To Defer Certain Inspections**

One commenter requests that an inspection compliance time of 12 years be provided for lower wing planks that have been replaced or reconditioned. The commenter states that the manufacturer has told the commenter that replaced or reconditioned lower wing planks shouldn't need to be inspected for 12 years.

We do agree that the inspection may be deferred for 12 years if the lower wing planks have been replaced with new lower wing planks. Since there is no actual definition for "reconditioned" in this case, we do not agree that the inspection may be deferred for 12 years if the lower wing planks have been "reconditioned." However, under the provisions of paragraph (h) of this supplemental NPRM, operators may request an alternative method of compliance (AMOC) if data are submitted to substantiate that such an AMOC would provide an acceptable level of safety.

#### **Changes to 14 CFR Part 39/Effect on the Proposed AD**

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). These changes are reflected in this supplemental NPRM.

#### **FAA's Determination and Proposed Requirements of the Supplemental NPRM**

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

#### **Difference Between the CB and the Proposed AD**

Operators should note that, although the Gulfstream CB does not specify certain corrective actions for levels of corrosion, this proposed AD would require shortened repetitive intervals for the NDT inspections based on certain levels of corrosion, or replacement of the corroded component with a serviceable component. Although the CB specifies certain one-time inspections, this supplemental NPRM would require repetitive inspections, since the nature of the unsafe condition (corrosion and cracking) may occur after a one-time inspection. This difference has been coordinated with the manufacturer.

#### **Clarification of a Note in the CB**

The Gulfstream CB includes a note in the Accomplishment Instructions to contact a Gulfstream Field Service Representative if technical assistance is required in accomplishing the CB. We have included Note 1 in this proposed AD to clarify that any deviation from the instructions provided in the CB must be approved as an alternative method of compliance under paragraph (h) of this AD.

#### **Costs of Compliance**

There are approximately 52 airplanes of the affected design in the worldwide fleet. The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately between 300 and 450 work hours per airplane, depending upon how many spot-welded skins have been replaced with bonded skin panels, to accomplish the proposed actions, and that the average labor rate

is \$65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between \$487,500 and \$731,250, or between \$19,500 and \$29,250 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### **Authority for This Rulemaking**

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

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

#### **Regulatory Findings**

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

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

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



under the criteria of the Regulatory Flexibility Act.

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

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Gulfstream Aerospace Corporation:** Docket 96–NM–143–AD.

**Applicability:** All Model G–159 airplanes, certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To detect and correct corrosion and cracking of the spot-welded skins of the lower wing plank splices and certain structural assemblies, which could result in reduced controllability of the airplane, accomplish the following:

**Note 1:** A note in the Accomplishment Instructions of the Gulfstream customer bulletin instructs operators to contact Gulfstream if any difficulty is encountered in accomplishing the customer bulletin. However, any deviation from the instructions provided in the service bulletin must be approved as an alternative method of compliance (AMOC) under paragraph (h) of this AD.

#### Non-Destructive Testing Inspections of the Fuselage, Empennage, and Flight Controls

(a) Within 9 months after the effective date of this AD, perform a non-destructive test (NDT) to detect corrosion of the skins of the elevators, ailerons, rudder and rudder trim tab, flaps, aft lower fuselage, and vertical and horizontal stabilizers; in accordance with Gulfstream GI Customer Bulletin (CB) No. 337B, including Appendix A, dated August 17, 2005. The corrosion criteria must be determined by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Gulfstream Tool ST905–377 is also an acceptable method of determining the corrosion criteria.

(1) If no corrosion or cracking is detected, repeat the inspection thereafter at intervals not to exceed 18 months.

(2) If all corrosion is detected that meets the criteria of “light” or “mild” corrosion, repeat the NDT inspections of that component thereafter at intervals not to exceed 12 months.

(3) If any corrosion is detected that meets the criteria of “moderate” corrosion, repeat the NDT inspection of that component thereafter at intervals not to exceed 9 months.

(4) If any corrosion is detected that meets the criteria of “severe” corrosion, before further flight, replace the component with a serviceable component in accordance with the CB.

#### Existing Repairs

(b) If any existing repairs are found during the inspections required by paragraph (a) of this AD, before further flight, ensure that the repairs are in accordance with a method approved by the Manager, Atlanta ACO, FAA.

#### Inspections of the Lower Wing Plank

(c) Except as provided in paragraph (f) of this AD: Within 9 months after the effective date of this AD, perform NDT inspections to detect corrosion and cracking of the lower wing plank splices in accordance with Gulfstream GI CB 337B, including Appendix A, dated August 17, 2005.

(1) If no corrosion or cracking is detected, repeat the NDT inspection at intervals not to exceed 18 months.

(2) If any corrosion or cracking is detected, before further flight, perform all applicable investigative actions and corrective actions in accordance with the customer bulletin.

#### Repair Removal Threshold

(d) For repairs specified in Appendix A of Gulfstream GI CB 337B, dated August 17, 2005: Within 144 months after the date of the repair installation, remove the repaired component and replace it with a new or serviceable component, in accordance with Gulfstream GI CB 337B, including Appendix A, dated August 17, 2005.

#### Prior Blending in the Riser Areas

(e) If, during the performance of the inspections required by paragraph (c) or (f) of this AD, the inspection reveals that prior blending has been performed on the riser areas: Before further flight, perform an eddy current or fluorescent penetrant inspection, as applicable, to evaluate the blending, and accomplish appropriate corrective actions, in accordance with Gulfstream GI CB 337B, including Appendix A, dated August 17, 2005. If any blend-out is outside the limits specified in the CB, before further flight, repair in a manner approved by the Manager, Atlanta ACO.

#### For Airplanes With New Lower Wing Planks

(f) For airplanes with new lower wing planks, as defined by paragraphs (f)(1) and (f)(2) of this AD: Within 144 months after replacement of the lower wing planks with new lower wing planks, or within 9 months after the effective date of this AD, whichever occurs later, perform all of the actions, including any other related investigative actions and corrective actions, specified in paragraph (c) of this AD.

#### Reporting Requirement

(g) Within 30 days of performing the inspections required by this AD: Submit a report of inspection findings (both positive and negative) to Gulfstream Aerospace Corporation; Attention: Technical Operations—Mail Station D–10, P. O. Box 2206, Savannah, Georgia 31402–0080. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

#### Alternative Methods of Compliance

(h)(1) The Manager, Atlanta 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.

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

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E6–4050 Filed 3–20–06; 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]

RIN 2120–AA64

#### Airworthiness Directives; Boeing Model 777 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 777 airplanes. This proposed AD would 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. This proposed AD

results from fuel system reviews conducted by the manufacturer. We are proposing 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:** We must receive comments on this proposed AD by May 5, 2006.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC 20590.

- Fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**FOR FURTHER INFORMATION CONTACT:** John L. Vann, Aerospace Engineer, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6513; fax (425) 917-6590.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2006-24173; Directorate Identifier 2005-NM-262-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://>

[dms.dot.gov](http://dms.dot.gov), including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

##### **Examining the Docket**

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

##### **Discussion**

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

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble

to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

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

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have received a report indicating that, on certain Boeing Model 747 airplanes, the sealant at the fitting for the fuel feed tube at the front spar bulkhead may be insufficient to protect against a spark between the bulkhead fitting and the spar in the event of a lightning strike. In SFAR 88-related testing, the manufacturer determined that a lightning strike can cause a spark even if the fitting is bonded. This condition, if not corrected, could result in 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.

The affected area on certain Boeing Model 747 airplanes is similar in design to that on the affected Boeing Model 777 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

##### **Relevant Service Information**

We have reviewed Boeing Special Attention Service Bulletin 777-28-0044, Revision 1, dated December 20, 2005. The service bulletin describes procedures for:

- Doing 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.
- Measuring the bonding resistance between the fitting for the fuel feed tube and the front spar in the left main fuel tank, and repairing the bonding if it

exceeds certain limits defined in the service bulletin.

- Applying additional sealant to completely cover the bulkhead fitting inside the fuel tank.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

#### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and the Service Bulletin."

#### Difference Between the Proposed AD and the Service Bulletin

Although the service bulletin does not give repair instructions if any damage or failure is found during the general visual inspection, or if the mechanical integrity of the bonding path is compromised, this proposed AD would require doing the 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.

#### Costs of Compliance

There are about 497 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 131 airplanes of U.S. registry. The proposed actions would 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 proposed 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

Boeing: Docket No. FAA-2006-24173; Directorate Identifier 2005-NM-262-AD.

#### Comments Due Date

- (a) The FAA must receive comments on this AD action by May 5, 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 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 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.

Issued in Renton, Washington, on March 10, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-4051 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### 31 CFR Part 103

RIN 1506-AA84

#### Proposed Amendments to Bank Secrecy Act Regulations Regarding Casino Recordkeeping and Reporting Requirements

**AGENCY:** Financial Crimes Enforcement Network, Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We are proposing to amend the Bank Secrecy Act regulations relating to currency transaction reporting by casinos. Specifically, we are proposing to exclude, as reportable transactions in currency, jackpots from slot machines and video lottery terminals. We are also proposing to exclude certain transactions between casinos and currency dealers or exchangers and casinos and check cashers as reportable transactions in currency. Finally, we are proposing several other amendments that would update or clarify the "cash in" and "cash out" examples of transactions that are set forth in our currency transaction reporting regulations.

**DATES:** Written comments on all aspects of the proposal are welcome and may be submitted on or before May 22, 2006.

**ADDRESSES:** You may submit comments identified by Regulatory Information Number (RIN) 1506-AA84, by any of the following methods:

- Federal E-rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Include 1506-AA84 in the submission.
- E-mail: [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov). Include 1506-AA84 in the subject line of the message.

- Mail: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include 1506-AA84 in the body of the text.

**Instructions:** Electronic comments are preferred because paper mail in the

Washington, DC, area may be delayed. Please submit comments by one method only. Any submissions received must include the agency name and the RIN for this rulemaking. All comments received will be posted without change to <http://www.fincen.gov>, including any personal information provided. Comments may be inspected in the Financial Crimes Enforcement Network reading room between 10 a.m. and 4 p.m. in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephone at (202) 354-6400 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949-2732 (toll-free number) or (202) 354-6400 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Statutory and Regulatory Background

The Director of the Financial Crimes Enforcement Network is the delegated administrator of the Bank Secrecy Act.<sup>1</sup> The Act authorizes the Director to issue regulations to require all financial institutions defined as such in the Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.<sup>2</sup>

Casinos are cash-intensive businesses that offer a broad array of financial services. These services include customer deposit or credit accounts, facilities for transmitting and receiving funds transfers directly from other financial institutions, and check cashing and currency exchange services. Consequently, these services offered by casinos are similar to and may serve as substitutes for services ordinarily provided by depository institutions and

certain non-bank financial institutions. As such, casinos are vulnerable to abuse by money launderers, terrorist financiers, and tax evaders.

In general, state-licensed casinos were made subject to the Bank Secrecy Act by regulation in 1985.<sup>3</sup> The 1985 rulemaking was based on the authority of the Secretary of the Treasury to designate as financial institutions for Bank Secrecy Act purposes: (i) Businesses that engage in activities that are "similar to, related to, or a substitute for" the activities of covered businesses listed in the Bank Secrecy Act and (ii) other businesses "whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters."<sup>4</sup> Congress later explicitly added casinos and other gaming establishments to the list of financial institutions regulated pursuant to the Bank Secrecy Act.<sup>5</sup>

Casinos authorized to conduct business under the Indian Gaming Regulatory Act became subject to the Bank Secrecy Act by regulation in 1996,<sup>6</sup> and card clubs became subject to the Bank Secrecy Act by regulation in 1998.<sup>7</sup>

###### B. Casino Currency Transaction Reporting Requirements

Regulations under the Bank Secrecy Act define a "transaction in currency" as any transaction "involving the physical transfer of currency from one person to another."<sup>8</sup> Casinos must report each transaction in currency involving cash in or cash out of more

<sup>3</sup> See 50 FR 5065 (February 6, 1985). Casinos whose gross annual gaming revenue did not exceed \$1 million were, and continue to be, excluded from Bank Secrecy Act requirements otherwise applicable to casinos and card clubs.

<sup>4</sup> See 31 U.S.C. 5312(a)(2)(Y) and (Z).

<sup>5</sup> See section 409 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325. The current statutory specification reads:

(2) Financial institution means—

\* \* \* \* \*

(X) A casino, gambling casino, or gaming establishment with an annual gaming revenue of more than \$1,000,000 which—

(i) Is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or

(ii) Is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act); \* \* \* 31 U.S.C. 5312(a)(2)(X).

<sup>6</sup> See 61 FR 7054 (February 23, 1996).

<sup>7</sup> See 63 FR 1919 (January 13, 1998). Card clubs generally are subject to the same rules as casinos, unless a different treatment for card clubs is explicitly stated in 31 CFR Part 103. Therefore, for purposes of this Notice of Proposed Rulemaking, and unless the context indicates otherwise, the term "casino" refers to both casinos and to card clubs.

<sup>8</sup> See 31 CFR 103.11(ii)(2).

<sup>1</sup> The statute generally referred to as the "Bank Secrecy Act," Titles I and II of Public Law 91-508, as amended, is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332.

<sup>2</sup> Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism ("USA PATRIOT") Act of 2001, Public Law 107-56 (October 26, 2001). In pertinent part, regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR part 103.

than \$10,000,<sup>9</sup> and are required to aggregate transactions in currency (treat the transactions as a single transaction) if the casino has knowledge that the transactions are conducted by or on behalf of the same person and result in cash in or cash out of more than \$10,000 during any gaming day.<sup>10</sup> The rule requiring casinos to report transactions in currency also lists examples of transactions in currency involving cash in and cash out.<sup>11</sup>

Casinos must report transactions in currency by filing Currency Transaction Reports on FinCEN Form 103 ("Currency Transaction Report by Casinos"). A casino must record identifying information on the Currency Transaction Report, verify identifying information, and indicate a description of the transaction(s).<sup>12</sup> In addition, a casino must file the completed form within 15 days following the date of the reportable transaction and retain a copy of the Currency Transaction Report for a period of five years from the date of filing.<sup>13</sup>

## II. Proposed Amendments to the Bank Secrecy Act Regulations

We are proposing to amend certain regulations under the Bank Secrecy Act that require casinos to report transactions in currency of more than \$10,000. In response to requests from the gaming industry, we are proposing to exclude jackpots from slot machines and video lottery terminals as reportable transactions in currency. We also are proposing to exclude certain transactions between (i) casinos and currency dealers or exchangers and (ii) casinos and check cashers from the requirement to report transactions in currency. Finally, we are proposing other technical and clarifying amendments to the illustrative list of cash in and cash out transactions in the rules.

Jackpots from slot machines and video lottery terminals account for a significant portion of Currency Transaction Reports filed by casinos. Absent fraud or abuse of the slot machine or video lottery terminal, a customer who wins more than \$10,000 in jackpots at a slot machine or video lottery terminal generally will have won those funds solely because of the workings of the random number generator in the slot machine or in a central computer that is networked with the video lottery terminal. Accordingly,

the jackpots are not likely to form part of a scheme to launder funds through the casino. Further, because casinos are required to file federal income tax forms with the Internal Revenue Service on jackpots of \$1,200 or more, jackpots from slot machines and video lottery terminals are not likely to form part of a scheme to evade taxes. We believe that jackpots from slot machines and video lottery terminals do not pose a significant risk for money laundering, terrorist financing, or tax evasion. Consequently, Currency Transaction Reports filed with respect to the jackpots do not have a high degree of usefulness in criminal, tax, and regulatory matters. Therefore, we are proposing to eliminate the requirement that casinos file Currency Transaction Reports for jackpots in excess of \$10,000 from slot machines or video lottery terminals.

In addition, we believe that transactions in currency between casinos and currency dealers or exchangers and check cashers are often routine casino business transactions. To illustrate, a check cashing company may operate on the premises of a casino. The check cashing company may cash checks for customers of the casino. Typically, the check cashing company writes a business check to the casino and in return receives currency from the casino cage to run the check cashing operation. As another illustration, a casino may enter into a contractual agreement with a commercial currency dealer or exchanger to have that business acquire excess foreign currency and foreign coins that a casino has accumulated from exchanges with its customers. In return, a casino generally receives a cashier's check or a business check from the dealer for the currency exchanged minus a commission for the service. At present, both types of transactions qualify as "transactions in currency" such that, if the transactions meet the \$10,000 threshold set forth in the rule, a casino would be required to file one or more Currency Transaction Reports. We believe these business transactions should not be subject to the reporting requirements of 31 CFR 103.22(b)(2). Further, requiring a casino to file Currency Transaction Reports with respect to these transactions would be duplicative of those filed by currency dealers or exchangers, or check cashers, which are themselves subject to the requirements of the Bank Secrecy Act and to the requirement to file Currency Transaction Reports.<sup>14</sup> Duplicate filings with respect to the same transaction do

not provide a high degree of usefulness in criminal, tax or regulatory matters.

## III. Section-by-Section Analysis

### A. Jackpots From Slot Machines and Video Lottery Terminals— 103.22(b)(2)(ii) and 103.22(b)(2)(iii)

For the reasons described above, we are proposing to amend 31 CFR 103.22(b)(2)(ii)(E) by deleting the reference to slot jackpots from the list of reportable cash out transactions in currency. We also are proposing to add a new paragraph, 31 CFR 103.22(b)(2)(iii)(B), that would explicitly exclude such transactions as "payments on bets" for purposes of casino currency transaction reporting.

### B. Currency Dealer or Exchanger, or Check Casher Transactions— 103.22(b)(2)(iii)(A)

We are proposing to amend 31 CFR 103.22(b)(2) to add a new paragraph (iii)(A) that would exclude from the list of reportable cash in or cash out transactions in currency, certain transactions in currency conducted between a casino and currency dealers or exchangers, or check cashers, as defined in 31 CFR 103.11(uu)(1) and (2), respectively. As described above, currently, our regulations require a casino to file a Currency Transaction Report for cash in or cash out transactions in excess of \$10,000 conducted between casinos and currency dealers or exchangers and casinos and check cashers.<sup>15</sup> Also, as discussed above, this proposed amendment would eliminate duplicative filings.<sup>16</sup> We believe that as long as these currency transactions are conducted pursuant to a contractual or other arrangement with a casino covering those services in §§ 103.22(b)(2)(i)(H), 103.22(b)(2)(ii)(G), and 103.22(b)(2)(ii)(H), these currency transactions should not be subject to currency transaction reporting requirements applicable to casinos.

### C. Other Amendments

A summary of other technical amendments follows.

<sup>9</sup> Since July 1997, there has been an "Exceptions" provision under the "General Instructions" section of the Currency Transaction Report by Casinos form for a casino's transactions with currency dealers or exchangers, or check cashers. This exception provision from such casino reporting on FinCEN Form 103 (Rev. November 2003) would be revised to reflect the language of this amendment once a final rule is issued.

<sup>16</sup> This proposed amendment does not relieve a currency dealer or exchanger, or a check casher, from complying with the reporting of currency transactions in excess of \$10,000 conducted with a casino. See 31 CFR 103.22(b)(1).

<sup>9</sup> See 31 CFR 103.22(b)(2).

<sup>10</sup> See 31 CFR 103.22(c)(3).

<sup>11</sup> See 31 CFR 103.22(b)(2)(i) and (ii).

<sup>12</sup> See 31 CFR 103.27(d) and 103.28.

<sup>13</sup> See 31 CFR 103.27(a)(1) and (3).

<sup>14</sup> See 31 CFR 103.22(b)(1).

1. *Gaming instruments*—103.22(b)(2)(i)(A). We are proposing to amend 31 CFR 103.22(b)(2)(i)(A) by deleting the term “plaques” and substituting the phrase “other gaming instruments” for cash in transactions. The term “plaque” only applies to a high value chip. In contrast, a gaming instrument would include any casino-issued financial product that is used to facilitate a gaming transaction (e.g., high dollar denomination plaques used in playing baccarat games, and stored value cards containing funds or monetary value), including those associated with a particular customer.

2. *Money plays as bets of currency*—103.22(b)(2)(i)(E). We are proposing to amend 31 CFR 103.22(b)(2)(i)(E) to include money plays as “bets of currency” and thus reportable cash in transactions for purposes of our currency reporting requirements for casinos. Under 31 CFR 103.11(ii)(2), a “transaction in currency” includes any transaction involving the physical transfer of currency to a casino. A “bet of currency” is listed as an example of a transaction in currency involving cash in.<sup>17</sup> Therefore, a wager of currency on table game play represents a “bet of currency”—and a transaction in currency involving cash in—regardless of whether the customer wins or loses the wager.

3. *Bills inserted into electronic gaming devices*—103.22(b)(2)(i)(I). We are proposing to add a new paragraph, 31 CFR 103.22(b)(2)(i)(I), to include “bills inserted into electronic gaming devices” as a type of cash in transaction. The insertion of currency into a slot machine or a video lottery terminal (which are electronic gaming devices), regardless of whether a customer wagers the currency, involves the physical transfer of currency to a casino.<sup>18</sup>

In the absence of a wager, the transaction is analogous to the purchase of a token or chip with currency, as the customer exchanges currency for a: (i) Token to wager at a slot machine or video lottery terminal, or (ii) chip to wager at a table game. The purchase of a token (or chip) with currency is a transaction in currency involving cash in.<sup>19</sup> Likewise, the insertion of currency into a slot machine or video lottery terminal is a transaction in currency, even in the absence of a wager.<sup>20</sup>

4. *Tickets and other gaming instruments*—103.22(b)(2)(ii)(A). We are proposing to amend 31 CFR 103.22(b)(2)(ii)(A) to delete the phrase

“and plaques” and insert the phrase “tickets, and other gaming instruments” for cash out transactions. The proposed amendment replaces the term “plaque,” which only applies to a high value chip, with terminology that is more current and commonly used with respect to the latest gaming technology. A ticket is a document issued by a slot machine, video lottery terminal, or a pari-mutuel clerk to a customer as a record of the wagering transaction and/or substitute for currency.<sup>21</sup> A customer can use a ticket at a machine or terminal that accepts tickets or cash a ticket out at a cage, slot booth, a redemption kiosk, or a pari-mutuel window at the gaming establishment. As described previously, a gaming instrument would encompass any casino-issued financial product that is used to facilitate a gaming transaction (e.g., high dollar denomination plaques used in playing baccarat games, and stored value cards containing funds or monetary value).

5. *Payments based on receipt of funds through wire transfers*—

103.22(b)(2)(ii)(F). We are proposing to amend 31 CFR 103.22(b)(2)(ii)(F) pertaining to payments in currency by a casino to a customer based on receipt of funds through a wire transfer to delete the reference to credit to a customer. Some casinos have been confused by the reference to credit for this type of cash out transaction. Since this reference is unnecessary, it will be removed.

6. *Travel and complimentary expenses and gaming incentives*—103.22(b)(2)(ii)(I). We are proposing to amend 31 CFR 103.22(b)(2)(ii)(I) to clarify the types of reportable cash out transactions under this provision. Specifically, we are proposing to replace the word “entertainment” with the term “complimentary”<sup>22</sup> for expenses, and to add the phrase “gaming incentives” which would mean that travel and complimentary expenses and gaming incentives would be reportable as currency transactions.

7. *Tournaments, contests or promotions*—103.22(b)(2)(ii)(J). We are proposing to add a new paragraph, 31 CFR 103.22(b)(2)(ii)(J), to add payments for tournament, contest, or other

<sup>21</sup> Tickets are voucher slips printed with the name and the address of the gaming establishment, the stated monetary value of the ticket, date and time, machine number (e.g., asset or location), an 18-digit ticket number, and a unique bar code. Tickets are a casino bearer “IOU” instrument. Slot machines or video lottery terminals that print tickets are commonly known as “ticket in/ticket out” or “TITO” machines.

<sup>22</sup> Although, complimentary (also referred to as “comps”) items typically are goods or services that a casino gives to a customer, at reduced or no cost, based on significant play, they can also be in the form of currency.

promotions as types of cash out transactions.

#### IV. Submission of Comments

We invite comments on all aspects of this notice of proposed rulemaking, and specifically invite comments on what impact a casino exemption from currency transaction-reporting for jackpots from slot machines or video lottery terminals reported would have for law enforcement. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

#### V. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

#### VI. Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities since the regulatory reporting threshold excludes casinos whose gross annual gaming revenues do not exceed \$1 million. For larger casinos, the requirements of the proposed amendments to 31 CFR 103.22(b)(2)(i)(E) and 103.22(b)(2)(i)(I) may be satisfied, in large part, by using existing business practices and records. For example, many casinos already obtain a great deal of data about their customers' transactions from information routinely collected from casino-established player rating and slot club accounts. This existing data can assist casinos in making decisions about whether a transaction is reportable as a currency transaction.

#### VII. Unfunded Mandates Reform Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in any expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. We have determined that we are not required to prepare a written statement

<sup>17</sup> See 31 CFR 103.22(b)(2)(i)(E).

<sup>18</sup> See 31 CFR 103.11(ii)(2).

<sup>19</sup> See 31 CFR 103.22(b)(2)(i)(A).

<sup>20</sup> See 31 CFR 103.22(b)(2)(i)(E).

under section 202, and have concluded that, on balance, this proposed rule provides the most cost-effective and least burdensome alternative to achieve the stated objectives associated with the same.

#### List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Gambling, Indian gaming, Investigations, Law enforcement, Reporting and recordkeeping requirements.

#### Authority and Issuance

For the reasons set forth in the preamble, part 103 of Title 31 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

Section 103.22 is amended by:

A. Revising paragraphs (b)(2)(i)(A), (E), (G), and (H), and adding a new paragraph (b)(2)(i)(I);

B. Revising paragraphs (b)(2)(ii)(A), (E), (F), (H), and (I), and adding a new paragraph (b)(2)(ii)(J); and

C. Adding a new paragraph (b)(2)(iii).

The revisions and additions read as follows:

#### § 103.22 Reports of transactions in currency.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) Purchases of chips, tokens, and other gaming instruments;

\* \* \* \* \*

(E) Bets of currency, including money plays;

\* \* \* \* \*

(G) Purchases of a casino's check;

(H) Exchanges of currency for currency, including foreign currency; and

(I) Bills inserted into electronic gaming devices.

(ii) \* \* \*

(A) Redemptions of chips, tokens, tickets, and other gaming instruments;

\* \* \* \* \*

(E) Payments on bets;

(F) Payments by a casino to a customer based on receipt of funds through wire transfers;

\* \* \* \* \*

(H) Exchanges of currency for currency, including foreign currency;

(I) Travel and complementary expenses and gaming incentives; and  
(J) Payment for tournament, contests and other promotions.

(iii) Other provisions of this part notwithstanding, a transaction in currency or currency transaction for purposes of §§ 102.22(b)(2) and (c)(3) shall not include:

(A) Transactions between a casino and a currency dealer or exchanger, or between a casino and a check casher, as those terms are defined in § 103.11(uu), so long as such transactions are conducted pursuant to a contractual or other arrangement with a casino covering the financial services in §§ 103.22(b)(2)(i)(H), 103.22(b)(2)(ii)(G), and 103.22(b)(2)(ii)(H); and

(B) Jackpots from slot machines or video lottery terminals.

\* \* \* \* \*

Dated: March 14, 2006.

**Robert W. Werner,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. E6–4072 Filed 3–20–06; 8:45 am]

BILLING CODE 4820–03–P

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 100

[CGD13–06–007]

RIN 1625–AA08

#### Special Local Regulation: Annual Dragon Boat Races, Portland, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent special local regulation for the Dragon Boat Races held annually the second Saturday and Sunday of June on the waters of the Willamette River, Portland, Oregon. These special local regulations limit the movement of non-participating vessels in the regulated race area. This proposed rule is needed to provide for the safety of life on navigable waters during the event.

**DATES:** Comments and related material must reach the Coast Guard on or before April 20, 2006.

**ADDRESSES:** You may mail comments and related material to U.S. Coast Guard

Sector Portland, 6767 N. Basin Ave, Portland, Oregon 97217. Waterways Management maintains the public docket [CGD13–06–007] for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Sector Portland between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. **FOR FURTHER INFORMATION CONTACT:** MST1 Charity Keuter, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217–3992, phone (503) 240–9311.

#### SUPPLEMENTARY INFORMATION:

#### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–06–007), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Sector Portland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

This event may result in a number of recreational vessels congregating near the boat races. The regulated area is needed to protect event participants. Dragon Boats have very little freeboard and are susceptible to swamping. Accordingly, regulatory action is needed in order to provide for the safety of spectators and participants during the event.

#### Discussion of Proposed Rule

This rule would control vessel movements from entering the race event



area. This regulated area will assist in minimizing the inherent danger associated with these races. In the event that one of the dragon boats should capsized due to excess speed from river traffic, emergency assistance must have immediate access to the craft. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Due to these concerns, public safety requires these regulations to provide for the safety of life on the navigable waters.

The Coast Guard proposes to create this regulation by revising § 100.1302, rather than create a new section in the *Code of Federal Regulations* because the annual Clarkston, Washington, Limited Hydroplane Races that currently exist in that section, is no longer an event which occurs with any regularity. Those races have not been conducted for at least five years and the sponsor has stated that they will no longer occur. The Dragon Boat Races in Portland, Oregon, however, is an event that takes place annually and would benefit from a permanent rule.

#### Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation of the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation will encompass a small portion of the river for eighteen hours over two days.

#### Small Entities

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of

the Willamette River from 8 a.m. (PDT) to 5 p.m. (PDT) on June 10th and 11th, 2006 and hereafter annually on the second Saturday and Sunday in June.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This regulated area will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 18 hours and vessel traffic will be allowed to safely pass through the area with a "no wake" zone enforced.

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

#### Assistance for Small Entities

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

#### Collection of Information

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

#### Federalism

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

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

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

#### Civil Justice Reform

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

#### Protection of Children

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

#### Indian Tribal Governments

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

#### Energy Effects

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

### Technical Standards

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

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

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2-1, paragraph (34)(h), of the Instruction, from further environmental documentation. Under figure 2-1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

### List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 100.1302 to read as follows:

### § 100.1302 Special Local Regulation, Annual Dragon Boat Races, Portland, Oregon.

(a) *Regulated Area.* All waters of the Willamette River shore to shore, bordered on the north by the Hawthorne Bridge, and on the south by the Marquam Bridge.

(b) *Enforcement Period.* The event is a two day event which will be enforced annually from 8 a.m. (PDT) to 5 p.m. (PDT) on the second Saturday and Sunday of June. In 2006, this regulation will be enforced from 8 a.m. until 5 p.m. on Saturday, June 10th and Sunday June 11th.

(c) *Special Local Regulation.* (1) Non participant vessels are prohibited from entering the race area unless authorized by the Coast Guard Patrol Commander.

(2) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must be moored to a waterfront facility in a way that will not interfere with the progress of the event or have permission to enter the area from the Mor Coast Guard patrol commander. Spectators must proceed at a safe speed as not to cause a wake. This requirement will be strictly enforced to preserve the safety of both life and property.

(3) A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Coast Guard Patrol Commander may be assisted by other Federal, State and local law enforcement agencies in enforcing this regulation.

Dated: February 28, 2006.

**R.R. Houck,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. E6-4017 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-15-P

### DEPARTMENT OF LABOR

### Office of Federal Contract Compliance Programs

### 41 CFR Part 60-2

RIN 1215-AB53

### Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors; Equal Opportunity Survey; Correction

**AGENCY:** Office of Federal Contract Compliance Programs, Labor.

**ACTION:** Notice of proposed rulemaking; correction; and extension of comment period.

**SUMMARY:** On January 20, 2006, the Office of Federal Contract Compliance Programs (OFCCP) published in the *Federal Register* a notice of proposed rulemaking (NPRM). The NPRM (71 FR 3373) proposes to amend the regulations implementing Executive Order 11246 by removing the current requirement for nonconstruction federal contractors to file the Equal Opportunity Survey ("EO Survey NPRM"). This document corrects the e-mail address for submitting comments on the EO Survey NPRM. Further, to ensure that all public comments are received, this document extends the comment period for the proposed rule for seven (7) days. Respondents who sent comments to the earlier e-mail address are encouraged to contact the person named below to find out if their comments were received and re-submit them to the e-mail address below if necessary.

**DATES:** The comment period for the EO Survey NPRM published January 20, 2006 (71 FR 3373) is extended to March 28, 2006.

**FOR FURTHER INFORMATION CONTACT:** James C. Pierce, Acting 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:

### Correction

Due to an upgrade in the computer system, the original e-mail address published in the proposed rule is not currently functioning and is not receiving e-mail comments. Accordingly, in FR Doc. 06-646 appearing on page 3373, in the *Federal Register* of Friday, January 20, 2006, the e-mail address shown, "ofccp-mail@dol.esa.gov," is corrected to read "OFCCP-Public@dol.gov."



Signed at Washington, DC, this 16th day of March, 2006.

**Victoria A. Lipnic,**

*Assistant Secretary for Employment Standards.*

**Charles E. James, Sr.,**

*Deputy Assistant Secretary for Federal Contract Compliance.*

[FR Doc. 06-2770 Filed 3-20-06; 8:45 am]

BILLING CODE 4510-CM-P

## DEPARTMENT OF LABOR

### Office of Federal Contract Compliance Programs

#### 41 CFR Part 60-300

RIN 1215-AB46

#### **Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Disabled Veterans, Recently Separated Veterans, Other Protected Veterans, and Armed Forces Service Medal Veterans; Correction**

**AGENCY:** Office of Federal Contract Compliance Programs, Labor.

**ACTION:** Notice of proposed rulemaking; correction; and extension of comment period.

**SUMMARY:** On January 20, 2006, the Office of Federal Contract Compliance Programs (OFCCP) published in the *Federal Register* a notice of proposed rulemaking (NPRM). The NPRM (71 FR 3351) proposes new regulations to implement amendments to the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA NPRM"). This document corrects the e-mail address for submitting comments on the VEVRAA NPRM. Further, to ensure that all public comments are received, this document extends the comment period for the proposed rule for seven (7) days. Respondents who sent comments to the earlier e-mail address are encouraged to contact the person named below to find out if their comments were received and re-submit them to the e-mail address below if necessary:

**DATES:** The comment period for the VEVRAA NPRM published January 20, 2006 (71 FR 3351) is extended to March 28, 2006.

**FOR FURTHER INFORMATION CONTACT:** James C. Pierce, Acting 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:

##### Correction

Due to an upgrade in the computer system, the original e-mail address published in the proposed rules is not currently functioning and is not receiving e-mail comments. Accordingly, in FR Doc. 06-440 appearing on page 3351, in the *Federal Register* of Friday, January 20, 2006, the e-mail address shown, "ofccp-mail@dol.esa.gov," is corrected to read "OFCCP-Public@dol.gov."

Signed at Washington, DC, this 16th day of March, 2006.

**Victoria A. Lipnic,**

*Assistant Secretary for Employment Standards.*

**Charles E. James, Sr.,**

*Deputy Assistant Secretary for Federal Contract Compliance.*

[FR Doc. 06-2769 Filed 3-20-06; 8:45 am]

BILLING CODE 4510-CM-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### 45 CFR Part 60

RIN 0906-AA43

#### **National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Reporting on Adverse and Negative Actions**

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would revise existing regulations under sections 401-432 of the Health Care Quality Improvement Act of 1986, governing the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, to incorporate statutory requirements under section 1921 of the Social Security Act, as amended by section 5(b) of the Medicare and Medicaid Patient and Program Protection Act of 1987, and as amended by the Omnibus Budget Reconciliation Act of 1990.

The Medicare and Medicaid Patient and Program Protection Act of 1987, along with certain additional provisions in the Omnibus Budget Reconciliation Act of 1990, was designed to protect program beneficiaries from unfit health

care practitioners, and otherwise improve the anti-fraud provisions of the Medicare and State health care programs. Section 1921, the statutory authority upon which this regulatory action is based, requires each State to adopt a system of reporting to the Secretary of Health and Human Services (the Secretary) certain adverse licensure actions taken against health care practitioners and health care entities licensed or otherwise authorized by a State (or a political subdivision thereof) to provide health care services. It also requires each State to report any negative actions or findings that a State licensing authority, peer review organization, or private accreditation entity has concluded against a health care practitioner or health care entity.

**DATES:** Comments on this proposed rule are invited. To be considered, comments must be received by May 22, 2006.

**ADDRESSES:** Written comments should be addressed to the Associate Administrator, Bureau of Health Professions (BHPr), Health Resources and Services Administration, Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Additionally, comments may be sent via e-mail to [policyanalysis@hrsa.gov](mailto:policyanalysis@hrsa.gov). All comments received will be available for public inspection and copying at the Practitioner Data Banks Branch, Office of Workforce Evaluation and Quality Assurance, BHPr, Parklawn Building, 5600 Fishers Lane, Room 8-103, Rockville, MD 20857, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m. Comments also may be sent through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark S. Pincus, Chief, Practitioner Data Banks Branch, Office of Workforce Evaluation and Quality Assurance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 8-103, Rockville, MD 20857; telephone number: (301) 443-2300.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

*The Health Care Quality Improvement Act of 1986*

The National Practitioner Data Bank (NPDB) was established by the Health Care Quality Improvement Act (HCQIA) of 1986, as amended (42 U.S.C. 11101 *et seq.*). The NPDB contains reports of adverse licensure actions against physicians and dentists (including revocations, suspensions, reprimands,

censures, probations, and surrenders for quality of care purposes only); adverse clinical privilege actions against physicians and dentists; adverse professional society membership actions against physicians and dentists; and medical malpractice payments made for the benefit of any health care practitioner. Groups that have access to this data system include hospitals, other health care entities that conduct peer review and provide health care services, State Medical or Dental Boards and other health care practitioner State boards. Individual practitioners can self-query. The reporting of information under the NPDB is limited to medical malpractice payers, State Medical and Dental Boards, professional societies with formal peer review, and hospitals and other health care entities (such as health maintenance organizations).

The current regulations governing the NPDB which are not expanded or modified by section 1921 are not subject to review or comment under this Notice of Proposed Rulemaking, e.g., current reporting requirements for medical malpractice payers, current eligible entities which may query the NPDB.

#### *Section 1921 of the Social Security Act*

Section 1921 of the Social Security Act (herein referred to as section 1921), as amended by section 5(b) of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100-93, and as amended by the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, expands the scope of the NPDB. Section 1921 requires each State to adopt a system of reporting to the Secretary certain adverse licensure actions taken against health care practitioners and health care entities by any authority of the State responsible for the licensing of such practitioners or entities. It also requires each State to report any negative action or finding that a State licensing authority, a peer review organization (except as noted below), or a private accreditation entity has concluded against a health care practitioner or health care entity.

Groups that have access to this information include all organizations eligible to query the NPDB under the HCQIA (hospitals, other health care entities that conduct peer review and provide health care services, State Medical or Dental Boards and other health care practitioner State boards), other State licensing authorities, agencies administering Federal health care programs, including private entities administering such programs under contract, State agencies administering or supervising the administration of State

health care programs, State Medicaid fraud control units, and certain law enforcement agencies, and utilization and quality control Quality Improvement Organizations (QIOs) as defined in Part B of title XI of the Social Security Act and appropriate entities with contracts under section 1154-3(a)(4)(C) of the Social Security Act. Individual health care practitioners and entities can self-query. The reporting of information under section 1921 is limited to State licensing and certification authorities, peer review organizations, and private accreditation entities.

The Department has determined that the statutory language establishing reporting requirements at section 1921(a)(1) is unclear with respect to whether utilization and quality control peer review organizations (PROs) and their successor entities Quality Improvement Organizations (QIOs) are required to report to the NPDB.

Section 1921(a)(1) refers to reporting of proceedings by "any peer review organization". Yet, section 1921(b)(4), when discussing who may have access to information, refers to "utilization and quality control peer review organizations described in Part B of title XI \* \* \*". This indicates that the earlier reference to "any peer review organization" does not refer to "utilization and quality control peer review organizations described in Part B of title XI \* \* \*".

We are proposing therefore that the reporting requirements at section 1921(a) not apply to QIOs. We are requesting specific comment on this choice. We based this decision on several factors. First, the critical mission of the QIO program is its focus on maintaining collaborative relationships with providers and practitioners to improve the quality of health care services delivered to Medicare beneficiaries. The reporting of QIO sanction recommendations to the NPDB will significantly interfere with the progress that has been made towards this goal and will substantially reduce the ability of QIOs to carry out their statutory and contractual obligations.

Second, we believe that the established QIO process allows that these actions will ultimately be reported to the NPDB. A QIO is required in regulation to disclose information that displays practice or performance patterns of a practitioner or institution to Federal and State agencies that are responsible for the investigation of fraud and abuse of the Medicare or Medicaid programs or that are responsible for licensing and certification of practitioners and entities. In addition,

the QIO must disclose sanction reports directly to the Office of the Inspector General and, if requested, CMS, and provide notice to the State medical board or other appropriate licensing boards for other practitioners when it submits a report and recommendations to the OIG. Finally, the QIO must disclose, upon request, and may disclose without a request, sanction reports to State and Federal agencies responsible for the identification, investigation, or prosecution of fraud and abuse.

We are also concerned that QIO reporting may create misconceptions about the meaning of QIO sanction recommendations if reported to the NPDB. This is based on the fact that a sanction recommendation made by the QIO is only a recommendation, and may or may not trigger further action by the OIG or a State licensing board.

Furthermore, when the OIG does not impose the recommended sanction, the QIO continues to monitor the performance of the affected party. If a QIO sanction recommendation results in OIG imposition of an exclusion from Medicare/Medicaid, that information is reported to the NPDB. If a QIO sanction recommendation results in a licensure action by a State licensing board, that information is reported to the NPDB as well.

Section 1921 requires "any peer review organization" to report to the NPDB. As proposed, the QIOs and other organizations used by the CMS to support the QIO program are not required to report to the NPDB. However, as proposed, all other peer review organizations are still required to do so. We are also aware of other types of peer review organizations or peer review organization-like entities (public and private) which are not linked to the QIO program. It is unclear what negative actions these entities take, what negative findings they make, or to whom recommendations are presented. Thus, we request that reviewers, particularly peer review organizations which are not QIOs or supporting the QIO program, carefully review this portion of the proposed regulation. Specifically, reviewers are requested to provide comments regarding, but not limited to, the proposed definition of a peer review organization, potential reportable events, relationships with other entities, public or private status, and types of practitioners and entities reviewed.

Section 1921 requires that private accreditation organizations report actions to the NPDB. We request that the public carefully review this portion of the proposed rule and provide

comments on any limitation on reporting that may apply to these organizations.

#### Section 1128E of the Social Security Act

The Secretary recognizes that the reporting requirements of both section 422 of the HCQIA and section 1921 overlap with the requirements under section 1128E of the Social Security Act (herein referred to as section 1128E), as added by section 221(a) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. Section 1128E directs the Secretary to establish and maintain a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers or practitioners. This data bank is known as the Healthcare Integrity and Protection Data Bank (HIPDB). The HIPDB began collecting reports in November 1999.

#### Distinctions Between the NPDB and the HIPDB

Although section 422 of the HCQIA and sections 1921 and 1128E have overlapping components, we note that the statutes have unique characteristics, including differences in the types of reportable adverse actions and individuals or entities with access to adverse action information. For example, the HCQIA allows for the reporting of licensure actions based on professional conduct and competence only against physicians and dentists, whereas sections 1921 and 1128E allow for reporting of all licensure actions against all health care practitioners. Hospitals have access under the HCQIA and section 1921, but not under section 1128E. The chart below illustrates the differences among the HCQIA, section 1921, and section 1128E.

Section 1921 requires that reporting of licensure actions taken against physicians and dentists to the NPDB be expanded, which will match the reporting requirements of HIPDB. Currently, the HCQIA limits reporting by medical and dental boards only to those adverse actions related to professional competence or professional conduct. The change will make the reporting of adverse actions by all State licensure and certification authorities identical for both the NPDB and HIPDB. There will be no increased reporting burden for the medical and dental boards. No current NPDB reporting requirements will be changed for hospitals, other health care entities, professional societies, or medical malpractice payers.

HCQIA	Section 1128E
<p><b>Who Reports?</b></p> <ul style="list-style-type: none"> <li>• Medical malpractice payers</li> <li>• Boards of Medical/Dental Examiners</li> <li>• Hospitals</li> <li>• Other health care entities</li> <li>• Professional societies with formal peer review</li> </ul> <p><b>What Information Is Available?</b></p> <ul style="list-style-type: none"> <li>• Medical malpractice payments (all health care practitioners)</li> <li>• Adverse licensure actions (physicians/dentist)</li> <li>—Revocation, suspension, reprimand, probation, surrender, censure</li> <li>• Adverse clinical privilege actions (primarily physicians/dentists)</li> <li>• Adverse professional society membership (primarily physicians/dentists)</li> </ul> <p><b>Who Can Query?</b></p> <ul style="list-style-type: none"> <li>• Hospitals</li> <li>• Other health care entities with formal peer review</li> <li>• Professional societies with formal peer review</li> <li>• Boards of Medical/Dental Examiners</li> <li>• Other health care practitioners State licensing boards</li> <li>• Plaintiff's attorney/pro se plaintiffs (plaintiffs representing themselves, limited circumstances)</li> <li>• Health care practitioners (self-query)</li> <li>• Researchers (statistical data only)</li> </ul>	<ul style="list-style-type: none"> <li>• Researchers (statistical data only)</li> </ul>
Section 1921	HIPDB
<p><b>Who Reports?</b></p> <ul style="list-style-type: none"> <li>• State health care practitioner licensing boards</li> <li>• State health care entity licensing boards</li> <li>• Peer review organizations</li> <li>• Private accreditation organizations</li> </ul> <p><b>What Information Is Available?</b></p> <ul style="list-style-type: none"> <li>• Any adverse licensure actions (practitioners/entities)</li> <li>—Revocation, reprimand, censure, suspension (including length), probation</li> <li>—Any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction</li> <li>—Any other loss of the license</li> <li>• Any negative action or finding by a State licensing authority, peer review organization, or private accreditation organization concluded against a health care practitioner or entity</li> </ul> <p><b>Who Can Query?</b></p> <ul style="list-style-type: none"> <li>• Hospitals and other health care entities (Title IV)</li> <li>• Professional societies with formal peer review</li> <li>• State health care practitioner/entity licensing boards</li> <li>• Agencies administering Federal health care programs, or their contractors</li> <li>• State agencies administering State health care programs</li> <li>• Quality Improvement Organizations</li> <li>• State Medicaid Fraud Control Units</li> <li>• U.S. Comptroller General</li> <li>• U.S. Attorney General and other law enforcement</li> <li>• Health care practitioners/entities (self-query)</li> </ul>	<p><b>Who Reports?</b></p> <ul style="list-style-type: none"> <li>• Federal and State Government Agencies</li> <li>• Health Plans</li> </ul> <p><b>What Information Is Available?</b></p> <ul style="list-style-type: none"> <li>• Licensing and certification actions (practitioners, providers, and suppliers) revocation, reprimand, suspension (including length), censure, probation voluntary surrender, any other negative action or finding by a Federal or State licensing or certification agency that is publicly available information</li> <li>• Health care-related civil judgments (practitioners, providers, and suppliers)</li> <li>• Health care-related criminal convictions (practitioners, providers and suppliers)</li> <li>• Exclusions from Federal or State health care programs (practitioners, providers, and suppliers)</li> <li>• Other adjudicated actions or decisions (practitioners, providers, and suppliers)</li> </ul> <p><b>Who Can Query?</b></p> <ul style="list-style-type: none"> <li>• Federal and State Government Agencies</li> <li>• Health Plans</li> <li>• Health care practitioners/providers/suppliers (self-query)</li> <li>• Researchers (statistical data only)</li> </ul>
Expanded NPDB	
<p><b>Who Reports?</b></p> <ul style="list-style-type: none"> <li>• Medical malpractice payers</li> <li>• State health care practitioner licensing and certification authorities (including medical and dental boards)</li> <li>• Hospitals</li> <li>• Other health care entities with formal peer review (HMO's, group practices, managed care organizations)</li> </ul>	

- Professional societies with formal peer review
- State entity licensing and certification authorities
- Peer review organizations
- Private accreditation organizations

#### What Information Is Available?

- Medical malpractice payments (all health care practitioners)
- Any adverse licensure actions (all practitioners or entities)
  - Revocation, reprimand, censure, suspension, probation
  - Any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction
  - Any other loss of license
- Adverse clinical privileging actions
- Adverse professional society membership actions
- Any negative action or finding by a State licensing or certification authority
- Peer review organization negative actions or finding against a health care practitioner or entity
- Private accreditation organization negative actions or findings against a health care practitioner or entity

#### Who Can Query?

- Hospitals
- Other health care entities, with formal peer review
- Professional societies with formal peer review
- State health care practitioner licensing and certification authorities (including medical and dental boards)
- State entity licensing and certification authorities\*
- Agencies or contractors administering Federal health care programs\*
- State agencies administering State health care programs\*
- State Medicaid Fraud Units\*
- U.S. Comptroller General\*
- U.S. Attorney General and other law enforcement\*
- Health care practitioners (self query)
- Plaintiff's attorney/*pro se* plaintiffs (under limited circumstances)\*\*
- Quality Improvement Organizations\*
- Researchers (statistical data only)

\* Eligible to receive only those reports authorized by section 1921.

\*\* Eligible to receive only those reports authorized by HCQIA.

#### Maximum Coordination Between the NPDB and HIPDB

Section 1921 requires the Secretary to provide for the maximum appropriate coordination in the implementation of its reporting requirements with those of section 422 of the HCQIA. The Secretary also is proposing to implement this regulation in a manner to avoid the need for an entity which must report information to both the NPDB and the HIPDB to file two reports. We have made significant efforts to develop these proposed regulations in a manner that minimizes the burden on reporters. Therefore, reporters responsible for

reporting the final adverse actions to both the NPDB and HIPDB will be required only to submit one report per action, provided that reporting is made through the Department's consolidated reporting mechanism that will sort the appropriate actions into the HIPDB, NPDB or both. The required adjustments to the reporting mechanism are made easier because both data banks are operated through the same contractor and managed by HRSA.

#### II. Provisions of the Proposed Rule

We note that certain sections of the existing NPDB regulations satisfy section 1921 requirements for the NPDB and, therefore, are applicable to the section 1921 component of the NPDB. Specifically, the following provisions would apply: (1) The provisions in § 60.6, pertaining to reporting errors, omissions, and revisions to an action previously reported to the NPDB; (2) the confidentiality provisions in the redesignated § 60.15 (formerly § 60.13); and (3) the provisions in the redesignated § 60.16 (formerly § 60.14), regarding procedures for disputing the accuracy of information in the NPDB. The proposed amendments are described below according to the sections of the regulations which they affect.

#### Section 60.3 Definitions

We propose to add the following new terms to this section:

*Affiliated or associated* refers to health care entities with which a subject of a report has a business or professional relationship. This includes, but is not limited to, organizations, associations, corporations, or partnerships. This also includes a professional corporation or other business entity composed of a single individual.

*Formal proceeding* means a formal or official proceeding held before a State licensing or certification authority, peer review organization, or private accreditation entity. We believe that by defining "formal proceeding" in this manner, State licensing authorities, peer review organizations, and private accreditation entities will have maximum flexibility in determining the process they will follow in conducting such proceedings.

*Negative action or finding* by a State licensing or credentialing authority, peer review organization, or private accreditation entity means:

(a) Receipt of less than full accreditation from a private accreditation entity that indicates a substantial risk to the safety of patient care or quality of health care services and includes, but is not limited to,

denial of accreditation or non-accreditation;

(b) Any recommendation by a peer review organization to sanction a practitioner; or

(c) Any negative action or finding that under the State's law is publicly available information, and is rendered by a licensing or certification authority, including, but not limited to, limitations on the scope of practice, liquidations, injunctions and forfeitures. This definition excludes administrative fines, or citations and corrective action plans, unless they are: (1) Connected to the delivery of health care services, and (2) taken in conjunction with other licensure or certification actions such as revocation, suspension, censure, reprimand, probation, or surrender.

*Organization name* means the subject's business or employer at the time the underlying acts occurred. If more than one business or employer is applicable, the one most closely related to the underlying acts should be reported as the "organization name" with the others being reported as the "affiliated or associated health care entities."

*Organization type* means a description of the nature of that business or employer.

*Peer review organization* means an organization with the primary purpose of evaluating the quality of patient care practices or services ordered or performed by health care practitioners measured against objective criteria which define acceptable and adequate practice through an evaluation by a sufficient number of health practitioners in such area to assure adequate peer review.

*Private accreditation entity* means an entity or organization, including but not limited to the Joint Commission on Accreditation of Healthcare Organizations, National Committee for Quality Assurance, Utilization Review Accreditation Commission, Commission on Accreditation of Rehabilitation Facilities, and the Community Health Accreditation Program, that:

(a) Evaluates and seeks to improve the quality of health care providers by a health care entity;

(b) Measures a health care entity's performance based on a set of standards and assigns a level of accreditation; and

(c) Conducts ongoing assessments and periodic reviews of the quality of health care provided by a health care entity.

We believe that this definition of "private accreditation entity" is necessary in order to include voluntary reviews by all outside accrediting organizations.



**Quality Improvement Organization** means an entity defined in part B of title XI of the Social Security Act and appropriate entities with contracts under section 1154(a)(4)(C) of the Social Security Act.

A utilization and quality control Quality Improvement Organization (as defined in part B of title XI of the Social Security Act) means an entity which—

“(1)(A) is composed of a substantial number of the licensed doctors of medicine and osteopathy engaged in the practice of medicine or surgery in the area and who are representative of the practicing physicians in the area, designated by the Secretary under section 1153, with respect to which the entity shall perform services under this part, or (B) has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area to assure that adequate peer review of the services provided by the various medical specialties and subspecialties can be assured; (2) is able, in the judgment of the Secretary, to perform review functions required under section 1154 in a manner consistent with the efficient and effective administration of this part and to perform reviews of the pattern of quality of care in an area of medical practice where actual performance is measured against objective criteria which define acceptable and adequate practice; and (3) has at least one individual who is a representative of consumers on it governing body.”

**Voluntary surrender** means a surrender made after a notification of investigation or a formal official request by a State licensing authority for a health care practitioner or entity to surrender a license. The definition also includes those instances where a health care practitioner or entity voluntarily surrenders a license in exchange for a decision by the licensing authority to cease an investigation or similar proceeding, or in return for not conducting an investigation or proceeding, or in lieu of a disciplinary action.

Section 1921 specifically requires the reporting of a health care practitioner or entity who voluntarily surrenders a license. Based on extensive discussions with various State licensing authorities, we have been advised that the voluntary surrender and non-renewal of licensure are used by Federal and State health care programs as a means to exclude questionable health care practitioners and entities from participation. These voluntary surrenders and non-renewal actions, if not reported to the NPDB, would result in allowing health care practitioners or entities to move from State to State without detection. We also recognize that many voluntary surrenders are not a result of the types

of adverse actions that are intended for inclusion in the NPDB. Therefore, we are proposing that voluntary surrenders and licensure non-renewals due to nonpayment of licensure fees, changes to inactive status and retirements be excluded from reporting to the NPDB unless they are taken in combination with a revocation, suspension, reprimand, censure, or probation, in which case they would be reportable actions.

#### **Section 60.5 When Information Must Be Reported**

We are proposing to amend this section by:

1. Revising the introductory text of this section to include references to the newly added §§ 60.9 and 60.10 and redesignated § 60.11;

2. Revising paragraph (b), “*Licensure Actions (§ 60.8 and § 60.9)*,” to refer specifically to the State Board of Medical Examiners and to clarify the requirements made in new § 60.9;

3. Revising the reference to “§ 60.9” in the title and the third sentence of paragraph (d) to read “§ 60.11”; and

4. Adding a new paragraph, “*Negative Action or Finding (§ 60.10)*,” to provide a new category of actions which are to be reported pursuant to section 1921.

#### **Section 60.7 Reporting Medical Malpractice Payments**

In accordance with 42 CFR 1003.103(c), the Department’s Office of Inspector General has raised the civil money penalty for each failure to report a medical malpractice payment from up to \$10,000 to up to \$11,000. Therefore, we propose to revise paragraph (c) to reflect this factual change.

#### **Section 60.8 Reporting Licensure Actions Taken by Boards of Medical Examiners**

We propose to revise paragraph (b)(10) of this section, to make it consistent with the reporting requirements for States in the newly proposed § 60.9, to require the reporting of the description of an action taken by a Board, to include the duration of a nonpermanent action.

#### **Section 60.9 (New) Reporting Licensure Actions Taken by States**

We propose to redesignate § 60.9 as § 60.11, and add a new § 60.9 to implement the reporting requirements of section 1921: Under this provision, each State, through the system adopted for reporting such information in section 1921(a)(1), would report directly to the NPDB.

The following actions resulting from formal proceedings would be reported:

1. Any adverse action taken by the licensing authority of the State resulting from a formal proceeding, including revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation;

2. Any dismissal or closure of a formal proceeding due to the practitioner or entity surrendering the license or the practitioner leaving the State or jurisdiction;

3. Any other loss of the license of the practitioner or entity, whether by operation of law, voluntary surrender or non-renewal (excluding those due to nonpayment of licensure renewal fees, retirement, or change to inactive status), or otherwise; and

4. Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.

Reportable actions, by statute, must be based on the result of formal proceedings. Thus, events unrelated to such proceedings would be excluded.

#### **Section 60.10 (New) Reporting Negative Actions or Findings Taken by Peer Review Organizations or Private Accreditation Entities**

We are proposing to redesignate § 60.10 as § 60.12 and add a new § 60.10 to implement the reporting requirements of section 1921. Under this provision, each State is required to adopt a system of reporting to the NPDB any negative action or finding which a peer review organization or private accreditation entity has concluded against a health care practitioner or health care entity (both as defined in § 60.3).

#### **Section 60.13 Requesting Information From the National Practitioner Data Bank [Redesignated]**

Under the statute, section 1921 data would be released for the purpose of determining the fitness of an individual to provide health care services and to protect the health and safety of individuals receiving health care through programs administered by the requesting entities, as well as to protect the fiscal integrity of these programs. We propose to redesignate § 60.11 as § 60.13 and revise redesignated § 60.13, paragraph (a), entitled “*Who may request information and what information may be available.*,” to clarify to whom information in the HCQIA and section 1921 components of the NPDB would be made available as outlined below:

(1) Information reported under §§ 60.7, 60.8, and 60.11 is available only to:

(i) A hospital that requests information concerning a physician,

dentist or other health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital;

(ii) A physician, dentist, or other health care practitioner who requests information concerning himself or herself;

(iii) A State Medical Board of Examiners or other State authority that licenses physicians, dentists, or other health care practitioners;

(iv) A health care entity which has entered or may be entering into an employment or affiliation relationship with a physician, dentist, or other health care practitioner, or to which the physician, dentist, or other health care practitioner has applied for clinical privileges or appointment to the medical staff;

(v) An attorney, or individual representing himself or herself, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or other health care practitioner who is also named in the action or claim. This information will be disclosed only upon the submission of evidence that the hospital failed to request information from the NPDB, as required by § 60.12(a), and may be used solely with respect to litigation resulting from the action or claim against the hospital;

(vi) A health care entity with respect to professional review activity; and

(vii) A person or entity requesting statistical information, which does not permit the identification of any individual or entity. (For example, researchers can use statistical information to identify the total number of physicians with adverse licensure actions or medical malpractice payments in a specific State.)

(2) Information reported under §§ 60.9 and 60.10 is available only to the agencies, authorities, and officials listed below that request information on licensure disciplinary actions and any other negative actions or findings concerning an individual health care practitioner or entity. These agencies, authorities, and officials may obtain data for the purposes of determining the fitness of individuals to provide health care services, protecting the health and safety of individuals receiving health care through programs administered by the requesting agency, and protecting the fiscal integrity of these programs.

(a) Agencies administering Federal health care programs, including private entities administering such programs under contract;

(b) Authorities of States (or political subdivisions thereof) which are responsible for licensing health care practitioners and entities;

(c) State agencies administering or supervising the administration of State health care programs (as defined in 42 U.S.C. 1128(h));

(d) State Medicaid fraud control units (as defined in 42 U.S.C. 1903(q));

(e) Law enforcement officials and agencies such as:

(1) United States Attorney General;

(2) United States Chief Postal

Inspector;

(3) United States Inspectors General;

(4) United States Attorneys;

(5) United States Comptroller General;

(6) United States Drug Enforcement Administration;

(7) United States Nuclear Regulatory Commission;

(8) Federal Bureau of Investigation; and

(9) State law enforcement agencies, which include, but are not limited to, State Attorneys General.

(f) Utilization and quality control Quality Improvement Organizations (QIOs) described in part B of title XI and appropriate entities with contracts under section 1154(a)(4)(C) of the Social Security Act with respect to eligible organizations reviewed under the contracts;

(g) Hospitals and other health care entities (as defined in section 431 of HCQIA), with respect to physicians or other licensed health care practitioners that have entered (or may be entering) into employment or affiliation relationships with, or have applied for clinical privileges or appointments to the medical staff of, such hospitals or health care entities;

(h) A physician, dentist, or other health care practitioner who, and an entity which, requests information concerning himself, herself, or itself; and

(i) A person or entity requesting statistical information, in a form which does not permit the identification of any individual or entity. (For example, researchers can use statistical information to identify the total number of nurses with adverse licensure actions in a specific State. Similarly, researchers can use statistical information to identify the total number of health care entities denied accreditation.)

*Section 60.14 Fees Applicable to Requests for Information [Redesignated]*

We propose to redesignate § 60.12 as § 60.14 and to revise redesignated § 60.14. Section 1921 expands the scope of the NPDB by permitting additional entities to query regarding adverse

licensure actions and certain other negative actions or findings. As provided in the annual HHS Appropriations Acts, the Department's authority for charging user fees (in addition to the basic authority) under section 427(b)(4) of the HCQIA applies to all requests for information from the NPDB and is set in amounts sufficient to recover the full costs of operating the NPDB. Additionally, we are making technical changes to this section in order to comply with Office of Management and Budget (OMB) Circular A-25 governing the Federal policy regarding fees assessed for Government services.

*Section 60.15 Confidentiality of National Practitioner Data Bank Information [Redesignated]*

In accordance with 42 CFR 1003.103(c), the Department's Office of Inspector General has raised the civil money penalty for each violation of the NPDB's confidentiality provisions from up to \$10,000 to up to \$11,000. Therefore, we propose to revise paragraph (b) to reflect this change.

**III. Implementation Schedule**

The Omnibus Budget Reconciliation Act of 1990 required each State to have a system available, as of January 1, 1992, for the reporting of adverse action information on health care practitioners and health care entities. Therefore, we will announce through the issuance of notice(s) in the *Federal Register* a schedule when States are to begin reporting to, and when information will be available from, the NPDB. Reporters responsible for reporting final adverse actions to both the NPDB and the HIPDB will be asked to submit the report only once, provided reporting is made through the new consolidated reporting mechanism. The system is being configured to sort the appropriate actions into the NPDB, HIPDB, or both.

**IV. Regulatory Impact Statement**

*A. Regulatory Analysis*

The Office of Management and Budget (OMB) has reviewed this proposed rule in accordance with the provisions of Executive Order 12866 and the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601-612), and the Small Business Regulatory Enforcement Act of 1996, Public Law 104-121, which amended the RFA, and has determined that it does not meet the criteria for an economically significant regulatory action. In accordance with the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, we have determined that this rule does not



impose any mandates on State, local or tribal governments, or the private sector that will result in an annual expenditure of \$110 million or more, and that a full analysis under the Act is not required.

#### 1. Executive Order 12866

HRSA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of \$100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

HRSA (for example) concludes that this proposed rule is a significant regulatory action under the Executive Order since it raises novel legal and policy issues under section 3(f)(4). HRSA concludes, however, that this proposed rule does not meet the significance threshold of \$100 million effect on the economy in any one year under section 3(f)(1). HRSA requests comments regarding this determination, and invites commenters to submit any relevant data that will assist the agency in estimating the impact of this rulemaking.

Consistent with section 1921, these proposed regulations identify certain data elements for reporting that are mandatory and specify other discretionary data elements for reporting. Many of the mandatory and discretionary data elements set forth in this proposed rulemaking are already collected and maintained on a routine basis for a variety of purposes by reporting entities, and should not result in additional costs or in new and significant burdens. After consulting with State representatives, we now know that States routinely collect and maintain much of this information. Many licensing boards also routinely collect and report much of this information to their national organizations such as the National Council of State Boards of Nursing, Federation of Chiropractic Licensing Boards, American Association of State Social Work Boards, Federation of State

Medical Boards and the Association of State and Provincial Psychology Boards. State Survey and Certification agencies also are required to report adverse information to CMS regarding certain health care entities. This information is already reported to the HIPDB under section 1128E. Actions that are already reported under section 1128E will only need to be reported once; the system will automatically route these reports to both Data Banks. Private accreditation entities also collect and maintain information on the Internet regarding health care entities that have been denied accreditation or are not accredited. We are unaware of any professional review organizations, which would be required to report, which maintain information regarding recommendations on the Internet. Since we recognize that some classes of reporters may not collect or maintain the full array of data elements contemplated for inclusion into the NPDB (e.g., other name (s) used or a DEA registration number), we are classifying certain data elements to be reported if known. We intend not to impose new or added burdens on reporters and are proposing to give reporters the option of omitting certain discretionary data elements that they do not maintain or to which they do not have access. We invite you to comment on appropriateness of providing the option to omit reporting certain discretionary data elements and as classifying certain data elements "to be reported if known."

#### 2. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require HRSA to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. In accordance with the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of the rule on small entities and analyze regulatory options that could lessen the impact of the rule. For purposes of this rule, we have defined small entities as peer review organizations, private accreditation entities and local health care practitioner and entity licensing boards; individuals and States are not included in this definition of small entities. We have determined that both the burden and costs associated with reporting to the NPDB will be minimal. According to the leading accrediting bodies (e.g., Joint

Commission on Accreditation of Healthcare Organizations, National Committee for Quality Assurance, Utilization Review Accreditation Commission and Commission on Accreditation of Rehabilitation Facilities), accreditation entities take approximately 100 negative findings or actions per year against health care practitioners or health care entities. We have little information on the potential volume of reporting by peer review organizations. We estimate that the number of reports will be small, but this is an issue that we believe can be better addressed after the review of public comments, however, we have provided an estimate of 100 reports per year. On this basis, we have determined that the data collection process will not have a significant impact on local government agencies, peer review organizations, private accreditation entities, and that this rule will not have a major effect on the economy or on Federal or State expenditures.

We estimate that the costs to entities which must report to the NPDB under section 1921 and those that opt to query under section 1921 will not approach the threshold of a major rule. In the burden estimate table which follows, the total cost of the rule to users is less than \$300,000 annually. This cost estimate does not include the cost of queries which the entity may file. The major reason for the low cost is that the majority of categories of reporters and potential queriers are already interacting with the NPDB and/or the HIPDB. These users are already familiar with the operation and procedures of the Data Banks. For instance the State Boards are currently reporting to the NPDB and/or the HIPDB. Reports required under section 1921 will be the same as those currently being made and filing one report, in most cases, will meet the reporting obligation for NPDB, HIPDB and section 1921 of the enhanced NPDB. Hospitals and other health care entities are currently querying the NPDB regarding physicians and dentists, for these entities there would only be a small increase in administrative costs if they began to query on other hospital personnel such as nurses. Thus, the Secretary certifies that these proposed regulations will not have a significant impact on a substantial number of small entities.

#### 3. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires that agencies assess anticipated costs and benefits for any rulemaking that may result in an annual expenditure of \$110 million or

more by State, local, or tribal governments, or the private sector. In accordance with the UMRA, we have determined that the only costs (which we believe will not be significant) would include the ability to transmit the information electronically (e.g., Internet service) and additional staff hours needed to transmit information. We estimate an initial start-up cost of approximately \$500 per private accreditation entity. For this reason, we have determined that this rule does not impose any mandates on State, local or tribal government or the private sector that will result in an annual expenditure of \$110 million or more, and that a full analysis under the UMRA is not necessary.

#### 4. Executive Order 13132

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has federalism implications. In reviewing this proposed rule under the threshold criteria of Executive Order

13132, we have determined that this rule will not significantly affect the rights, roles, and responsibilities of State or local governments.

#### Paperwork Reduction Act of 1995

The NPDB regulations contain information collection requirements that have been approved by OMB under the Paperwork Reduction Act of 1995 and assigned control number 0915-0126.

This proposed rule also contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to OMB for its review of these information collection requirements.

**Collection of Information:** National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners.

**Description:** Information collected under §§ 60.9 and 60.10 of this proposed rule would be used by authorized parties, specified in the proposed rule, to determine the fitness of individuals to provide health care services, to protect the health and safety of individuals receiving health care

through programs administered by the requesting agencies, and to protect the fiscal integrity of these programs. Information collected under §§ 60.6 and 60.16 would be used to correct reports submitted to the NPDB. Information collected under § 60.13 would be used to disseminate reports to individuals and entities eligible to query the NPDB.

**Description of Respondents:** State government authorities responsible for licensing health care practitioners and health care entities, peer review organizations, and private accreditation entities reviewing the services of a health care practitioner or entity.

**Estimated Annual Reporting:** We estimate that the public reporting burden for the proposed rule is 11,444 hours. Each State is required to adopt a system of reporting to the Secretary certain adverse licensure actions taken against health care practitioners and health care entities, and any other negative actions or findings by a State licensing authority, peer review organization, or private accreditation entity.

The estimated annual reporting and querying burden is as follows:

Section No.	Number of respondents	Frequency of response	Number of responses	Hours per response	Burden hours	Hourly cost	Total cost <sup>a</sup>
Errors and Omissions 60.6 (a) <sup>1</sup>	23	1	23	15 min	6	\$25	\$150
Revisions 60.6 (b) <sup>1</sup> .....	7	1	7	30 min	4	25	100
Licensure Actions 60.9 <sup>2</sup> .....	0	0	0	0	0	0	0
Negative Actions: Private Accreditation Entities 60.10 <sup>3</sup> .....	4	25	100	45 min	75	25	1,875
Negative Actions: Peer review organizations 60.10 <sup>3</sup> .....	25	4	100	45 min	75	25	1,875
Queries: Agencies administering Federal health care programs 60.13(a)(2)(i) <sup>4</sup> .....	10	25.5	255	5 min	21	25	525
Queries: State Agencies 60.13(a)(2)(iii) <sup>4</sup> .....	51	20	1020	5 min	85	25	2,125
Queries: State Medicaid 60.13(a)(2)(iv) <sup>4</sup> .....	51	20	1020	5 min	85	25	2,125
Queries: Law Enforcement 60.13(a)(2)(v) <sup>4</sup> .....	262	.71	185	5 min	15	25	225
Queries: QIOs 60.13(a)(2)(vi) <sup>4</sup> ..	51	5	255	5 min	21	25	525
Queries: Hospitals and other health care entities 60.13(a)(2)(vii) <sup>4</sup> .....	10,930	10.5	114,765	5 min	9,564	25	239,000
Self-Query 60.13(1)(b) <sup>5</sup> .....	0	0	0	0	0	0	0
Initial Request for Dispute of Report 60.16(b) <sup>7</sup> .....	18	1	18	15 min	5	45	225
Practitioner Requests for Secretarial Review 60.16(b) <sup>7</sup> .....	3	1	3	8 hours	24	200	4,800
Subject Statements 60.16(b) <sup>7</sup> ...	40	1	40	60 min	40	100	4,000
Entity Registration 60.3 <sup>6</sup> .....	1,500	1	1,500	60 min	1,500	25	37,000
Entity Update 60.3 <sup>6</sup> .....	225	1	225	5 min	19	25	475

Section No.	Number of respondents	Frequency of response	Number of responses	Hours per response	Burden hours	Hourly cost	Total cost <sup>8</sup>
Total .....	13,200	.....	119,516	.....	11,518	.....	295,025

<sup>1</sup> Although OMB has previously approved the burden under HCQIA for the reporting of errors and omissions to information previously reported to the NPDB, section 1921 will expand the scope of the NPDB to include all health care practitioners and health care entities. However, licensure actions reported to the NPDB regarding health care practitioners and health care entities are also reported to the HIPDB and, thus, were previously calculated in the burden estimates for the HIPDB. Therefore, the burden for correcting or revising NPDB licensure actions is not included in this regulation. Section 60.6 requires individuals and entities that report information to the NPDB to ensure the accuracy of the information. If there are any errors or omissions to the reports previously submitted to the NPDB, the individual or entity that submitted the report to the NPDB is also responsible for making the necessary correction or revision to the original report. If there is any revision to the action, the individual or entity that submitted the original report to the NPDB is also responsible for reporting revisions. Based upon corrections and revisions made under the HCQIA, we estimate that a total of 23 respondents will need to correct their reports each year and that a total of 7 respondents will need to revise actions originally reported each year. Based on experience with the NPDB, a correction is expected to take 15 minutes to complete and submit. A revision is expected to take somewhat longer (30 minutes) because it involves completing a portion of a new report form rather than just correcting the individual items that are in error. The costs associated with preparing corrections and revisions are estimated at \$25 per hour.

<sup>2</sup> Since § 60.9 requires each State to adopt a system of reporting to the NPDB disciplinary licensure actions, the various licensing boards within each State will be required to report such actions directly to the State licensing authorities. These same licensing boards also are responsible for reporting such actions to the HIPDB. Therefore, we calculate the annual reporting burden for State licensing boards under the HIPDB and not this regulation. As a result, the reporting burden for State licensing boards is not included in this regulation. We estimate that under the HIPDB regulations 40,400 reports will be submitted to both the NPDB and the HIPDB each year, for an average of 187 reports per State licensing authority and 22 reports per State licensing board. The costs associated with preparing licensure reports are estimated at \$25 per hour. The cost estimates for this burden associated with the HIPDB.

<sup>3</sup> Section 1921 requires each State to adopt a system of reporting to the NPDB any negative action or finding concluded against health care practitioners and health care entities by a State licensing authority, peer review organization, or private accreditation entity. The negative actions or findings taken by State licensing authorities are also required to be reported to the HIPDB and were included in the HIPDB regulations. Therefore, this regulation includes the burden estimates only for those negative actions or findings taken by peer review organizations and private accreditation entities. We speculate that there may be 25 professional review organizations that may meet the definition proposed in this NPRM. We estimate that each of these organizations may report a finding 4 times a year to the NPDB. The section of the NPRM that deals with professional review organizations and the associated public burden estimates may require substantial revision based on the public comments received. We estimate that, under § 60.10 there will be an average of 4 private accreditation entities reporting approximately 25 times each during the year to the NPDB for a total of 100 reports. Based on experience with the NPDB, we estimate that it will take a peer review organization or a private accreditation entity 45 minutes to complete and submit an initial report. The costs associated with preparing reports are estimated at \$25 per hour.

<sup>4</sup> Although OMB has previously approved the burden under the HCQIA for querying the NPDB, section 1921 authorizes additional entities, such as State Medicaid fraud control units, utilization and quality control Quality Improvement Organizations, and certain law enforcement officials to query the NPDB for disciplinary licensure actions, and other negative actions or findings concluded against health care practitioners and health care entities. Based on current NPDB querying patterns, we estimate an approximate total of 117,500 new (section 1921-only) queries per year on health care practitioners and health care entities. The costs associated with preparing these queries are estimated at \$25 per hour.

<sup>5</sup> Currently, self queries by health care practitioners are automatically submitted to both the NPDB and the HIPDB, and we anticipate the same policy will be in effect for health care entities when section 1921 is implemented. Therefore, self queries submitted to the NPDB by health care practitioners and health care entities already are included in HIPDB burden estimates and are not included in this regulation. Since the burden and costs for preparation of self queries is contained in HIPDB no additional cost estimates are required by the implementation of section 1921.

<sup>6</sup> To access the NPDB, entities are required to certify that they meet section 1921 reporting and/or querying requirements. An eligible entity also must complete and submit an *Entity Registration Form* to the NPDB. The information collected on this form provides the NPDB with essential information concerning the entity (e.g., name, address, and entity type). Eligible entities (e.g., State licensing agencies, hospitals, or managed care organizations) that have access to the HCQIA, section 1921 and section 1128E information will only be required to register once. All other eligible entities must complete and submit the *Entity Registration Form*. We estimate that an additional 1,500 entities will register with the NPDB each year for the next three years for a total of 4,500 entities. We estimate that it will take an entity 60 minutes to complete and submit the *Entity Registration Form* to the NPDB. The costs associated with preparing the registration and entity verification documents are estimated at \$25 per hour.

If there are any changes in the entity's name, address, telephone, entity type designation, or query and/or report point of contact, the entity representative must update the information on the *Entity Registration Update Form* and submit it to the NPDB. Of these 4,500 new registrants, we estimate that approximately 225 entities will need to update their organization's information each year. The costs associated with preparing the registration and entity verification documents are estimated at \$25 per hour.

<sup>7</sup> OMB has previously approved the burden under the HCQIA for disputing the factual accuracy of information in a report and requesting Secretarial review of the disputed report. Based on experience with the NPDB, we estimate that an additional 18 reports will be entered into the "disputed status." We estimate that it will take a health care practitioner or health care entity 15 minutes to notify the NPDB to enter the report into "disputed status." The costs associated with preparing an initial dispute request is estimated at approximately \$50 per hour. Of the 18 disputed reports, we estimate that only 3 will be forwarded to the Secretary for review. We estimate that it will take a health care practitioner or entity 8 hours to describe, in writing, which facts are in dispute and to gather supporting documentation related to the dispute. Based on experience with the NPDB and HIPDB we estimate the costs associated with preparing a request for Secretarial review at approximately \$200 per hour. In addition, a health care practitioner who, or a health care entity that, is the subject of a report may submit a 2,000-character statement at any time after the NPDB has received the report. We estimate that an additional 40 practitioners and entities will submit statements to the NPDB. Based on previous experience, we estimate that each statement will take approximately 60 minutes to prepare. The cost estimate for preparation of statements is \$100 per hour.

<sup>8</sup> The costs presented in this table have been estimated based on whole hours. The cost estimates are for response preparation, and do not cover the costs per query (user fee) which will be assessed for each name submitted to the NPDB. The per hour cost estimates have been developed by using operational reports of organizations utilizing the NPDB and HIPDB.

*Request for Comment:* In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Written comments and recommendations concerning the proposed information collection requirements should be sent to: John Kraemer, Human Resources and

Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments must be

received within 60 days of publication of this proposed regulation.

**List of Subjects in 45 CFR Part 60**

Claims, Fraud, Health, Health maintenance organizations (HMOs), Health professions, Hospitals, Insurance companies, Malpractice, Reporting and recordkeeping requirements.

Dated: June 7, 2005.

**Elizabeth M. Duke,**

*Administrator, Health Resources and Services Administration.*

Approved: November 7, 2005.

**Michael O. Leavitt,**

*Secretary of Health and Human Services.*

Accordingly, 45 CFR part 60 is proposed to be amended as set forth below:

**PART 60—NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS**

1. The authority citation for 45 CFR part 60 is revised to read as follows:

**Authority:** 42 U.S.C. 11101–11152; 42 U.S.C. 1396r–2.

**Subpart A—General Provisions**

2. Section 60.1 is revised to read as follows:

**§ 60.1 The National Practitioner Data Bank.**

The Health Care Quality Improvement Act of 1986, as amended (HCQIA), title IV of Public Law 99–660 (42 U.S.C. 11101 *et seq.*), authorizes the Secretary to establish (either directly or by contract) a National Practitioner Data Bank (NPDB) to collect and release certain information relating to the professional competence and conduct of physicians, dentists and other health care practitioners. Section 1921 of the Social Security Act (42 U.S.C. 1396r–2) (section 1921) requires each State to adopt a system of reporting to the Secretary adverse licensure actions taken against health care practitioners and entities. Section 1921 also requires States to report any negative action or finding which a State licensing authority, peer review organization, or private accreditation entity has concluded against a health care practitioner or entity. This information will be collected and released to authorized parties by the NPDB. These regulations set forth the reporting and disclosure requirements for the NPDB.

**§ 60.2 [Amended]**

3. Section 60.2 is amended by adding the phrase “State licensing authorities;” after the phrase “Boards of Medical Examiners;” in the first sentence and by adding “State licensing or certification

authorities, peer review organizations, and private accreditation entities that take negative actions or findings against health care practitioners or entities;” after the phrase “professional review actions;” in the first sentence; and by removing the phrase “National Practitioner Data Bank”, wherever it appears, and adding the term “NPDB” in its place.

4. Section 60.3 is amended by revising the reference to “§ 60.9” in the third sentence of the definition of “Board of Medical Examiners” to read “§ 60.11”; and by adding the following terms and their definitions: “Affiliated or associated”, “Formal proceeding”, “Negative action or finding”, “Organization name”, “Organization type”, “Peer review organization”, “Private accreditation entity”, “Quality Improvement Organization”, and “Voluntary surrender”, inserted in the appropriate alphabetical order to read as follows:

**§ 60.3 Definitions.**

\* \* \* \* \*

*Affiliated or associated* refers to health care entities with which a subject of a final adverse action has a business or professional relationship. This includes, but is not limited to, organizations, associations, corporations, or partnerships. This also includes a professional corporation or other business entity composed of a single individual.

\* \* \* \* \*

*Formal proceeding* means a formal or official proceeding held before a State licensing or certification authority, peer review organization, or private accreditation entity.

\* \* \* \* \*

*Negative action or finding* by a State licensing authority, peer review organization, or private accreditation entity means:

(1) Receipt of less than full accreditation from a private accreditation entity that indicates a substantial risk to the safety of a patient or patients or quality of health care services and includes, but is not limited to, denial of accreditation or non-accreditation; or

(2) Any recommendation by a peer review organization to sanction a practitioner.

(3) Any negative action or finding that under the State’s law is publicly available information and is rendered by a licensing or certification authority, including, but not limited to, limitations on the scope of practice, liquidations, injunctions and forfeitures. This definition excludes administrative fines,

or citations and corrective action plans, unless they are:

(i) Connected to the delivery of health care services; and

(ii) Taken in conjunction with other licensure or certification actions such as revocation, suspension, censure, reprimand, probation, or surrender.

*Organization name* means the subject’s business or employer at the time the underlying acts occurred. If more than one business or employer is applicable, the one most closely related to the underlying acts should be reported as the “organization name”, with the others being reported as “affiliated or associated health care entities”.

*Organization type* means a description of the nature of that business or employer.

*Peer review organization* means an organization with the primary purpose of evaluating the quality of patient care practices or services ordered or performed by health care practitioners measured against objective criteria which define acceptable and adequate practice through an evaluation by a sufficient number of health practitioners in such area to assure adequate peer review. This definition excludes Quality Improvement Organizations (QIOs) funded by the Centers for Medicare & Medicaid Services (CMS) and other organizations used by CMS to support the QIO program.

\* \* \* \* \*

*Private accreditation entity* means an entity or organization that:

(1) Evaluates and seeks to improve the quality of health care provided by a health care entity;

(2) Measures a health care entity’s performance based on a set of standards and assigns a level of accreditation; and

(3) Conducts ongoing assessments and periodic reviews of the quality of health care provided by a health care entity.

\* \* \* \* \*

*Quality Improvement Organization* means a utilization and quality control Quality Improvement Organization (as defined in part B of title XI of the Social Security Act) means an entity which—

“(1)(A) is composed of a substantial number of the licensed doctors of medicine and osteopathy engaged in the practice of medicine or surgery in the area and who are representative of the practicing physicians in the area, designated by the Secretary under section 1153, with respect to which the entity shall perform services under this part, or (B) has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area to assure that adequate



peer review of the services provided by the various medical specialties and subspecialties can be assured; (2) is able, in the judgment of the Secretary, to perform review functions required under section 1154 in a manner consistent with the efficient and effective administration of this part and to perform reviews of the pattern of quality of care in an area of medical practice where actual performance is measured against objective criteria which define acceptable and adequate practice; and (3) has at least one individual who is a representative of consumers on it governing body."

\* \* \* \* \*

*Voluntary surrender* means a surrender made after a notification of investigation or a formal official request by a State licensing authority for a health care practitioner or entity to surrender a license. The definition also includes those instances where a health care practitioner or entity voluntarily surrenders a license in exchange for a decision by the licensing authority to cease an investigation or similar proceeding, or in return for not conducting an investigation or proceeding, or in lieu of a disciplinary action.

5. Subpart B is revised as set forth below:

#### Subpart B—Reporting of Information

- 60.4 How information must be reported.
- 60.5 When information must be reported.
- 60.6 Reporting errors, omissions, and revisions.
- 60.7 Reporting medical malpractice payments.
- 60.8 Reporting licensure actions taken by Boards of Medical Examiners.
- 60.9 Reporting licensure actions taken by States.
- 60.10 Reporting negative actions or findings taken by peer review organizations or private accreditation entities.
- 60.11 Reporting adverse actions on clinical privileges.

#### Subpart B—Reporting of Information

##### § 60.4 How information must be reported.

Information must be reported to the NPDB or to a Board of Medical Examiners as required under §§ 60.7, 60.8, and 60.11 in such form and manner as the Secretary may prescribe.

##### § 60.5 When information must be reported.

Information required under §§ 60.7, 60.8, and 60.11 must be submitted to the NPDB within 30 days following the action to be reported, beginning with actions occurring after August 31, 1990, and information required under §§ 60.9 and 60.10 must be submitted to the NPDB within 30 days following the action to be reported, beginning with actions occurring after December 31, 1991, as follows:

##### (a) *Malpractice Payments (§ 60.7).*

Persons or entities must submit information to the NPDB within 30 days from the date that a payment, as described in § 60.7, is made. If required under § 60.7, this information must be submitted simultaneously to the appropriate State licensing board.

(b) *Licensure Actions (§ 60.8 and § 60.9).* The Board of Medical Examiners or other licensing or certifying authority of a State must submit information within 30 days from the date the licensure action was taken.

(c) *Negative Action or Finding (§ 60.10).* Peer review organizations, or private accreditation entities must report any negative actions or findings to the State within 15 days from the date the action was taken or the finding was made. Each State, through the adopted system of reporting, must submit to the NPDB the information received from the peer review organization, or private accreditation entity within 15 days from the date on which it received this information.

(d) *Adverse Actions (§ 60.11).* A health care entity must report an adverse action to the Board within 15 days from the date the adverse action was taken. The Board must submit the information received from a health care entity within 15 days from the date on which it received this information. If required under § 60.11, this information must be submitted by the Board simultaneously to the appropriate State licensing board in the State in which the health care entity is located, if the Board is not such licensing Board.

##### § 60.6 Reporting errors, omissions, and revisions.

(a) Persons and entities are responsible for the accuracy of information which they report to the NPDB. If errors or omissions are found after information has been reported, the person or entity which reported it must send an addition or correction to the NPDB or, in the case of reports made under § 60.11, to the Board of Medical Examiners, as soon as possible.

(b) An individual or entity which reports information on licensure, negative actions or findings or clinical privileges under §§ 60.8, 60.9, 60.10, or 60.11 must also report any revision of the action originally reported. Revisions include reversal of a professional review action or reinstatement of a license. Revisions are subject to the same time constraints and procedures of §§ 60.5, 60.8, 60.9, 60.10, and 60.11, as applicable to the original action which was reported. (Approved by the Office of Management and Budget under control number 0915-0126)

##### § 60.7 Reporting medical malpractice payments.

(a) *Who must report.* Each entity, including an insurance company, which makes a payment under an insurance policy, self-insurance, or otherwise, for the benefit of a physician, dentist or other health care practitioner in settlement of or in satisfaction in whole or in part of a claim or a judgment against such physician, dentist, or other health care practitioner for medical malpractice, must report information as set forth in paragraph (b) of this section to the NPDB and to the appropriate State licensing board(s) in the State in which the act or omission upon which the medical malpractice claim was based. For purposes of this section, the waiver of an outstanding debt is not construed as a "payment" and is not required to be reported.

(b) *What information must be reported.* Entities described in paragraph (a) of this section must report the following information:

(1) With respect to the physician, dentist or other health care practitioner for whose benefit the payment is made—

- (i) Name,
- (ii) Work address,
- (iii) Home address, if known,
- (iv) Social Security Number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974,
- (v) Date of birth,
- (vi) Name of each professional school attended and year of graduation,
- (vii) For each professional license: the license number, the field of licensure, and the name of the State or Territory in which the license is held,
- (viii) Drug Enforcement Administration registration number, if known,
- (ix) Name of each hospital with which he or she is affiliated, if known;

(2) With respect to the reporting entity—

- (i) Name and address of the entity making the payment,
- (ii) Name, title, and telephone number of the responsible official submitting the report on behalf of the entity, and
- (iii) Relationship of the reporting entity to the physician, dentist, or other health care practitioner for whose benefit the payment is made;

(3) With respect to the judgment or settlement resulting in the payment—

- (i) Where an action or claim has been filed with an adjudicative body, identification of the adjudicative body and the case number,
- (ii) Date or dates on which the act(s) or omission(s) which gave rise to the action or claim occurred,



(iii) Date of judgment or settlement,  
(iv) Amount paid, date of payment, and whether payment is for a judgment or a settlement,

(v) Description and amount of judgment or settlement and any conditions attached thereto, including terms of payment,

(vi) A description of the acts or omissions and injuries or illnesses upon which the action or claim was based,

(vii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary, and

(viii) Other information as required by the Secretary from time to time after publication in the **Federal Register** and after an opportunity for public comment.

(c) *Sanctions.* Any entity that fails to report information on a payment required to be reported under this section is subject to a civil money penalty of up to \$11,000 for each such payment involved. This penalty will be imposed pursuant to procedures at 42 CFR part 1003.

(d) *Interpretation of information.* A payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

(Approved by the Office of Management and Budget under control number 0915-0126)

#### **§ 60.8 Reporting licensure actions taken by Boards of Medical Examiners.**

(a) *What actions must be reported.* Each Board of Medical Examiners must report to the NPDB any action based on reasons relating to a physician's or dentist's professional competence or professional conduct—

(1) Which revokes or suspends (or otherwise restricts) a physician's or dentist's license,

(2) Which censures, reprimands, or places on probation a physician or dentist, or

(3) Under which a physician's or dentist's license is surrendered.

(b) Information that must be reported. The Board must report the following information for each action:

(1) The physician's or dentist's name,

(2) The physician's or dentist's work address,

(3) The physician's or dentist's home address, if known,

(4) The physician's or dentist's Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974,

(5) The physician's or dentist's date of birth,

(6) Name of each professional school attended by the physician or dentist and year of graduation.

(7) For each professional license, the physician's or dentist's license number, the field of licensure and the name of the State or Territory in which the license is held,

(8) The physician's or dentist's Drug Enforcement Administration registration number, if known,

(9) A description of the acts or omissions or other reasons for the action taken,

(10) A description of the Board action, the date the action was taken, and its effective date and duration,

(11) Classification of the action in accordance with a reporting code adopted by the Secretary, and

(12) Other information as required by the Secretary from time to time after publication in the **Federal Register** and after an opportunity for public comment.

(c) *Sanctions.* If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board has failed to submit a report as required by this section, the Secretary will designate another qualified entity for the reporting of information under § 60.11.

(Approved by the Office of Management and Budget under control number 0915-0126)

#### **§ 60.9 Reporting licensure actions taken by States.**

(a) *What actions must be reported.* Each State is required to adopt a system of reporting to the NPDB actions, as listed below, which are taken against a health care practitioner or entity (both as defined in § 60.3). The actions taken must be as a result of formal proceedings (as defined in § 60.3). The actions which must be reported are:

(1) Any adverse action taken by the licensing authority of the State as a result of a formal proceeding, including revocation or suspension of a license (and the length of any such suspension), reprimand, censure, or probation;

(2) Any dismissal or closure of the formal proceeding by reason of the practitioner or entity surrendering the license, or the practitioner leaving the State or jurisdiction;

(3) Any other loss of the license of the practitioner or entity, whether by operation of law, voluntary surrender (excluding those due to nonpayment of licensure renewal fees, retirement, or change to inactive status), or otherwise; and

(4) Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.

(b) *What information must be reported.* Each State must report the following information (not otherwise reported under § 60.8):

(1) If the subject is a *health care practitioner*, personal identifiers, including:

(i) Name;

(ii) Social Security Number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974;

(iii) Home address or address of record;

(iv) Sex; and

(v) Date of birth.

(2) If the subject is a *health care practitioner*, employment or professional identifiers, including:

(i) Organization name and type;

(ii) Occupation and specialty, if applicable;

(iii) National Provider Identifier (NPI), when issued by the Centers for Medicare & Medicaid Services (CMS);

(iv) Name of each professional school attended and year of graduation; and

(v) With respect to the professional license (including professional certification and registration) on which the reported action was taken, the license number, the field of licensure, and the name of the State or Territory in which the license is held.

(3) If the subject is a *health care entity*, identifiers, including:

(i) Name;

(ii) Business address;

(iii) Federal Employer Identification Number (FEIN), or Social Security Number when used by the subject as a Taxpayer Identification Number (TIN);

(iv) The NPI, when issued by CMS;

(v) Type of organization; and

(vi) With respect to the license (including certification and registration) on which the reported action was taken, the license and the name of the State or Territory in which the license is held.

(4) For all *subjects*:

(i) A narrative description of the acts or omissions and injuries upon which the reported action was based;

(ii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary;

(iii) Classification of the action taken in accordance with a reporting code adopted by the Secretary;

(iv) The date the action was taken, its effective date and duration;

(v) Name of the agency taking the action;

(vi) Name and address of the reporting entity; and

(vii) The name, title and telephone number of the responsible official

submitting the report on behalf of the reporting entity.

(c) *What information may be reported, if known:* Entities described in paragraph (a) of this section may voluntarily report, if known, the following information:

(1) If the subject is a *health care practitioner*, personal identifiers, including:

- (i) Other name(s) used;
- (ii) Other address;
- (iii) FEIN, when used by the individual as a TIN; and
- (iv) If deceased, date of death.

(2) If the subject is a *health care practitioner*, employment or professional identifiers, including:

- (i) Other State professional license number(s), field(s) of licensure, and the name(s) of the State or Territory in which the license is held;
- (ii) Other numbers assigned by Federal or State agencies, including, but not limited to Drug Enforcement Administration (DEA) registration number(s), Unique Physician Identification Number(s) (UPIN), and Medicaid and Medicare provider number(s);
- (iii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and
- (iv) Nature of the subject's relationship to each associated or affiliated health care entity.

(3) If the subject is a *health care entity*, identifiers, including:

- (i) Other name(s) used;
- (ii) Other address(es) used;
- (iii) Other FEIN(s) or Social Security Number(s) used;
- (iv) Other NPI(s) used;
- (v) Other State license number(s) and the name(s) of the State or Territory in which the license is held;
- (vi) Other numbers assigned by Federal or State agencies, including, but not limited to Drug Enforcement Administration (DEA) registration number(s), Clinical Laboratory Improvement Act (CLIA) number(s), Food and Drug Administration (FDA) number(s), and Medicaid and Medicare provider number(s);
- (vii) Names and titles of principal officers and owners;
- (viii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and
- (ix) Nature of the subject's relationship to each associated or affiliated health care entity.

(4) *For all subjects:*

- (i) Whether the subject will be automatically reinstated; and
- (ii) The amount of any monetary penalty resulting from the reported action.

(d) *Access to documents.* Each State must provide the Secretary (or an entity designated by the Secretary) with access to the documents underlying the actions described in paragraphs (a)(1) through (4) of this section, as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations for the purpose of carrying out section 1921 of the Social Security Act.

**§ 60.10 Reporting negative actions or findings taken by peer review organizations or private accreditation entities.**

(a) *What actions must be reported.* Each State is required to adopt a system of reporting to the NPDB any negative actions or findings (as defined in § 60.3) which are taken against a health care practitioner or health care entity by a peer review organization or private accreditation entity. The health care practitioner or health care entity must be licensed or otherwise authorized by the State to provide health care services.

(b) *What information must be reported.* Each State must report the information as required in § 60.9(b).

(c) *What information should be reported, if known:* Each State should report, if known, the information as described in § 60.9(c).

(d) *Access to documents.* Each State must provide the Secretary (or an entity designated by the Secretary) with access to the documents underlying the actions described in this section as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations for the purpose of carrying out section 1921 of the Social Security Act.

**§ 60.11 Reporting adverse actions on clinical privileges.**

(a) *Reporting to the Board of Medical Examiners—*(1) *Actions that must be reported and to whom the report must be made.* Each health care entity must report to the Board of Medical Examiners in the State in which the health care entity is located the following actions:

- (i) Any professional review action that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days;
- (ii) Acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist—

(A) While the physician or dentist is under investigation by the health care entity relating to possible incompetence or improper professional conduct, or

(B) In return for not conducting such an investigation or proceeding; or

(iii) In the case of a health care entity which is a professional society, when it

takes a professional review action concerning a physician or dentist.

(2) *Voluntary reporting on other health care practitioners.* A health care entity may report to the Board of Medical Examiners information as described in paragraph (a)(3) of this section concerning actions described in paragraph (a)(1) in this section with respect to other health care practitioners.

(3) *What information must be reported.* The health care entity must report the following information concerning actions described in paragraph (a)(1) of this section with respect to the physician or dentist:

- (i) Name,
- (ii) Work address,
- (iii) Home address, if known,
- (iv) Social Security Number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974,
- (v) Date of birth,
- (vi) Name of each professional school attended and year of graduation,
- (vii) For each professional license: the license number, the field of licensure, and the name of the State or Territory in which the license is held,
- (viii) Drug Enforcement Administration registration number, if known,
- (ix) A description of the acts or omissions or other reasons for privilege loss, or, if known, for surrender,
- (x) Action taken, date the action was taken, and effective date of the action, and
- (xi) Other information as required by the Secretary from time to time after publication in the *Federal Register* and after an opportunity for public comment.

(b) *Reporting by the Board of Medical Examiners to the National Practitioner Data Bank.* Each Board must report, in accordance with §§ 60.4 and 60.5, the information reported to it by a health care entity and any known instances of a health care entity's failure to report information as required under paragraph (a)(1) of this section. In addition, each Board must simultaneously report this information to the appropriate State licensing board in the State in which the health care entity is located, if the Board is not such licensing board.

(c) *Sanctions—*(1) *Health care entities.* If the Secretary has reason to believe that a health care entity has substantially failed to report information in accordance with this section, the Secretary will conduct an investigation. If the investigation shows that the health care entity has not complied with this section, the

Secretary will provide the entity with a written notice describing the noncompliance, giving the health care entity an opportunity to correct the noncompliance, and stating that the entity may request, within 30 days after receipt of such notice, a hearing with respect to the noncompliance. The request for a hearing must contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. If a hearing is held, it will be in the Washington, DC, metropolitan area. The Secretary will deny a hearing if:

- (i) The request for a hearing is untimely;
  - (ii) The health care entity does not provide a statement of material factual issues in dispute, or
  - (iii) The statement of factual issues in dispute is frivolous or inconsequential.
- (2) In the event that the Secretary denies a hearing, the Secretary will send a written denial to the health care entity setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing the entity is found to be in noncompliance, the Secretary will publish the name of the health care entity in the **Federal Register**. In such case, the immunity protections provided under section 411(a) of the Act will not apply to the health care entity for professional review activities that occur during the 3-year period beginning 30 days after the date of publication of the entity's name in the **Federal Register**.

(3) **Board of Medical Examiners.** If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board has failed to report information in accordance with paragraph (b) of this section, the Secretary will designate another qualified entity for the reporting of this information.

(Approved by the Office of Management and Budget under control number 0915-0126)

6. Subpart C is revised as set forth below:

**Subpart C—Disclosure of Information by the National Practitioner Data Bank**

- 60.12 Information which hospitals must request from the National Practitioner Data Bank.
- 60.13 Requesting information from the National Practitioner Data Bank.
- 60.14 Fees applicable to requests for information.
- 60.15 Confidentiality of National Practitioner Data Bank information.
- 60.16 How to dispute the accuracy of National Practitioner Data Bank information.

**Subpart C—Disclosure of Information by the National Practitioner Data Bank**

**§ 60.12 Information which hospitals must request from the National Practitioner Data Bank.**

(a) *When information must be requested.* Each hospital, either directly or through an authorized agent, must request information from the NPDB concerning a physician, dentist or other health care practitioner as follows:

- (1) At the time a physician, dentist or other health care practitioner applies for a position on its medical staff (courtesy or otherwise), or for clinical privileges at the hospital; and
- (2) Every 2 years concerning any physician, dentist, or other health care practitioner who is on its medical staff (courtesy or otherwise), or has clinical privileges at the hospital.

(b) *Failure to request information.* Any hospital which does not request the information as required in paragraph (a) of this section is presumed to have knowledge of any information reported to the NPDB concerning this physician, dentist or other health care practitioner.

(c) *Reliance on the obtained information.* Each hospital may rely upon the information provided by the NPDB to the hospital. A hospital shall not be held liable for this reliance unless the hospital has knowledge that the information provided was false.

(Approved by the Office of Management and Budget under control number 0915-0126)

**§ 60.13 Requesting information from the National Practitioner Data Bank.**

(a) *Who may request information and what information may be available.* Information in the NPDB will be available, upon request, to the persons or entities, or their authorized agents, as described below:

- (1) Information reported under §§ 60.7, 60.8, and 60.11 is available to:
  - (i) A hospital that requests information concerning a physician, dentist or other health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital;
  - (ii) A physician, dentist, or other health care practitioner who requests information concerning himself or herself;
  - (iii) A State Medical Board of Examiners or other State authority that licenses physicians, dentists, or other health care practitioners;
  - (iv) A health care entity which has entered or may be entering into an employment or affiliation relationship with a physician, dentist, or other health care practitioner, or to which the

physician, dentist, or other health care practitioner has applied for clinical privileges or appointment to the medical staff;

(v) An attorney, or individual representing himself or herself, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or other health care practitioner who is also named in the action or claim. This information will be disclosed only upon the submission of evidence that the hospital failed to request information from the NPDB, as required by § 60.12(a), and may be used solely with respect to litigation resulting from the action or claim against the hospital;

(vi) A health care entity with respect to professional review activity; and

(vii) A person or entity requesting statistical information, in a form which does not permit the identification of any individual or entity.

(2) Information reported under §§ 60.9 and 60.10 is available to the agencies, authorities, and officials listed below that request information on licensure disciplinary actions and any other negative actions or findings concerning an individual health care practitioner or entity. These agencies, authorities, and officials may obtain data for the purposes of determining the fitness of individuals to provide health care services, protecting the health and safety of individuals receiving health care through programs administered by the requesting agency, and protecting the fiscal integrity of these programs.

- (i) Agencies administering Federal health care programs, including private entities administering such programs under contract;
- (ii) Authorities of States (or political subdivisions thereof) which are responsible for licensing health care practitioners and entities;
- (iii) State agencies administering or supervising the administration of State health care programs (as defined in 42 U.S.C. 1128(h));
- (iv) State Medicaid fraud control units (as defined in 42 U.S.C. 1903(q));
- (v) Law enforcement officials and agencies such as:
  - (A) United States Attorney General;
  - (B) United States Chief Postal Inspector;
  - (C) United States Inspectors General;
  - (D) United States Attorneys;
  - (E) United States Comptroller General;
  - (F) United States Drug Enforcement Administration;
  - (G) United States Nuclear Regulatory Commission;
  - (H) Federal Bureau of Investigation; and

(I) State law enforcement agencies, which include, but are not limited to, State Attorneys General.

(vi) Utilization and quality control Quality Improvement Organizations described in part B of title XI and appropriate entities with contracts under section 1154(a)(4)(C) of the Social Security Act with respect to eligible organizations reviewed under the contracts;

(vii) Hospitals and other health care entities (as defined in section 431 of the HCQIA), with respect to physicians or other licensed health care practitioners who have entered (or may be entering) into employment or affiliation relationships with, or have applied for clinical privileges or appointments to the medical staff of, such hospitals or other health care entities;

(viii) A physician, dentist, or other health care practitioner who, and an entity which, requests information concerning himself, herself, or itself; and

(ix) A person or entity requesting statistical information, in a form which does not permit the identification of any individual or entity. (For example, researchers may use statistical information to identify the total number of nurses with adverse licensure actions in a specific State. Similarly, researchers may use statistical information to identify the total number of health care entities denied accreditation.)

**(b) Procedures for obtaining National Practitioner Data Bank information.**

Persons and entities may obtain information from the NPDB by submitting a request in such form and manner as the Secretary may prescribe. These requests are subject to fees as described in § 60.14.

**§ 60.14 Fees applicable to requests for information.**

(a) *Policy on Fees.* The fees described in this section apply to all requests for information from the NPDB. The amount of such fees will be sufficient to recover the full costs of operating the NPDB. The actual fees will be announced by the Secretary in periodic notices in the *Federal Register*.

However, for purposes of verification and dispute resolution at the time the report is accepted, the NPDB will provide a copy—at the time a report has been submitted, automatically, without a request and free of charge—of the record to the health care practitioner or entity who is the subject of the report and to the reporter.

(b) *Criteria for determining the fee.* The amount of each fee will be determined based on the following criteria:

(1) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;

(2) Physical overhead, consulting, and other indirect costs including materials and supplies, utilities, insurance, travel and rent and depreciation on land, buildings and equipment;

(3) Agency management and supervisory costs;

(4) Costs of enforcement, research, and establishment of regulations and guidance;

(5) Use of electronic data processing equipment to collect and maintain information—the actual cost of the service, including computer search time, runs and printouts; and

(6) Any other direct or indirect costs related to the provision of services.

(c) *Assessing and collecting fees.* The Secretary will announce through notice in the *Federal Register* from time to time the methods of payment of NPDB fees. In determining these methods, the Secretary will consider efficiency, effectiveness, and convenience for the NPDB users and the Department. Methods may include: Credit card; electronic fund transfer and other methods of electronic payment.

**§ 60.15 Confidentiality of National Practitioner Data Bank information.**

(a) *Limitations on disclosure.* Information reported to the NPDB is considered confidential and shall not be disclosed outside the Department of Health and Human Services, except as specified in §§ 60.12, 60.13, and 60.16. Persons who, and entities which, receive information from the NPDB either directly or from another party may use it solely with respect to the purpose for which it was provided. Nothing in this paragraph shall prevent the disclosure of information by a party which is authorized under applicable State law to make such disclosure.

(b) *Penalty for violations.* Any person who violates paragraph (a) of this section shall be subject to a civil money penalty of up to \$11,000 for each violation. This penalty will be imposed pursuant to procedures at 42 CFR part 1003.

**§ 60.16 How to dispute the accuracy of National Practitioner Data Bank information.**

(a) *Who may dispute National Practitioner Data Bank information.* Any physician, dentist, or other health care practitioner or health care entity may dispute the accuracy of information in the NPDB concerning himself, herself or itself. The Secretary will routinely mail a copy of any report filed in the NPDB to the subject individual or entity.

(b) *Procedures for filing a dispute.* The subject of the report may dispute the accuracy of the report within 60 days from the date on which the Secretary mails the report to the subject individual or entity. The procedures for disputing a report are:

(1) Informing the Secretary and the reporting entity, in writing, of the disagreement, and the basis for it,

(2) Requesting simultaneously that the disputed information be entered into a “disputed” status and be reported to inquirers as being in a “disputed” status, and

(3) Attempting to enter into discussion with the reporting entity to resolve the dispute.

(c) *Procedures for revising disputed information.* (1) If the reporting entity revises the information originally submitted to the NPDB, the Secretary will notify all entities to whom reports have been sent that the original information has been revised.

(2) If the reporting entity does not revise the reported information, the Secretary will, upon request, review the written information submitted by both parties (the subject individual or entity and the reporting entity). After review, the Secretary will either—

(i) If the Secretary concludes that the information is accurate, include a brief statement by the physician, dentist or other health care practitioner or health care entity describing the disagreement concerning the information, and an explanation of the basis for the decision that it is accurate, or

(ii) If the Secretary concludes that the information is incorrect, send corrected information to previous inquirers.

[FR Doc. 06–2686 Filed 3–20–06; 8:45 am]

BILLING CODE 4160–15–P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 232 and 252**

**RIN 0750–AF28**

**Defense Federal Acquisition Regulation Supplement; Electronic Submission and Processing of Payment Requests (DFARS Case 2005–D009)**

**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 policy regarding requirements for DoD contractors to submit payment requests in electronic form. The proposed rule clarifies the situations under which DoD will grant exceptions to requirements for electronic submission of payment requests.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before May 22, 2006 to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2005-D009, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2005-D009 in the subject line of the message.
- Fax: (703) 602-0350.
- Mail: Defense Acquisition

Regulations System, Attn: Mr. Bill Sain, 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:** Mr. Bill Sain, (703) 602-0293.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

DFARS subpart 232.70 and the corresponding contract clause at DFARS 252.232-7003 contain requirements for electronic submission and processing of contract payment requests, in accordance with 10 U.S.C. 2227. The DFARS provides for certain exceptions to these requirements, to include one that applies if a contractor is unable to submit, or DoD is unable to receive, a payment request in electronic form. When this exception applies, the contractor must submit the payment request using a method mutually agreed to by the contractor, the contracting officer, the contract administration office, and the payment office. This DFARS text has caused differing interpretations as to what constitutes a contractor's inability to submit an electronic payment request, and whether the contracting officer, the contract administration office, and the payment office all must agree that the contractor is unable to submit an electronic payment request or if this decision is the sole authority of the

contracting officer. Furthermore, the DFARS presently does not contain a requirement for the contract to specify the alternative method to be used when non-electronic submission is authorized.

To clarify requirements for submission of payment requests, DoD is proposing the following DFARS changes:

- Amendment of 232.7002(a) to replace the language that has caused confusion with an exception that applies when the administrative contracting officer determines, in writing, that electronic submission would be unduly burdensome to the contractor. The proposed language is consistent with the provisions of 10 U.S.C. 2227.
- Addition of a new paragraph at 232.7002(c) to require the contracting officer to specify, in Section G of the contract, the payment request method to be used when electronic submission is not required.
- Amendment of the clause at 252.232-7003 for consistency with the changes to 232.7002, and to add a reference to a DoD website that will contain a listing of the DoD activities and payment systems that are unable to receive payment requests in electronic form.

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 is designed to avoid any such impact by permitting alternative means of requesting payment when submission of electronic payment requests would be unduly burdensome to a contractor. 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-D009.

##### **C. Paperwork Reduction Act**

The proposed 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 Parts 232 and 252**

Government procurement.

**Michele P. Peterson**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 232 and 252 as follows:

1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

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

##### **PART 232—CONTRACT FINANCING**

2. Section 232.7002 is revised to read as follows:

###### **232.7002 Policy.**

(a) Contractors shall submit payment requests in electronic form, except for—

(1) Purchases paid for with a Governmentwide commercial purchase card;

(2) Awards made to foreign vendors for work performed outside the United States;

(3) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified information or national security;

(4) Contracts awarded by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(8) or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies;

(5) Purchases to support unusual or compelling needs of the type described in FAR 6.302-2;

(6) Cases in which DoD is unable to receive payment requests in electronic form; or

(7) Cases in which the administrative contracting officer has determined, in writing, that electronic submission would be unduly burdensome to the contractor.

(b) DoD officials receiving payment requests in electronic form shall process the payment requests in electronic form. Any supporting documentation necessary for payment, such as receiving reports, contracts, contract modifications, and required certifications, also shall be processed in electronic form. Scanned documents are acceptable forms for processing supporting documentation.



(c) When payment requests will not be submitted in electronic form, Section G of the contract shall specify the alternative payment request method or methods to be used (e.g., facsimile, conventional mail).

3. Section 232.7004 is revised to read as follows:

**§ 232.7004 Contract clause.**

Except as provided in 232.7002(a)(1) through (6), use the clause at 252.232-7003, Electronic Submission of Payment Requests, in solicitations and contracts.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Section 252.232-7003 is amended as follows:

- a. By revising the clause date and paragraph (c);
- b. By redesignating paragraph (d) as paragraph (e); and
- c. By adding a new paragraph (d) to read as follows:

**252.232-7003 Electronic Submission of Payment Requests.**

\* \* \* \* \*

Electronic Submission of Payment Requests (XXX 2006)

\* \* \* \* \*

(c) The Contractor may submit a payment request in non-electronic form only when—

(1) The Administrative Contracting Officer has determined, in writing, that electronic submission would be unduly burdensome to the Contractor. In such cases, the Contractor shall include a copy of the Administrative Contracting Officer's determination with each request for payment; or

(2) DoD is unable to receive a payment request in electronic form. A listing of the DoD activities and payment systems that are unable to receive payment requests in electronic form is available at <http://www.dod.mil/dfas/ecedi/>.

(d) The Contractor shall submit any non-electronic payment requests using the method or methods specified in Section G of the contract.

\* \* \* \* \*

[FR Doc. E6-3992 Filed 3-20-06; 8:45 am]

BILLING CODE 5001-01-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 252**

RIN 0750-AF24

**Defense Federal Acquisition Regulation Supplement; Reports of Government Property (DFARS Case 2005-D015)**

**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 revise requirements for reporting of Government property in the possession of DoD contractors. The proposed rule replaces existing DD Form 1662 reporting requirements with requirements for DoD contractors to electronically submit, to the Item Unique Identification (IUID) Registry, the IUID data applicable to the Government property in the contractor's possession. This will result in more efficient and accurate reporting of Government property in the possession of contractors.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before April 20, 2006 to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2005-D015, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2005-D015 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**

The clause at DFARS 252.245-7001 presently requires contractors to submit an annual report for all DoD property for which the contractor is accountable. The report must be prepared in accordance with the requirements of DD Form 1662 or an approved substitute. DD Form 1662 provides for reporting of only summary level totals for each of the various types of Government property (e.g. land, special test equipment, industrial plant equipment), and does not consider capitalization requirements or useful lives, nor can it be used for existence, completeness, or valuation purposes. The limited data produced through use of DD Form 1662 is considered to be insufficient for complete visibility and control of DoD property.

This proposed rule would replace DD Form 1662 reporting with requirements for contractors to electronically submit, to the Item Unique Identification (IUID) Registry, the IUID data for all DoD tangible personal property in the possession of the contractor. The proposed rule also contains requirements for contractors to provide real property data to the owning military department's real property inventory system. This data will be used to populate DoD information systems for more effective and efficient accountability and control of DoD property.

DoD contractors with existing contracts containing DD Form 1662 reporting requirements are encouraged to request contract modifications to designate use of the procedures specified in this proposed rule as the approved substitute for DD Form 1662, as permitted by the clause at DFARS 252.245-7001.

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 an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This proposed rule amends the DFARS to require DoD contractors to electronically submit, to the IUID Registry, the IUID data for DoD personal property in the contractor's possession. In addition, the proposed rule contains requirements for contractors to maintain records in DoD real property inventory systems for all real property provided under the contract. The existing

requirements for contractor reporting of Government property rely on a paper-based administrative infrastructure, and do not provide DoD with sufficient information to validate the existence, completeness, or valuation of Government property in the possession of contractors. This rule will facilitate DoD compliance with the Chief Financial Officers Act of 1990 (Pub. L. 101-576) and the financial reporting requirements imposed by the Federal Accounting Standards Advisory Board.

The rule will apply to all DoD contracts with Government-furnished property. The objective of the rule is to improve the accountability and control of DoD assets. Use of the IUID Registry and DoD real property inventory systems will enable DoD to maintain accurate records of its property inventories. The Chief Financial Officers Act of 1990 requires the production of complete, reliable, timely, and consistent financial information with regard to Federal programs.

In accordance with the clause at DFARS 252.245-7001, DoD contractors already are required to maintain records of DoD property in their possession and to submit an annual report using DD Form 1662 or an approved substitute. The proposed rule would replace use of DD Form 1662 with requirements for use of the IUID Registry and DoD real property inventory systems as an electronic means of recording and reporting of DoD property in the contractor's possession. This will improve the accuracy and efficiency of the existing reporting and recordkeeping requirements.

DoD considers the approach described in the proposed rule to be the most practical and beneficial for both Government and industry. Continued reliance on the current reporting process would not permit the level of accountability that DoD needs to comply with statutory and regulatory requirements related to the management of Government property. DoD already has adopted the use of IUID technology as the standard marking approach for all items in DoD's inventory system. Therefore, it logically follows that DoD property in the possession of contractors should also be recorded and reported using IUID technology.

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 2005-D015.

### C. Paperwork Reduction Act

The information collection requirements of the clause at DFARS 252.245-7001 have been approved by the Office of Management and Budget under Clearance Number 0704-0246. The requirements of this proposed rule are not expected to significantly change the burden hours approved under Clearance Number 0704-0246.

#### List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,  
Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 252 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.

2. Section 252.245-7001 is revised to read as follows:

#### 252.245-7001 Reports of Government Property.

As prescribed in 245.505-14(a), use the following clause:

Reports of Government Property (XXX 2006)

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

*Equipment* means a tangible article of personal property that is complete in and of itself, durable, nonexpendable, and needed for the performance of a contract. Equipment generally has an expected life of one year or more and does not ordinarily lose its identity or become a component part of another article when put into use.

*Material* means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling, special test equipment, or unique federal property.

*Property in the possession of the Contractor (PIPC)* means tangible personal property, to which the Government has title, that is in the stewardship or possession of, or is controlled by, the Contractor for the performance of a contract. PIPC consists of both tangible Government-furnished property and contractor-acquired property and includes equipment and material.

(b) The Contractor shall provide item unique identification (IUID) data electronically into the IUID Registry—

(1) For all DoD PIPC under this contract, including that at subcontractor and alternate locations; and

(2) In accordance with the data submission procedures in the Government Personal and Real Property in the Possession of the Contractor guidebook in effect on the date of the award of this contract. The guidebook is located at <http://www.acq.osd.mil/dpap/IUID/DataSubmission.htm>.

(c) The Contractor shall update PIPC records in the IUID Registry for changes in the status, mark, custody, or disposition of the PIPC, for all PIPC—

(1) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor;

(2) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract as determined by the Government property administrator, including reasonable inventory adjustments;

(3) Disposed of; or

(4) Transferred to a follow-on or another contract.

(d) At a minimum, the Contractor shall update PIPC records for PIPC provided under this contract in the IUID Registry, so that the IUID Registry reflects the same information that is recorded in the Contractor's property records for all PIPC in the Contractor's stewardship, possession, or control, by March 31st and September 30th of each year.

(e) For all real property provided under this contract, the Contractor shall maintain records in the owning military department's real property inventory system in accordance with guidance published by the military department, recording all changes as they occur.

(End of clause)

[FR Doc. E6-3993 Filed 3-20-06; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 680

[Docket No. 060227052-6052-01; I.D. 021606B]

RIN 0648-AU06

**Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations implementing Amendment 20 to the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner crabs (FMP). This proposed action would amend the BSAI Crab Rationalization Program (hereinafter referred to as the Program). If approved, Amendment 20 and this action would modify the allocation of harvesting shares and processing shares for Bering Sea Tanner crab *Chionoecetes bairdi* (Tanner crab) to allow this species to be managed as two separate stocks. This proposed action is necessary to increase resource conservation and economic efficiency in the crab fisheries that are subject to the Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable law.

**DATES:** Comments must be received no later than May 5, 2006.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Records Office. Comments may be submitted by:

• E-mail:

0648-7AU06-KTC20-PR@noaa.gov.

Include in the subject line of the e-mail the following document identifier: Crab Rationalization RIN 0648-AU06. E-mail comments, with or without attachments, are limited to 5 megabytes.

• Mail: P.O. Box 21668, Juneau, AK 99802.

• Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

• Facsimile: 907-586-7557.

• Webform at the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the

instructions at that site for submitting comments.

Copies of Amendment 20 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://www.fakr.noaa.gov/sustainablefisheries.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Glenn Merrill, 907-586-7228 or [glenn.merrill@noaa.gov](mailto:glenn.merrill@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The king and Tanner crab fisheries in the exclusive economic zone of the BSAI are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act as amended by the Consolidated Appropriations Act of 2004 (Public Law 108-199, section 801). Amendments 18 and 19 to the FMP amended the FMP to include the Program. A final rule implementing these amendments was published on March 2, 2005 (70 FR 10174). NMFS also published three corrections to the final rule (70 FR 13097; March 18, 2005), (70 FR 33390; June 8, 2005) and (70 FR 75419; December 20, 2005).

Under the Program, harvester quota share (QS), processor quota share (PQS), individual fishing quota (IFQ), and individual processing quota (IPQ) currently are issued for one Tanner crab fishery. The State of Alaska (State), however, has determined that eastern Bering Sea Tanner crab should be separated into two stocks and managed as two separate fisheries to avoid localized depletion by the commercial fishery, particularly of legal-sized males in the Pribilof Islands area. Although the distribution of Tanner crab is continuous over its range in the eastern Bering Sea, some discontinuity exists in the distribution of legal-size males. Highest densities of legal-sized males during stock assessment surveys tend to occur at sampling stations either east of 166° W. longitude (i.e., in Bristol Bay) or west of 168° W. longitude (i.e., in the vicinity of the Pribilof Islands). In contrast, densities of legal-sized males tend to be low at survey stations between 166° W. longitude and 168° W. longitude. The contrast between densities in the Pribilof Islands area and Bristol Bay with the densities in the intervening area between 166° W. longitude and 168° W. longitude is most notable at times of high populations of legal-sized males in the eastern Bering Sea. The distribution of catch of legal-sized males during the commercial

fishery has shown a similar pattern. The Program and the final rule implementing it allocated shares of the Tanner crab fishery in the Bering Sea, but did not separately distinguish the management of these two stocks.

If approved, Amendment 20 to the FMP and this action would modify the allocation of harvesting shares and processing shares for Bering Sea Tanner crab to accommodate management of geographically separate Tanner crab fisheries. This action proposes to allocate QS and PQS and the resulting IFQ and IPQ for two Tanner crab fisheries, one east of 166° W. longitude, the other west of 166° W. longitude. Revision of the QS and PQS allocations would resolve the current inconsistency between current allocations and management of the Tanner crab species as two stocks. This change is expected to reduce administrative costs for managers and the operational costs of harvesters and processors while increasing their flexibility.

Management of any harvestable surplus also would be improved through distinct allocations for separate Tanner crab stocks. Setting two total allowable catches (TACs) east and west of 166° W. longitude that are proportional to the estimated abundances east and west of 166° W. longitude provides a means to avoid localized depletion by the commercial fishery, particularly of those legal-sized males in the Pribilof Islands area. The 166° W. longitude boundary corresponds with an area in which historical fishery catch and effort has been low. Hence the 166° W. longitude boundary has the benefit of providing low potential for causing conservation, management and enforcement concerns that can result from fishers "fishing to the line" (i.e., commercial fishing effort and high removal rates concentrated on either side of the boundary).

This proposed action would not alter the basic structure or management of the Program. Reporting, monitoring, fee collection, and other requirements to participate in the Tanner crab fishery would remain unchanged. The proposed action also would not increase the number of harvesters or processors in the Tanner crab fisheries or the amount of crab that may be harvested currently. The proposed action would not affect regional delivery requirements or other restrictions on harvesting and processing Tanner crab that currently apply. It would provide a mechanism to ensure that quota is managed for each stock separately in accordance with biomass distribution. The proposed action also would provide additional flexibility to industry participants to

hold quota to fish specific Tanner crab fisheries and reduce potential conflicts among participants that may occur if one quota is used to provide harvesting and processing privileges to two distinct stocks.

Under the proposed action, IFQ and IPQ holders will be able to trade shares in the fisheries independently to establish long-term relationships in each fishery independently.

This proposed action would not modify the process used to apply for and initially receive Tanner crab QS, PQS and the resulting IFQ and IPQ. Under the existing regulations, the agency calculated initial allocations of Tanner crab QS and PQS to eligible harvesters and processors who applied during the application period (April 4, 2005 through June 3, 2005). The allocations of east and west Tanner crab stock QS, PQS and the resulting IFQ and IPQ under this proposed action would be based on the existing application and allocation process.

NMFS proposes to reissue Tanner crab QS and PQS. Currently Tanner crab is issued as Bering Sea Tanner (BST) QS and BST PQS. For each share of BST QS held, a person would be issued one share of eastern Bering Sea Tanner crab (EBT) QS, and one share of western Bering Sea Tanner crab (WBT) QS. Similarly, for each BST PQS held, a person would be issued one share of EBT PQS, and one share of WBT PQS. EBT QS and PQS would result in IFQ and IPQ that could be used for the Tanner crab fishery occurring east of 166° W. longitude; WBT QS and PQS would result in IFQ and IPQ that could be used for the Tanner crab fishery occurring west of 166° W. longitude. This reissuance of Tanner crab QS and PQS would not increase the number of initially issued Tanner crab quota holders. Tanner crab QS and PQS holders would receive IFQ and IPQ in a specific fishery only if that specific Tanner crab fishery had a harvestable surplus and TAC assigned by the State.

NMFS would reissue Tanner crab QS and PQS after the end of the current Tanner crab fishing season (March 31, 2006), and prior to the date when the State would announce any TAC for the 2006/2007 fishing season (in early October 2006). This would reduce any potential conflict with the current Tanner crab fishery. The precise timing of QS and PQS reissuance is dependent on rulemaking and cannot be determined at this time.

#### Classification

At this time, NMFS has not determined that Amendment 20 and the provisions in this rule that would

implement Amendment 20 are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the determination that this proposed rule is consistent, will take into account the data, views, and comments received during the comment period (see **DATES**).

A Regulatory Impact Review (RIR) was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. Additionally, an initial regulatory flexibility analysis (IRFA) was prepared that describes the impact this proposed rule would have on small entities. The IRFA discusses both small and non-small entities to adequately characterize the fishing participants. Copies of the RIR/IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**). The RIR/IRFA prepared for this proposed action builds off an extensive RIR/IRFA prepared for Amendments 18 and 19 that detailed the impacts of the Program on small entities.

The reasons why this action is being proposed and the objectives and legal basis for the proposed rule are discussed in the preamble to this rule and are not repeated here. The IRFA contains a description and estimate of the number of directly affected small entities.

Estimates of the number of small harvesting entities under the Program are complicated by several factors. First, each eligible captain will receive an allocation of QS under the program. A total of 186 captains received allocations of Tanner crab QS for the 2005–2006 fishery. In addition, 269 allocations of QS to LLP license holders were made under the Program, for a total of 454 QS allocations in the Bering Sea Tanner crab fisheries. Because some persons participated as LLP holders and captains and others received allocations from the activities of multiple vessels, only 294 unique persons received QS. Of those entities receiving QS, 287 are small entities because they either generated \$4.0 million or less in gross revenue, or they are independent entities not affiliated with a processor. Estimates of gross revenues for purposes of determining the number of small entities, relied on the low estimates of prices from the arbitration reports based on the 2005/2006 fishing season.

Allocations of Tanner crab PQS under the Program were made to 20 processors. Of these PQS recipients, nine are estimated to be large entities, and eleven small entities. Estimates of large entities were made based on available records of employment and the analysts' knowledge of foreign

ownership of processing companies. These totals exclude catcher/processors, which are included in the LLP holder discussion.

Other supporting businesses also may be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are treated in the RIR prepared for this action (see **ADDRESSES**).

This proposed action does not contain any reporting, recordkeeping and other reporting requirements. No federal rules that may duplicate, overlap, or conflict with this proposed action have been identified.

The Council considered alternatives as it designed and evaluated the potential methods for accommodating two-stock management in the Bering Sea Tanner crab fisheries in the EA prepared for this proposed action. The alternatives differed only in the calculation of initial allocations of QS and PQS and the nature of the processing privileges (PQS and IPQ) in the rationalized Tanner crab fisheries. The alternatives have no effect on fishing practices or patterns and therefore have no effects on the physical and biological environment. Effects of the Program, including rationalizing the Tanner crab fishery, on the physical and biological environment (including effects on benthic species and habitat, essential fish habitat, the ecosystem, endangered species, marine mammals, and sea birds) are fully analyzed in the EIS prepared for the Program (Crab EIS) and are incorporated by reference in the EA prepared for this proposed action.

This proposed action is not anticipated to have additional impacts on the Tanner crab fisheries beyond those identified in the Crab EIS. No new significant information is available that would change these determinations in the Crab EIS. Please refer to the Crab EIS and its appendices for more detail (see **ADDRESSES**).

The EA/RIR/IRFA prepared for this action analyzed a suite of three alternatives for harvesters, and a separate suite of three alternatives for processors. Alternative 1 for both harvesters and processors, the no action alternative, would maintain the existing inconsistency between Federal allocations supporting a single Tanner crab fishery and State management of two stocks of Tanner crab. For harvesters, the difference in effects of the revised allocation alternatives on the social and economic environment is primarily distributional. Under the preferred harvester alternative (Alternative 2), an eligible participant would receive an allocation in both fisheries based on all qualifying catches

regardless of where that catch occurred. Under harvester Alternative 3, a harvester would receive an allocation in each fishery based on historic catch from the area of the fishery. Under this alternative, a person's allocation will be skewed toward the area in which the person had greater catch relative to other participants.

For processors, the choice of revised allocation alternatives would have operational and efficiency effects. Under the preferred processor alternative (Alternative 2), PQS and IPQ pools would be created for the two fisheries. Share holders would be able to trade shares in the fisheries independently to establish long-term relationships in each fishery independently. Under processor Alternative 3, PQS would generate an annual allocation of IPQ that could be used in either fishery. Since TACs in the fisheries may fluctuate independently, harvesters that do not hold equal percentages of the pools in both fisheries will be unable to establish fixed long-term relationships with a processor for all their shares. Instead, these participants would need to modify their relationships if TACs change independently in the different Tanner crab fisheries. This restructuring of relationships could reduce efficiency in the Tanner crab fisheries by adding to transaction costs of participants.

Although the different allocations under consideration in this action would have distributional and efficiency impacts for individual participants, in no case are these impacts in the aggregate expected to be substantial. In all instances, similar numbers of participants would receive allocations. Although none of the alternatives has substantial negative impacts on small entities, preferred Alternative 2 for processors minimizes the potential negative impacts that could arise under Alternative 3 for processors. Differences in efficiency that could arise are likely to affect most participants in a minor way having an overall insubstantial impact. As a consequence, none of the alternatives is

expected to have any significant economic or socioeconomic impacts.

**Collection-of-information**

This rule does not contain new collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

**List of Subjects in 50 CFR Part 680**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 16, 2006.

**James W. Balsiger,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 680 is proposed to be amended as follows:

**PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for part 680 continues to read as follows:

**Authority:** 16 U.S.C. 1862.

2. In § 680.4, revise paragraphs (b) and (c) to read as follows:

**§ 680.4 Permits.**

\* \* \* \* \*

(b) *Crab QS permit.* (1) Crab QS is issued by the Regional Administrator to persons who successfully apply for an initial allocation under § 680.40 or receive QS by transfer under § 680.41. Once issued, a crab QS permit is valid until modified under paragraph (b)(2) of this section, or by transfer under § 680.41; or until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904. To qualify for a crab QS permit, the applicant must be a U.S. Citizen.

(2) Each unit of Crab QS initially issued under § 680.40 for the Bering Sea Tanner crab (*Chionoecetes bairdi*) CR fishery shall be reissued as one unit of

Eastern Bering Sea Tanner crab (EBT) QS and one unit of Western Bering Sea Tanner crab (WBT) QS.

(c) *Crab PQS permit.* (1) Crab PQS is issued by the Regional Administrator to persons who successfully apply for an initial allocation under § 680.40 or receive PQS by transfer under § 680.41. Once issued, a crab PQS permit is valid until modified under paragraph (c)(2) of this section, or by transfer under § 680.41; or until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(2) Each unit of Crab PQS initially issued under § 680.40 for the Bering Sea Tanner crab (*Chionoecetes bairdi*) CR fishery shall be reissued as one unit of Eastern Bering Sea Tanner crab (EBT) PQS and one unit of Western Bering Sea Tanner crab (WBT) PQS.

\* \* \* \* \*

**§§ 680.40 and 680.41 [Amended]**

3. In the table below, at each of the locations shown in the "Location" column, remove the phrase indicated in the "Remove" column and replace it with the phrase indicated in the "Add" column:

LOCATION	RE-MOVE	ADD
§ 680.40(b)(2)(ii)(A)	BST	EBT or WBT
§ 680.40(d)(2)(iv)(B)	BST	EBT or WBT
§ 680.41(i)(1)(i)	BST	EBT, WBT,

4. In § 680.40, revise paragraph (b)(2)(iii) to read as follows:

**§ 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) Issuance.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) The regional designations that apply to each of the crab QS fisheries are specified in the following table:

Crab QS Fishery	North Region	South Region	West Region	Undesignated Region
(A) EAG	X	X		
(B) WAG			X	X
(C) EBT				X
(D) WBT				X
(E) BSS	X	X		
(F) BBR	X	X		
(G) PIK	X	X		



Crab QS Fishery	North Region	South Region	West Region	Undesignated Region
(H) SMB	X	X		
(I) WAI		X		

\* \* \* \* \*  
 5. In § 680.42, revise paragraph (a)(2)(i), (a)(3)(i), (a)(4)(i), (c) paragraph heading, and (c)(1) to read as follows:

**§ 680.42 Limitations on use of QS, PQS, IFQ and IPQ.**  
 (a) \* \* \*  
 (2) \* \* \*

(i) Hold QS in amounts in excess of the amounts specified in the following table, unless that person's QS was received in the initial allocation:

Fishery	CVO/CPO Use Cap in QS Units	CVC/CPC Use Cap in QS Units
(A) Percent of the initial QS pool for BBR	1.0% = 3,880,000	2.0% = 240,000
(B) Percent of the initial QS pool for BSS	1.0% = 9,700,000	2.0% = 600,000
(C) Percent of the initial QS pool for EBT	1.0% = 1,940,000	2.0% = 120,000
(D) Percent of the initial QS pool for WBT	1.0% = 1,940,000	2.0% = 120,000
(E) Percent of the initial QS pool for PIK	2.0% = 582,000	4.0% = 36,000
(F) Percent of the initial QS pool for SMB	2.0% = 582,000	4.0% = 36,000
(G) Percent of the initial QS pool for EAG	10.0% = 970,000	20.0% = 60,000
(H) Percent of the initial QS pool for WAG	10.0% = 3,880,000	20.0% = 240,000
(I) Percent of the initial QS pool for WAI	10.0% = 5,820,000	20.0% = 360,000

\* \* \* \* \*  
 (3) \* \* \*

(i) Hold QS in excess of more than the amounts of QS specified in the following table:

Fishery	CDQ CVO/CPO Use Cap in QS Units
(A) 5.0 percent of the initial QS pool for BBR	19,400,000
(B) 5.0 percent of the initial QS pool for BSS	48,500,000
(C) 5.0 percent of the initial QS pool for EBT	9,700,000
(D) 5.0 percent of the initial QS pool for WBT	9,700,000
(E) 10.0 percent of the initial QS pool for PIK	2,910,000
(F) 10.0 percent of the initial QS pool for SMB	2,910,000
(G) 20.0 percent of the initial QS pool for EAG	1,940,000
(H) 20.0 percent of the initial QS pool for WAG	7,760,000
(I) 20.0 percent of the initial QS pool for WAI	11,640,000

\* \* \* \* \*  
 (4) \* \* \*

(i) Hold QS in excess of the amounts specified in the following table:

Fishery	CVO/CPO Use Cap in QS Units
(A) 5.0 percent of the initial QS pool for BBR	19,400,000
(B) 5.0 percent of the initial QS pool for BSS	48,500,000
(C) 5.0 percent of the initial QS pool for EBT	9,700,000
(D) 5.0 percent of the initial QS pool for WBT	9,700,000
(E) 5.0 percent of the initial QS pool for PIK	1,455,000

Fishery	CVO/CPO Use Cap in QS Units
(F) 5.0 percent of the initial QS pool for SMB	1,455,000
(G) 5.0 percent of the initial QS pool for EAG	485,000
(H) 5.0 percent of the initial QS pool for WAG	1,940,000
(I) 5.0 percent of the initial QS pool for WAI	2,910,000

\* \* \* \* \*

(c) *Vessel limitations.* (1) Except for vessels that participate solely in a crab harvesting cooperative as described under § 680.21 and under the provisions described in paragraph (c)(4) of this section, no vessel may be used to harvest CVO or CPO IFQ in excess of the

following percentages of the TAC for that crab QS fishery for that crab fishing year:

- (i) 2.0 percent for BSS;
- (ii) 2.0 percent for BBR;
- (iii) 2.0 percent for EBT;
- (iv) 2.0 percent for WBT;
- (v) 4.0 percent for PIK;

- (vi) 4.0 percent for SMB;
- (vii) 20.0 percent for EAG;
- (viii) 20.0 percent for WAG; or
- (ix) 20.0 percent for the WAI crab QS fishery west of 179° W. long.

\* \* \* \* \*

6. Revise Table 1 to part 680 to read as follows:

TABLE 1 TO PART 680—CRAB RATIONALIZATION (CR) FISHERIES

Fishery Code	CR Fishery	Geographic Area
BBR	Bristol Bay red king crab ( <i>Paralithodes camtschaticus</i> )	In waters of the EEZ with: (1) A northern boundary of 58°30' N. lat., (2) A southern boundary of 54°36' N. lat., and (3) A western boundary of 168° W. long. and including all waters of Bristol Bay.
BSS	Bering Sea Snow crab ( <i>Chionoecetes opilio</i> )	In waters of the EEZ with: (1) A northern and western boundary of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (2) A southern boundary of 54°30' N. lat. to 171° W. long., and then south to 54°36' N. lat.
EAG	Eastern Aleutian Islands golden king crab ( <i>Lithodes aequispinus</i> )	In waters of the EEZ with: (1) An eastern boundary the longitude of Scotch Cap Light (164°44' W. long.) to 53°30' N. lat., then West to 165° W. long., (2) A western boundary of 174° W. long., and (3) A northern boundary of a line from the latitude of Cape Sarichef (54°36' N. lat.) westward to 171° W. long., then north to 55°30' N. lat., then west to 174° W. long.
EBT	Eastern Bering Sea Tanner crab ( <i>Chionoecetes bairdi</i> )	In waters of the EEZ with: (1) A western boundary the longitude of 166° W. long., (2) A northern boundary of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) A southern boundary of 54°30' N. lat.

TABLE 1 TO PART 680—CRAB RATIONALIZATION (CR) FISHERIES—Continued

Fishery Code	CR Fishery	Geographic Area
PIK	Pribilof red king and blue king crab ( <i>Paralithodes camtschaticus</i> and <i>P. platypus</i> )	In waters of the EEZ with: (1) A northern boundary of 58°30' N. lat., (2) An eastern boundary of 168° W. long., and (3) A southern boundary line from 54°36' N. lat., 168° W. long., to 54°36' N. lat., 171° W. long., to 55°30' N. lat., 171° W. long., to 55°30' N. lat., 173°30' E. lat., and then westward to the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
SMB	St. Matthew blue king crab ( <i>Paralithodes platypus</i> )	In waters of the EEZ with: (1) A northern boundary of 62° N. lat., (2) A southern boundary of 58°30' N. lat., and (3) A western boundary of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
WAG	Western Aleutian Islands golden king crab ( <i>Lithodes aequispinus</i> )	In waters of the EEZ with: (1) An eastern boundary the longitude 174° W. long., (2) A western boundary the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) A northern boundary of a line from the latitude of 55°30' N. lat., then west to the U.S.-Russian Convention line of 1867.
WAI	Western Aleutian Islands red king crab ( <i>Paralithodes camtschaticus</i> )	In waters of the EEZ with: (1) An eastern boundary the longitude 179° W. long., (2) A western boundary of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) A northern boundary of a line from the latitude of 55°30' N. lat., then west to the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
WBT	Western Bering Sea Tanner crab ( <i>Chionoecetes bairdi</i> )	In waters of the EEZ with: (1) An eastern boundary the longitude of 166° W. long., (2) A northern and western boundary of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) A southern boundary of 54°30' N. lat. to 171° W. long., and then south to 54°36' N. lat.

7. Revise Tables 7, 8, and 9 to part 680 to read as follows:

TABLE 7 TO PART 680—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY

Column A: Crab QS Fisheries	Column B: Qualifying Years for QS	Column C: Eligibility Years for CVC and CPC QS	Column D: Recent Participation Seasons for CVC and CPC QS	Column E: Subset of Qualifying Years
For each crab QS fishery the Regional Administrator shall calculate (see § 680.40(c)(2):	QS for any qualified person based on that person's total legal landings of crab in each of the crab QS fisheries for any:	In addition, each person receiving CVC and CPC QS must have made at least one landing per year, as recorded on a State of Alaska fish ticket, in any three years during the base period described below:	In addition, each person receiving CVC or CPC QS, must have made at least one landing, as recorded on a State of Alaska fish ticket, in at least 2 of the last 3 fishing seasons in each of, the crab QS fisheries as those seasons are described below:	The maximum number of qualifying years that can be used to calculate QS for each QS fishery is:
1. Bristol Bay red king crab (BBR)	4 years of the 5-year QS base period beginning on: (1) November 1–5, 1996; (2) November 1–5, 1997; (3) November 1–6, 1998; (4) October 15–20, 1999; (5) October 16–20, 2000.	3 years of the 5-year QS base period beginning on: (1) November 1–5, 1996; (2) November 1–5, 1997; (3) November 1–6, 1998; (4) October 15–20, 1999; (5) October 16–20, 2000.	(1) October 15–20, 1999. (2) October 16–20, 2000. (3) October 15–18, 2001.	4 years
2. Bering Sea snow crab (BSS)	4 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 20, 1998; (4) January 15, 1999 through March 22, 1999; (5) April 1–8, 2000.	3 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 20, 1998; (4) January 15, 1999 through March 22, 1999; (5) April 1–8, 2000.	(1) April 1–8, 2000. (2) January 15, 2001 through February 14, 2001. (3) January 15, 2002 through February 8, 2002.	4 years

TABLE 7 TO PART 680—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	Column B: Qualifying Years for QS	Column C: Eligibility Years for CVC and CPC QS	Column D: Recent Participation Seasons for CVC and CPC QS	Column E: Subset of Qualifying Years
3. Eastern Aleutian Islands golden king crab (EAG)	5 years of the 5-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 through November 24, 1997; (3) September 1, 1998 through November 7, 1998; (4) September 1, 1999 through October 25, 1999; (5) August 15, 2000 through September 24, 2000.	3 years of the 5-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 through November 24, 1997; (3) September 1, 1998 through November 7, 1998; (4) September 1, 1999 through October 25, 1999; (5) August 15, 2000 through September 25, 2000.	(1) September 1 1999 through October 25, 1999. (2) August 15, 2000 through September 24, 2000. (3) August 15, 2001 through September 10, 2001.	5 years
4. Eastern Bering Sea Tanner crab (EBT)	4 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1–10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1–21, 1994; (5) November 1–16, 1995; (6) November 1–5, 1996 and November 15–27, 1996.	3 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1–10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1–21, 1994; (5) November 1–16, 1995; (6) November 1–5, 1996 and November 15–27, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	4 years
5. Pribilof red king and blue king crab (PIK)	4 years of the 5-year period beginning on: (1) September 15–21, 1994; (2) September 15–22, 1995; (3) September 15–26, 1996; (4) September 15–29, 1997; (5) September 1–28, 1998.	3 years of the 5-year period beginning on: (1) September 15–21, 1994; (2) September 15–22, 1995; (3) September 15–26, 1996; (4) September 15–29, 1997; (5) September 15–28, 1998.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries, except that persons applying for an allocation to receive QS based on legal landings made aboard a vessel less than 60 feet (18.3 m) LOA at the time of harvest are exempt from this requirement.	4 years



TABLE 7 TO PART 680—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	Column B: Qualifying Years for QS	Column C: Eligibility Years for CVC and CPC QS	Column D: Recent Participation Seasons for CVC and CPC QS	Column E: Subset of Qualifying Years
6. St. Matthew blue king crab (SMB)	4 years of the 5-year period beginning on: (1) September 15–22, 1994; (2) September 15–20, 1995; (3) September 15–23, 1996; (4) September 15–22, 1997; (5) September 15–26, 1998.	3 years of the 5-year period beginning on: (1) September 15–22, 1994; (2) September 15–20, 1995; (3) September 15–23, 1996; (4) September 15–22, 1997; and (5) September 15–26, 1998.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	4 years
7. Western Aleutian Islands brown king crab (WAG)	5 of the 5 seasons beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 through August 21, 1998; (3) September 1, 1998 through August 31, 1999; (4) September 1, 1999 through August 14, 2000; (5) August 15, 2000 through March 28, 2001.	3 of the 5 seasons beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 through August 31, 1998; (3) September 1, 1998 through August 31, 1999; (4) September 1, 1999 through August 14, 2000; (5) August 15, 2000 through March 28, 2001.	(1) September 1, 1999 through August 14, 2000. (2) August 15, 2000 through March 28, 2001. (3) August 15 2001 through March 30, 2002.	5 years
8. Western Aleutian Islands red king crab (WAI)	3 of the 4 seasons beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1993 through February 15, 1994; (3) November 1–28, 1994; (4) November 1, 1995 through February 13, 1996.	3 of the 4 seasons beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1993 through February 15, 1994; (3) November 1–28, 1994; (4) November 1, 1995 through February 13, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	3 years

TABLE 7 TO PART 680—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	Column B: Qualifying Years for QS	Column C: Eligibility Years for CVC and CPC QS	Column D: Recent Participation Seasons for CVC and CPC QS	Column E: Subset of Qualifying Years
9. Western Bering Sea Tanner crab (WBT)	4 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1–10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1–21, 1994; (5) November 1–16, 1995; (6) November 1–5, 1996 and November 15–27, 1996.	3 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1–10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1–21, 1994; (5) November 1–16, 1995; (6) November 1–5, 1996 and November 15–27, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	4 years

TABLE 8 TO PART 680—INITIAL QS AND PQS POOL FOR EACH CRAB QS FISHERY

Crab QS Fishery	Initial QS Pool	Initial PQS Pool
BBR - Bristol Bay red king crab	400,000,000	400,000,000
BSS - Bering Sea snow crab <i>C. opilio</i>	1,000,000,000	1,000,000,000
EAG - Eastern Aleutian Islands golden king crab	10,000,000	10,000,000
EBT - Eastern Bering Sea Tanner crab ( <i>C. bairdi</i> )	200,000,000	200,000,000
PIK - Pribilof Islands red and blue king crab	30,000,000	30,000,000
SMB - St. Matthew blue king crab	30,000,000	30,000,000
WAG - Western Aleutian Islands golden king crab	40,000,000	40,000,000
WAI - Western Aleutian Islands red king crab	60,000,000	60,000,000
WBT - Western Bering Sea Tanner crab ( <i>C. bairdi</i> )	200,000,000	200,000,000

TABLE 9 TO PART 680—INITIAL ISSUANCE OF CRAB PQS BY CRAB QS FISHERY

Column A: For each crab QS fishery:	Column B: The Regional Administrator shall calculate PQS for any qualified person based on that person's total legal purchase of crab in each of the crab QS fisheries for any...
Bristol Bay red king crab (BBR)	3 years of the 3-year QS base period beginning on: (1) November 1–5, 1997; (2) November 1–6, 1998; and (3) October 15–20, 1999.
Bering Sea snow crab (BSS)	3 years of the 3-year period beginning on: (1) January 15, 1997 through March 21, 1997; (2) January 15, 1998 through March 20, 1998; and (3) January 15, 1999 through March 22, 1999.
Eastern Aleutian Island golden king crab (EAG)	4 years of the 4-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 through November 24, 1997; (3) September 1, 1998 through November 7, 1998; and (4) September 1, 1999 through October 25, 1999.

TABLE 9 TO PART 680—INITIAL ISSUANCE OF CRAB PQS BY CRAB QS FISHERY—Continued

Column A: For each crab QS fishery:	Column B: The Regional Administrator shall calculate PQS for any qualified person based on that person's total legal purchase of crab in each of the crab QS fisheries for any...
Eastern Bering Sea Tanner crab (EBT)	Equivalent to 50 percent of the total legally processed crab in the Bering Sea snow crab fishery during the qualifying years established for that fishery, and 50 percent of the total legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that fishery.
Pribilof Islands red and blue king crab (PIK)	<i>3 years of the 3-year period beginning on:</i> (1) September 15–26, 1996; (2) September 15–29, 1997; and (3) September 15–28, 1998.
St. Matthew blue king crab (SMB)	<i>3 years of the 3-year period beginning on:</i> (1) September 15–23, 1996; (2) September 15–22, 1997; and (3) September 15–26, 1998.
Western Aleutian Island golden king crab (WAG)	<i>4 years of the 4-year base period beginning on:</i> (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 through August 31, 1998; (3) September 1, 1998 through August 31, 1999; and (4) September 1, 1999 through August 14, 2000.
Western Aleutian Islands red king crab (WAI)	Equivalent to the total legally processed crab in the Western Aleutian Islands golden (brown) king crab fishery during the qualifying years established for that fishery.
Western Bering Sea Tanner crab (WBT)	Equivalent to 50 percent of the total legally processed crab in the Bering Sea snow crab fishery during the qualifying years established for that fishery, and 50 percent of the total legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that fishery.

[FR Doc. 06–2705 Filed 3–20–06; 8:45 am]

BILLING CODE 3510–22–S

## Notices

Federal Register

Vol. 71, No. 54

Tuesday, March 21, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

### DEPARTMENT OF AGRICULTURE

#### Forest Service

#### Ravalli County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Ravalli County Resource Advisory Committee will be meeting to review 2006 projects, discuss public outreach methods, and hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393). The meeting is open to the public. **DATES:** The meeting will be held on March 28, 2006, 6:30 p.m.

**ADDRESSES:** The meeting will be held at the Bitterroot National Forest Supervisor Office, 1801 N First, Hamilton, Montana. Send written comments to Daniel Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777-7423, or electronically to [dritter@fs.fed.us](mailto:dritter@fs.fed.us).

**FOR FURTHER INFORMATION CONTACT:** Daniel Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777-5461.

Dated: March 14, 2006.

**David T. Bull,**

*Forest Supervisor.*

[FR Doc. 06-2678 Filed 3-20-06; 8:45 am]

BILLING CODE 3410-11-M

### DEPARTMENT OF AGRICULTURE

#### Forest Service

#### Southwest Washington Province Advisory Committee Meeting Notice

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Southwest Washington Province Advisory Committee will meet on Thursday, April 13, 2006, at the Gifford Pinchot National Forest Headquarters, 10600 NE., 51st Circle, Vancouver, WA 98682. The meeting will begin at 9:30 a.m. and continue until 4 p.m.

The purpose of the meeting is to share information and receive feedback on: Efforts to quantify and monitor biodiversity under the Northwest Forest Plan; the Yakama Nation's timber program; the Gifford Pinchot National Forest's monitoring program, and to share information among Committee members.

All Southwest Washington Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides an opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled for 1:30 p.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments to Committee business at any time.

**FOR FURTHER INFORMATION CONTACT:** Tom Knappenbeger, Public Affairs Officer, at (360) 891-5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: March 15, 2006.

**Ron Freeman,**

*Acting Forest Supervisor*

[FR Doc. 06-2679 Filed 3-20-06; 8:45 am]

BILLING CODE 3410-11-M

### DEPARTMENT OF AGRICULTURE

#### Rural Housing Service

#### Notice of Funding Availability: The Choctaw Intermediate Relending Fund (CIRF) Demonstration Program for Fiscal Year 2006

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Notice.

#### Overview Information

**SUMMARY:** The Rural Housing Service, (RHS), an Agency under USDA Rural Development, announces the

availability of funds and the timeframe to submit applications for loans to private non-profit organizations, or such non-profit organizations' loan affiliate funds and State and local housing finance agencies, to carry out a housing demonstration program to provide loans for the construction and rehabilitation of housing for the Mississippi Band of Choctaw Indians. Housing that is assisted by this demonstration program must be financed by USDA Rural Development in accordance with its current housing loan programs as authorized by the Housing Act of 1949. This demonstration program will be achieved through loans made to intermediaries who will then make loans to ultimate recipients for the construction and rehabilitation of housing for the Mississippi Band of Choctaw Indians (as determined by the Native American Housing and Self Determination (NAHASDA) Act.)

#### Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Numbers 10.415 and 10.410.

**DATES:** The deadline for receipt of all applications in response to this NOFA is 5 p.m., Eastern Time, June 19, 2006. The application closing deadline is firm as to date and hour. The Agency will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

#### FOR FURTHER INFORMATION CONTACT:

Henry Searcy, Jr., Senior Loan Specialist, Multi-Family Housing Processing Division—STOP 0781 (Room 1263-S), or Bonnie Edwards-Jackson, Senior Loan Specialist, Multi-Family Housing Processing Division—STOP 0781 (Room 1239-S), U.S. Department of Agriculture, USDA Rural Development, 1400 Independence Ave., SW., Washington, DC 20250-0781 or by telephone at (202) 720-1753 or (202) 690-0759, or via e-mail, [Henry.Searcy@wdc.usda.gov](mailto:Henry.Searcy@wdc.usda.gov) or [Bonnie.Edwards@wdc.usda.gov](mailto:Bonnie.Edwards@wdc.usda.gov). (Please note the phone numbers are not toll free numbers.)

#### SUPPLEMENTARY INFORMATION:

### Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget must approve all "collections of information" by USDA Rural Development. The Act defines "collection of information" as a requirement for "answers to \* \* \* identical reporting or recordkeeping requirements imposed on ten or more persons \* \* \*." (44 U.S.C. 3502(3)(A)) Because this NOFA will receive less than 10 respondents, the Paperwork Reduction Act does not apply.

### Equal Opportunity and Nondiscrimination Requirements

(1) In accordance with the Fair Housing Act, title VI of the Civil Rights Act of 1964, the Equal Credit Opportunity Act, the Age Discrimination Act of 1975, Executive Order 12898, the Americans with Disabilities Act, and section 504 of the Rehabilitation Act of 1973, neither the intermediary nor the Agency will discriminate against any employee, proposed intermediary or proposed ultimate recipient on the basis of sex, marital status, race, color, religion, national origin, age, physical or mental disability (provided the proposed intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the proposed intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the proposed intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime Agency loan funds are involved.

(2) The policies and regulations contained in 7 CFR part 1901, subpart E apply to this program.

(3) The Agency Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with the Fair Housing Act, title VI of the Civil Rights Act of 1964, the Equal Credit Opportunity Act, the Age Discrimination Act of 1975, Executive Order 12898, the Americans with Disabilities Act, and section 504 of the Rehabilitation Act of 1973.

(4) All housing must meet the accessibility requirements found at 7 CFR 3560.60(d).

(5) In accordance with RD Instruction 2006-P (available in any Rural Development office) and Departmental Regulation 5600-2, the Agency should conduct a Civil Rights Impact Analysis for each loan made to an intermediary and the Agency should document their

analyses through the completion of Form RD 2006-38, "Civil Rights Impact Analysis Certification."

### Overview

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109-97, November 10, 2005); Sec 791 provides funding for, and authorizes USDA Rural Development to, establish a loan program for the purpose of providing loans to intermediaries that lead to ultimate recipients for the construction and rehabilitation of housing for the Mississippi Band of Choctaw Indians.

### Program Administration

#### I. Funding Opportunities Description

This NOFA requests applications from eligible intermediary applicants for loans to establish and operate a relending fund for the construction and rehabilitation of housing for the Mississippi Band of Choctaw Indians in accordance with the RHS current housing lending programs.

Housing that is constructed must meet the Agency design and construction standards and the development standards contained in 7 CFR part 1924, subparts A and C, respectively. A multi-family housing project, once constructed, must be managed in accordance with the program's management regulation, 7 CFR part 3560, subpart C. For single family houses, homeowners must comply with 7 CFR part 3550. Tenant eligibility is limited to persons who qualify as a very low-, low-, or moderate-income household or who are eligible under the requirements established to qualify for housing benefits provided by sources other than the Agency, such as the U.S. Department of Housing and Urban Development Section 8 assistance or the Low Income Housing Tax Credit Assistance, when a tenant receives such housing benefits. Additional tenant eligibility requirements are contained in 7 CFR 3560.152. Homeowner eligibility is limited to persons whose household adjusted income, at the time of loan approval, must not exceed the applicable low-income for the area, and at closing, must not exceed the applicable moderate-income limit for the area. Additional homeowner eligibility requirements are contained at 7 CFR 3550.53.

#### II. Award Information

Public Law 109-97 (November 10, 2005) made funding available for loans to private non-profit organizations, or such non-profit organizations' affiliate

loan funds and State and local housing finance agencies, to carry out a housing demonstration program to provide intermediate relending for the construction and rehabilitation of housing for the Mississippi Band of Choctaw Indians. The total amount of funding available for this program is \$990,000. As required by this statute, loans to intermediaries under this demonstration program shall have an interest rate of no more than one percent, and the Secretary of Agriculture may defer the interest and principal payment to USDA Rural Development for up to three years during the first three years of the loan. The term of such loans shall not exceed 30 years. Payments will be made on an annual basis. Funding priority will be given to entities with equal or greater matching funds, including housing tax credits for rural housing assistance and to entities with experience in the administration of relending loan programs.

#### III. Eligibility Information

##### Applicant Eligibility

(1) Eligibility requirements—Intermediary.

(a) The types of entities which may become intermediaries are private nonprofit organizations or such nonprofit organizations' affiliate loan funds and State and local housing finance agencies, tribal housing authorities and federally recognized tribes.

(b) The intermediary must have:

(i) The legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan;

(ii) A proven record of successfully assisting low-income multi-family housing projects, or providing housing loans, or technical assistance. Such record will include documentation reflecting recent experience in loan making and servicing loans that are similar in nature to those proposed for the CIRF demonstration program and a satisfactory delinquency and loss rate; and

(iii) The services of a staff with loan making and servicing expertise.

(c) No loans will be extended to an intermediary unless:

(i) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the proposed intermediary;

(ii) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made;

(iii) At least 51 percent of the outstanding interest or membership in



any nonpublic body intermediary must be composed of citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence;

(iv) The Intermediary's Debt Service Coverage Ratio (DSCR) must be greater than 1.1 for the fiscal year immediately prior to the year of application and a minimum DSCR of 1 for the fiscal year two years prior and the fiscal year three years prior to the application; and

(v) The Intermediary's prior calendar year audit.

(d) Intermediaries, and the principals of the intermediaries, must not be suspended, debarred, or excluded based on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs."

(e) Intermediaries and their principals must not be delinquent on Federal debt, or be a Federal judgment debtor.

(2) Eligibility requirements—Ultimate recipients.

(a) To be eligible to receive loans from the CIRF, ultimate recipients must:

(i) Be unable to provide the necessary housing from its own resources and, except for State or local public agencies and Indian tribes, be unable to obtain the necessary credit from other sources upon terms and conditions the applicant could reasonably be expected to fulfill;

(ii) Along with its principal officers (including their immediate family), hold no legal or financial interest or influence in the intermediary. Also, the intermediary and its principal officers (including immediate family) must hold no legal or financial interest or influence in the ultimate recipient; and

(iii) Be in compliance with all Agency program requirements under 7 CFR part 3560 or 7 CFR part 3550, whichever is applicable, or have an Agency approved workout plan in place which will correct a non-compliance status.

(b) Any delinquent debt to the Federal Government, by the ultimate recipient or any of its principals, shall cause the proposed ultimate recipient to be ineligible to receive a loan from the CIRF. CIRF loan funds may not be used to satisfy the delinquency.

(c) The ultimate recipient or any of its principals may not be a Federal judgment debtor.

Cost Sharing or Matching. Funding priority will be given to entities with equal or greater matching funds, including housing tax credits for rural housing assistance. Refer to the Selection Criteria section of the NOFA for further information on funding priorities.

#### IV. Application and Submission Information

##### Application Requirements

The application must contain the following:

(1) A summary page, that is double-spaced, that lists the following items:

- (a) Applicant's name.
- (b) Applicant's Taxpayer Identification Number.
- (c) Applicant's address.
- (d) Applicant's telephone number.
- (e) Name of applicant's contact person, telephone number, and address.
- (f) Amount of loan requested.

(2) Form RD 4274-1, "Application for Loan (Intermediary Relending Program)."

(3) A written work plan to demonstrate the feasibility of the intermediary's program to meet the objectives of this demonstration program. The work plan must, at a minimum:

(a) Document the intermediary's ability to administer this demonstration program in accordance with the provisions of this NOFA. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for Agency review, and the terms of the contract and its duration must be sufficient to adequately service the Agency loan through to its ultimate conclusion. If the Agency determines the personnel lack the necessary expertise to administer the program, the loan request will not be approved;

(b) Document the intermediary's ability to commit financial resources under the control of the intermediary to the demonstration program. This should include a statement of the sources of non-Agency funds for administration of the intermediary's operations and financial assistance for projects;

(c) Demonstrate a need for loan funds. At a minimum, the intermediary must either (1) identify a sufficient number of proposed and known ultimate recipients to justify Agency funding of its loan request; or (2) include well-developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for this demonstration program, along with supporting statistical or narrative

evidence that such prospective recipients exist in sufficient numbers to justify Agency funding of the loan request;

(d) Include a list of proposed fees and other charges it will assess the ultimate recipients;

(e) Demonstrate that the intermediary has secured commitments of significant financial support from public agencies and private organizations;

(f) Include the intermediary's plan for relending the loan funds. The plan must be of sufficient detail to provide the Agency with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees, rates, terms, collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management are some of the items that must be addressed by the intermediary's relending plan;

(g) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms such as low-income housing complexes rehabilitated or low-income housing units preserved, and should relate to the purpose of this demonstration program; and

(h) Provide specific information as to whether and how the intermediary will ensure that technical assistance is made available to ultimate recipients and potential ultimate recipients. Describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and any arrangements between such organizations and the intermediary.

(4) A pro forma balance sheet at start-up and projected balance sheets for at least 3 additional years; financial statements for the last 3 years, (or from inception of the operations of the intermediary if less than 3 years); and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that takes into account a projected year with

factoring in full annual installment on the CIRF loan.

(5) Form RD 400-4, "Assurance Agreement."

(6) Complete organizational documents, including evidence of authority to conduct the proposed activities.

(7) Latest audit report.

(8) Form RD 1910-11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts."

(9) Form AD-1047, "Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transactions."

(10) Exhibit A-1 of RD Instruction 1940-Q, "Certification for Contracts, Grants, and Loans" (available in any Rural Development office).

(11) Tax Returns for three years prior to application, and a current financial statement.

(12) A separate one-page information sheet listing each of the "Application Scoring Criteria" contained in this Notice, followed by the page numbers of all relevant material and documentation that is contained in the proposal that supports these criteria. Applicants are also encouraged, but not required, to include a checklist of all of the selection criteria as set out in more detail under Section V of this notice. Application Review Information in this NOFA and to have their application indexed and tabbed to facilitate the review process.

Submission address. Applications should be submitted to USDA Rural Housing Service; Attention: Henry Searcy, Jr., Senior Loan Specialist, Multi-Family Housing Processing Division STOP 0781 (Room 1263-S), or Bonnie Edwards-Jackson, Senior Loan Specialist, Multi-Family Housing Processing Division—STOP 0781 (Room 1239-S), U.S. Department of Agriculture-USDA Rural Development, 1400 Independence Ave., SW., Washington, DC 20250-0781 or by telephone at (202) 720-1753 or (202) 690-0759 or via e-mail, [Henry.Searcy@wdc.usda.gov](mailto:Henry.Searcy@wdc.usda.gov) or [Bonnie.Edwards@wdc.usda.gov](mailto:Bonnie.Edwards@wdc.usda.gov). (Please note the phone numbers are not toll free numbers.)

#### V. Application Review Information

All applications will be evaluated by a loan committee. The loan committee will make recommendations to the Agency Administrator concerning eligibility determinations and for the selection of applications based on the selection criteria contained in this NOFA and the availability of funds. The Administrator will inform applicants of the status of their application within 30

days of the loan application closing date of the NOFA.

#### Selection Criteria

Selection criteria points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in paragraphs (1) through (4) of this section. In each case, the intermediary's work plan must provide documentation that the selection criteria have been met in order to qualify for selection criteria points. If an application does not fit one of the categories listed, it receives no points for that paragraph.

(1) Other funds. Points allowed under this paragraph are to be based on documented successful history or written evidence that the other funds are available.

(a) The intermediary will obtain non-Agency loan or grant funds or provide housing tax credits (measured in dollars) to pay part of the cost of the ultimate recipients' project cost. The intermediary shall pledge as collateral its CIRF, including its portfolio of investments derived from the proceeds of other funds and this loan award.

Points for the amount of funds from other sources are as follows:

(i) At least 10% but less than 25% of the total loan amount requested by the intermediary—5 points;

(ii) At least 25% but less than 50% of the total loan amount requested by the intermediary—10 points; or

(iii) 50% or more of the total loan amount requested by the intermediary—15 points.

(b) The intermediary will provide loans to the ultimate recipient from its own funds (not loan or grant) to pay part of the ultimate recipients' project cost. The amount of the intermediary's own funds will average:

(i) At least 10% but less than 25% of the total loan amount requested by the intermediary—5 points;

(ii) At least 25% but less than 50% of total loan amount requested by the intermediary—10 points; or

(iii) 50% or more of total loan amount requested by the intermediary—15 points.

(2) Intermediary pledged security funds: The Intermediary will pledge security funds not derived from the Agency which will be considered security funds. The pledged security funds will be placed in a separate account from the CIRF loan account and will remain in this account until the CIRF revolves as described in the loan agreement. The Intermediary shall

contribute the pledged security funds into a separate bank account or accounts according to their work plan. These pledged security funds are to be placed into an interest bearing counter-signature account until the PRLF revolves. No other funds shall be commingled with such money.

The amount of pledged security funds contributed to the CIRF will equal the following percentage of the Agency CIRF loan:

(a) At least 5% but less than 15%—15 points;

(b) At least 15% but less than 25%—30 points; or

(c) 25% or more—50 points.

(3) Experience. The intermediary has actual experience in the administration of relending loan funds, with a successful record, for the following number of full years. Applicants must have actual experience in both the administration of relending loan funds in order to qualify for points under this selection criteria. If the number of years of experience differs between the two types of experience, the type with the least number of years will be used for this selection criteria.

(a) At least 1 but less than 3 years—5 points;

(b) At least 3 but less than 5 years—10 points;

(c) At least 5 but less than 10 years—20 points; or

(d) 10 or more years—30 points.

(4) Administrative. The Administrator may assign up to 35 additional points to an application to account for the following items not adequately covered by the other priority criteria set out in this section, including the amount of funds requested in relation to the amount of need; a particularly successful affordable housing development record; a service area with no other CIRF coverage; a service area with severe affordable housing problems; a service area with emergency conditions caused by a natural disaster; an innovative proposal; the quality of the proposed program; a work plan that is in accord with a strategic plan, particularly a plan prepared as part of a request for an Empowerment Zone/Enterprise Community designation; or excellent utilization of an existing revolving loan fund program. The Administrator will document his reasons for the point allocation.

#### VI. Other Administrative Requirements

(1) The following policies and regulations apply to loans to intermediaries made in response to this NOFA:

(a) CIRF intermediaries will be required to provide the Agency with the following reports:

(i) An annual audit;

(A) Dates of audit report period need not necessarily coincide with other reports on the CIRF. The Agency will inform the intermediary when the audits need to be conducted. Audit reports shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant. The audit will be performed in accordance with Generally Accepted Government Auditing Standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary.

(B) It is not intended that audits required by this program be separate from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work for this program should be done in connection with these other audits. Intermediaries covered by the Office of Management and Budget Circular A-128 or A-133 should submit audits made in accordance with that circulars.

(ii) Quarterly or semiannual reports (due 30 days after the end of the period):

(A) Performance reports will be required quarterly during the first year after loan closing. Thereafter, reports will be required semiannually. Also, the Agency may resume requiring quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary's CIRF is not adequately protected by the current financial status and paying capacity of the ultimate recipients.

(B) These reports shall contain information only on the CIRF loan. If other funds are included, the CIRF portion shall be segregated from the others. If the intermediary has more than one CIRF loan from the Agency, a separate report shall be made for each CIRF loan.

(C) The reports will include, on a form to be provided by the Agency, information on the intermediary's lending activity, income and expenses, financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(D) Quarterly and semiannual reports will be due to the Agency 30 days after the end of the calendar quarter or half. Quarterly reports will be due April 30,

July 31, October 31, or January 31. Semiannual reports will be due July 1 and January 31.

(iii) Annual proposed budget for the following year; and

(iv) Other reports as the Agency may require from time to time.

(b) The Agency may consider, on a case by case basis, subordinating its security interest on the property to the lien of the intermediary so that the Agency has a junior lien interest when an independent appraisal documents that the Agency will continue to be fully secured.

(c) The term of the loan to the ultimate recipient may not exceed 30 years.

(d) The policies and regulations contained in 7 CFR part 1901, subpart F regarding historical and archaeological properties apply to all loans funded under this NOFA.

(e) The policies and regulations contained in 7 CFR part 1940, subpart G regarding environmental assessments apply to all loans funded under this NOFA.

(f) These loans are subject to the provisions of Executive Order 12372 that require intergovernmental consultation with state and local officials. RHS conducts intergovernmental consultations for each loan in a manner delineated in RD Instruction 1940-J which is available in any Rural Development office.

(2) The intermediary agrees to the following:

(a) To obtain the written Agency approval, before the first lending of CIRF funds to an ultimate recipient, of:

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments; and

(ii) Intermediary's policy with regard to the amount and form of security to be required.

(b) To obtain written approval from the Agency before making any significant changes in forms, security policy, or the work plan. The Agency may approve changes in forms, security policy, or work plans at any time upon a written request from the intermediary and determination by the Agency that the change will not jeopardize repayment of the loan or violate any requirement of this NOFA or other Agency regulations. The intermediary must comply with the work plan approved by the Agency so long as any portion of the intermediary's CIRF loan is outstanding.

(c) To secure the indebtedness by pledging the CIRF, including its portfolio of investments derived from the proceeds of the loan award, and

other rights and interests as the Agency may require.

(d) The Intermediary may withdraw up to 25 percent of USDA CIRF loan funds at loan closing. Thereafter, the intermediary may withdraw, under this award, only such funds as are necessary to cover a 30-day period in implementing its approved work plan. Advances will be requested by the Intermediary in writing. Subsequent CIRF advances will not be considered by the Agency unless at least 80 percent of prior advances are used. The date of such withdrawal shall constitute the date the funds are advanced under this Loan Agreement for purposes of computing interest payments. To return, as an extra payment on the loan any funds that have not been used in accordance with the intermediary's work plan by a date 2 years from the date of the loan agreement. If any revolving loan funds have not been used by 5 years from the date of the loan agreement, the approval will be canceled for any funds that have not been delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any revolving loan funds it has received and not used in accordance with the work plan. In accordance with the Agency approved promissory note, regular loan payments will be based on the amount of funds actually drawn by the intermediary.

(3) The intermediary will be required to enter into an Agency approved loan agreement and promissory note. The promissory note will have a term not to exceed 30 years, bear interest at no more than one percent per annum, and provide that interest and principal due to the Government during the first three years of the loan may be deferred.

(4) Loans made to the CIRF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing and be consistent with the requirements of title V of the Housing Act of 1949.

(5) When an intermediary proposes to make a loan from the CIRF to an ultimate recipient, Agency concurrence is required prior to final approval of the loan. A request for Agency concurrence in approval of a proposed loan to an ultimate recipient must include:

(a) Certification by the intermediary that:

(i) The proposed ultimate recipient is eligible for the loan;

(ii) The proposed loan is for eligible purposes;

(iii) The proposed loan complies with all applicable statutes and regulations; and

(iv) Prior to closing the loan to the ultimate recipient, the intermediary and

its principal officers (including immediate family) hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest or influence in the intermediary.

(b) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files, to allow the Agency to determine the:

- (i) Name and address of the ultimate recipient;
- (ii) Loan purposes;
- (iii) Interest rate and term;
- (iv) Location, nature, and scope of the project being financed;
- (v) Other funding included in the project; and
- (vi) Nature and lien priority of the collateral.

(c) Such other information as the Agency may request on specific cases.

(6) Upon receipt of a request for concurrence in a loan to an ultimate recipient the Agency will provide the necessary materials as authorized by the Housing Act of 1949. The Agency will also issue a letter concurring in the loan when all requirements have been met or notify the intermediary in writing of the reasons for denial when the Agency determines it is unable to concur in the loan.

#### Funding Restrictions

Loans made to the CIRF intermediary under this demonstration program may not exceed \$990,000 and may be limited by geographic area so that multiple loan recipients are not providing similar services to the same service areas.

Loans made to the CIRF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing and be consistent with the requirements of title V of the Housing Act of 1949.

#### VII. Appeal Process

All adverse determination regarding applicant eligibility and the awarding of points as part of the selection process are appealable. Instructions on the appeal process will be provided at the time the applicant is notified of the decision.

Dated: March 16, 2006.

**Russell T. Davis,**

*Administrator, Rural Housing Service.*

[FR Doc. E6-4059 Filed 3-20-06; 8:45 am]

BILLING CODE 3410-XV-P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service, an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

**DATES:** Comments on this notice must be received by May 22, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Michele Brooks, Deputy Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave., SW., STOP 1522, Room 5159 South Building, Washington, DC 20250-1522. Telephone: (202) 690-1078. FAX: (202) 720-4120.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that will be submitted to OMB for approval.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Deputy Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, 1400 Independence Ave.,

SW., Washington, DC 20250-1522. FAX: (202) 720-4120.

*Title:* Water and Waste Loan and Grant Program.

*OMB Control Number:* 0572-0121.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* USDA Rural Development, through the Rural Utilities Service, is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes to fund water and waste disposal projects serving the most financially needy rural communities through the Water and Waste Disposal loan and grant program. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users. The program is limited to rural areas and small towns with a population of 10,000 or less. The Water and Waste loan and grant program is administered through 7 CFR part 1780. The items covered by this collection include forms and related documentation to support a loan application.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 3 hours per response.

*Respondents:* Not-for-profit institutions; State, Local, or Tribal Government.

*Estimated Number of Respondents:* 6,000.

*Estimated Number of Responses per Respondent:* 8.

*Estimated Total Annual Burden on Respondents:* 132, 069 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690-1078. FAX: (202) 720-4120

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.

Dated: March 8, 2006.

**James M. Andrew,**

*Administrator, Rural Utilities Service.*

[FR Doc. E6-4016 Filed 3-20-06; 8:45 am]

BILLING CODE 3410-15-P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Hawai'i Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawai'i Advisory Committee to the



Commission will convene at 9 a.m. and adjourn at 12 p.m. on March 23, 2006, at the Marriott Waikiki Hotel 2552 Kalakaua Avenue. The purpose of the meeting is to plan future activities and discuss the status of civil right issues and concerns.

Persons desiring additional information, or planning a presentation to the Committee, should contact Thomas V. Pilla, Civil Rights Analyst of the Western Regional Office, (213) 894-3437, (TDD (213) 894-3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the regional office at least ten (10) working days before the scheduled date of the meeting. The Commission is implementing new travel and budget procedures and forms; it was not possible to publish this notice 15 days in advance of the meeting date.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC March 15, 2006.

Ivy L. Davis,

Acting Chief, Regional Programs  
Coordination Unit.

[FR Doc. E6-4054 Filed 3-20-06; 8:45 am]

BILLING CODE 6335-01-P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 12 p.m. on March 16, 2006, at the Westin Hotel 1900 Fifth Avenue, Seattle, Washington 98101. The purpose of the meeting is to plan future activities, conduct a briefing on the Washington Assessment of Student Learning (WASL) program, and discuss civil right issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Thomas V. Pilla, Civil Rights Analyst of the Western Regional Office, (213) 894-3437, (TDD (213) 894-3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the regional office at least three (3) working days before the scheduled date of the meeting. The Commission is implementing new travel and budget procedures and forms; it was not

possible to publish this notice 15 days in advance of the meeting date.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC March 15, 2006.

Ivy L. Davis,

Acting Chief, Regional Programs  
Coordination Unit.

[FR Doc. E6-4053 Filed 3-20-06; 8:45 am]

BILLING CODE 6335-01-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-552-801

#### Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review

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

**SUMMARY:** On September 13, 2005, the Department of Commerce (the "Department") published in the *Federal Register* the preliminary results of the first administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam"). See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007 (September 13, 2005) ("*Preliminary Results*"). We gave interested parties an opportunity to comment on the *Preliminary Results*. As a result, we made changes to the dumping margin calculations for the final results. See *Memorandum to the File from Irene Gorelik, Analyst, through Alex Villanueva, Program Manager; Analysis for the Final Results of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Vinh Hoan Company Ltd.* ("Vinh Hoan"), dated March 13, 2006 ("*Vinh Hoan Final Analysis Memo*"); see also *Memorandum to the File from Javier Barrientos, Analyst, through Alex Villanueva, Program Manager; Analysis for the Final Results of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Can Tho Agricultural and Animal Products Import Export Company* ("CATACO"), dated March 13, 2006 ("*CATACO Final Analysis Memo*").

**EFFECTIVE DATE:** March 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Irene Gorelik (Vinh Hoan) or Javier Barrientos (CATACO), 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) 482-6905 or (202) 482-9068, respectively.

### SUPPLEMENTARY INFORMATION:

#### Case History

The Preliminary Results for this administrative review were published on September 13, 2005. Since the Preliminary Results, the following events have occurred:

#### Submission of Final Surrogate Value Information

On September 30, 2005, Vinh Hoan submitted publicly available information to be used in valuing surrogate factors of production for the final results. On October 3, 2005, the Department extended the deadline for the submission of publicly available information for the final results per Petitioners' extension request dated September 30, 2005. On October 17, 2005, Petitioners submitted publicly available information for the Department's consideration in the final results. On October 17, 2005, H&N Foods International ("H&N"), an interested party, submitted publicly available information for the final results. On October 27, 2005, Petitioners submitted rebuttal comments to H&N's October 17, 2005, submission of publicly available information.

#### Verification

On September 30, 2005, the Department issued verification outlines to Vinh Hoan and CATACO for the on-site verifications scheduled for October 10, 2005, through October 14, 2005. On October 6, 2005, Petitioners submitted pre-verification comments for Vinh Hoan and CATACO regarding the sales and factors of production verifications scheduled for October 10, 2005, through October 14, 2005. The Department conducted its verification of Vinh Hoan's questionnaire responses from October 10, 2005, through October 14, 2005. The Department began its verification of CATACO's questionnaire responses on October 10, 2005. On October 12, 2005, CATACO terminated the verification and informed the Department that it no longer wished to participate in this administrative review. On October 24, 2005, Vinh Hoan submitted verification exhibits per its extension request dated September 30,

<sup>1</sup> The Catfish Farmers of America and individual U.S. catfish processors are henceforth collectively referred to as "Petitioners."



2005. On November 1, 2005, the Department issued its verification report for CATACO. On November 14, 2005, the Department issued its verification report for Vinh Hoan. On January 9, 2006, the Department issued a memorandum clarifying a statement in its verification report for CATACO.

#### Case Briefs

On October 6, 2005, and November 10, 2005, the Department extended the deadline for the submission of case briefs. On November 15, 2005, the Department issued a memorandum inviting comments from interested parties regarding the expected nonmarket economy wage rate. On November 29, 2005, January 6, 2006, and January 11, 2006, the Department further extended the deadline for the submission of case briefs due to our extension of the final results of this review. On January 20, 2006, Petitioners filed an extension request for case brief submissions concerning CATACO. On January 20, 2006, the Department granted Petitioners' limited extension request. On January 24, 2006, Petitioners, Vinh Hoan and H&N submitted case briefs concerning Vinh Hoan. On January 27, 2006, Petitioners submitted case briefs concerning CATACO. On February 3, 2006, Petitioners, Vinh Hoan, and H&N submitted rebuttal briefs concerning both respondents. In its February 3, 2006, rebuttal brief, Vinh Hoan stated that Petitioners included new information in their January 24, 2005, case brief concerning Vinh Hoan. On February 9, 2005, the Department notified Petitioners that they must remove the new information from their January 24, 2006, case brief concerning Vinh Hoan. On February 10, 2006, Petitioners resubmitted their case brief concerning Vinh Hoan absent the unsolicited and untimely new information included in their January 24, 2006, case brief.

#### Hearing

On October 13, 2005, Petitioners submitted a request for a public hearing. On January 20, 2005, Petitioners withdrew their October 13, 2005, request for a public hearing.

#### Extension of the Final Results

On December 2, 2005, the Department extended the time limit for completion of the final results of the instant administrative review. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for the Final Results of the First Antidumping Duty Administrative*

*Review*, 70 FR 72294 (December 2, 2005).

#### CATACO Business Proprietary Information ("BPI")

On October 13, 2005, CATACO formally filed its request for the removal and/or destruction of its BPI. On October 21, 2005, Petitioners filed a request to deny CATACO's request to either return or destroy its BPI. On January 18, 2006, the Department issued a memorandum regarding its intention to remove and destroy CATACO's BPI documents placed on the record for this administrative review. On January 23, 2006, the Department sent CATACO a letter stating that we removed its BPI submission from the record.

On January 17, 2006, the Department placed entry summaries received from U.S. Customs and Border Protection ("CBP") on the record. On January 18, 2006, the Department placed certain public information from the second administrative review of certain frozen fish fillets from Vietnam on the record of this proceeding.

#### Scope of the Order

The product covered by this order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact ("regular" fillets), boneless fillets with the belly flap removed ("shank" fillets), boneless shank fillets cut into strips ("fillet strips/finger"), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen "basa" and "tra" fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States ("HTSUS").<sup>2</sup> This order

covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum ("*Final Decision Memo*"), which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this administrative review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit ("CRU"), room B-099 of the main Department building. In addition, a copy of the *Final Decision Memo* can be accessed directly on our Web site at <http://ia.ita.doc.gov/>. The paper copy and electronic version of the *Final Decision Memo* are identical in content.

#### Verification

As provided in section 782(i) of the of the Tariff Act, as Amended ("the Act"), we conducted verification of the information submitted by Vinh Hoan and CATACO for use in our final results. See *Memorandum to the File, through, Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, from, Irene Gorelik, Case Analyst, AD/CVD Operations, Office 9, RE: Verification of Sales and Factors of Production for Vinh Hoan Company Ltd. ("Vinh Hoan")* (November 14, 2005) ("*Vinh Hoan Verification Report*"); see also *Memorandum to the File from Alex Villanueva, Program Manager, Verification of Sales and Factors of Production for Can Tho Agricultural and Animal Products Import Export Company ("CATACO") in the First Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* (November 1, 2005) ("*CATACO Verification Report*") and *Memorandum to the File from Alex Villanueva, Program Manager, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Verification Report Correction* (January 9, 2006) ("*CATACO Verification Report Correction*"). For both companies, we used standard verification procedures, including examination of relevant accounting and

<sup>2</sup> Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish

Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS.

production records, as well as original source documents provided by the Respondents.

As stated above, the Department began verification of CATACO's sales and factors of production on October 10, 2005. On October 12, 2005, CATACO terminated the verification prior to its scheduled completion. See *CATACO Verification Report*. See also *CATACO Verification Report Correction*.

#### Changes Since the Preliminary Results

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results*, we have made revisions to the margin calculations for the final results. Specific changes to Vinh Hoan's margin calculation include a revision of the inflator used for truck freight, a recalculation of labor and electricity reported for byproduct production as a result of verification findings, an update to the margin program language merging Vinh Hoan's sales and factors of production datasets, and other changes resulting from our decisions in Comments 5 and 6 of the *Final Decision Memo*. See *Vinh Hoan Final Analysis Memo*. See also *Memorandum from Irene Gorelik, Case Analyst, through Alex Villanueva, Program Manager, Office 9 and James C. Doyle, Office Director, Office 9, to The File, Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Surrogate Values for the Final Results*, dated March 13, 2006 ("*Final Factors Memo*"). CATACO's margin calculation changes are addressed in Comment 2 of the *Final Decision Memo*. A full discussion of the calculation methodology is described in CATACO's analysis memorandum. See *CATACO Final Analysis Memo* at 1.

#### Adverse Facts Available

Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Further, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its

ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act.

In accordance with sections 776(a)(2)(C) and (D) of the Act, the Department finds that applying facts available is warranted for CATACO because CATACO terminated verification and withdrew its BPI from the record of the instant proceeding, thereby significantly impeding this proceeding and rendering the information submitted unverifiable. For the final results, pursuant to section 776(a)(1) of the Act, we are applying facts otherwise available to CATACO because the necessary information is not available on the record. Furthermore, pursuant to section 776(b) of the Act, the Department has determined that CATACO did not cooperate to the best of its ability to comply with the Department's requests for information during the verification. Therefore, pursuant to section 776(b) of the Act, for the final results, we will apply facts available with an adverse inference, in selecting from among the facts otherwise available, to CATACO because it failed to cooperate to the best of its ability when it terminated verification. We find that for cash deposit purposes the Department must take into account the reimbursement findings at verification and assign CATACO an individual rate for future entries because it would be inappropriate to apply the reimbursement finding to all exporters that are part of the Vietnam-Wide Entity. While it would be consistent with the Department's normal practice for CATACO to be subject to the same rate as all other exporters that are part of the Vietnam-Wide Entity because it failed to cooperate to the best of its ability and withdrew from the proceeding, the Department's additional finding that CATACO agreed to reimburse antidumping duties warrants a different result under these unusual circumstances. A finding of

reimbursement is necessarily exporter-importer specific, and is treated as a unique adjustment. Moreover, as we are applying AFA in this instance, the reimbursement adjustment is exogenous to the normal calculation of the dumping margin. In order to properly account for CATACO's reimbursement activities, the Department will adjust CATACO's cash deposit and assessment rates, but not apply the adjustment to the rest of the Vietnam-Wide Entity. In this unique situation in which CATACO terminated verification and where we also found reimbursement of antidumping duties, it is appropriate to assign CATACO a rate inclusive of the Vietnam-Wide Entity rate and the reimbursement adjustment.<sup>3</sup> Consequently, the cash deposit rate assigned to CATACO for these final results is 80.88 percent.<sup>4</sup> See *CATACO Final Analysis Memo* at 2-3. See also *Final Decision Memo* at Comments 1 and 2.

#### Phan Quan Company ("Phan Quan")

In the *Preliminary Results*, the Department assigned total AFA to the Vietnam-Wide Entity, including Phan Quan. The Department did not receive any comments regarding the Vietnam-Wide Entity or Phan Quan. Therefore, for the final results, we continue to apply AFA to the Vietnam-Wide Entity and to treat Phan Quan as part of the Vietnam-Wide Entity.

#### Final Results of Review

The weighted-average dumping margins for the POR are as follows:

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Vinh Hoan .....	6.81
CATACO .....	80.88
Vietnam-Wide Entity <sup>5</sup> ...	63.88

<sup>5</sup> The Vietnam-wide Entity includes Phan Quan.

#### Assessment

The Department will determine, and the U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). We have calculated importer-specific duty assessment rates on the basis of the ratio

<sup>3</sup> As part of the adverse inference, the Department's finding of reimbursement will be applied to all of CATACO's importers for cash deposit and assessment purposes. See *CATACO Final Analysis Memo* at 2-3.

<sup>4</sup> The Department corroborated the Vietnam-wide rate of 63.88 percent component of the 80.88 percent in the *Preliminary Results*. No interested party commented on the Department's corroboration of this rate, thus the Vietnam-wide rate of 63.88 percent remains unchanged for the final results.

of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for each importer as reported by Vinh Hoan and CATACO. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate, without regard to antidumping duties, all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (i.e., less than 0.50 percent). To determine whether the per-unit duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific ad valorem ratios based on export prices. We will direct CBP to apply the resulting assessment rates to the entered customs values for the subject merchandise on each of the importer's entries during the review period. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of the final results of this administrative review.

#### Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise 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: (1) The cash deposit rate for each of the reviewed companies that received a separate rate in this review will be the rate listed in the final results of review (except that if the rate for a particular company is *de minimis*, i.e., less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters (including Phan Quan) will be the Vietnam-wide rate of 63.88 percent, as explained in the *Final Decision Memo* and *CATACO Final Analysis Memo*. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

#### Administrative Protective Orders

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

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 13, 2006.

David M. Spooner,  
Assistant Secretary for Import  
Administration.

#### Appendix I – Decision Memorandum ISSUES FOR THE FINAL RESULTS:

*Comment 1:* Total Adverse Facts Available ("AFA") for CATACO

*Comment 2:* AFA Calculation Methodology

*Comment 3:* Surrogate Factor Valuations (Whole Fish, Fish Oil, Fish Waste)

*Comment 4:* Byproduct Offset Cap

*Comment 5:* Importer-Specific Assessment Rates

*Comment 6:* Vinh Hoan Verification Clarifications (Byproduct Packing, Capacity, Telephone Communications) [FR Doc. E6-4070 Filed 3-20-06; 8:45 am]

BILLING CODE 3510-DS-S

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

A-570-851

#### Certain Preserved Mushrooms from the People's Republic of China: Extension of Time Limit for Preliminary Results of the 2005 New Shipper Review

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

**EFFECTIVE DATE:** March 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Alex Villanueva or Matthew Renkey, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3208 and (202) 482-2312, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 19, 1999, the Department published in the *Federal Register* an amended final determination and antidumping duty order on certain preserved mushrooms from the PRC. See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308 (February 19, 1999). The Department received a timely request from Guangxi Eastwing Trading Co., Ltd. ("Eastwing"), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China, which has a February annual anniversary month and an August semi-annual anniversary month. On September 30, 2005, the Department initiated a review with respect to Eastwing. See *Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Review*, 70 FR 58686 (October 7, 2005).

The Department has issued the initial antidumping duty questionnaire and supplemental questionnaires to Eastwing. The deadline for completion of the preliminary results is currently March 29, 2006.

#### Extension of Time Limits for Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within

180 days after the date on which the new shipper review was initiated and final results of a review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated. See 19 CFR 351.214(i)(2).

Pursuant to section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department determines that this review is extraordinarily complicated and that it is not practicable to complete the new shipper review within the current time limit. Specifically, the Department requires additional time to analyze all questionnaire responses, to conduct verification of the responses submitted, and to examine whether Eastwing's U.S. sale was made on a *bona fide* basis. Accordingly, the Department is extending the time limit for the completion of the preliminary results by 90 days to June 27, 2006, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). The final results, in turn, will be due 90 days after the date of issuance of the preliminary results, unless extended.

We are issuing and publishing this notice in accordance with sections 751(a)(2) and 777(i)(1) of the Act.

Dated: March 14, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E6-4068 Filed 3-20-06; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

C-580-851

#### Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review

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

**SUMMARY:** On September 15, 2005, the Department of Commerce ("the Department") published in the *Federal Register* its preliminary results of administrative review of the countervailing duty order on dynamic random access memory semiconductors ("DRAMs") from the Republic of Korea ("Korea") for the period April 7, 2003, through December 31, 2003. This review covers one company, Hynix Semiconductor, Inc. ("Hynix").

We gave interested parties an opportunity to comment on the preliminary results. Based on information received since the preliminary results and our analysis of the comments received, the Department has revised the net subsidy rate for Hynix. The final net subsidy rate for the reviewed company is listed below in the section entitled "Final Results of Review."

**EFFECTIVE DATE:** March 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ryan Langan, Natalie Kempkey, or Andrew McAllister, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2613, (202) 482-1698, or (202) 482-1174, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

Since the publication of the preliminary results of this review (see *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 70 FR 54525 (September 15, 2005) ("Preliminary Results")), the following events have occurred: On September 16, 2005, the Department had a disclosure meeting with Micron Technology, Inc. ("Micron") regarding the *Preliminary Results* calculations (see Memorandum to the File, "Disclosure Meeting with Counsel for Micron Technology Inc.," dated September 16, 2005). Also, on September 16, the Department revised its August 31, 2005, calculation memorandum (see Memorandum to the File, "Revision of the Preliminary Determination Calculation Memorandum," dated September 16, 2005).

On October 18, 2005, the Department met with officials from Micron and Infineon Technologies North America Corp. to discuss alleged irregularities with regard to Hynix's payment of countervailing duties (understating entered value). See Memorandum to the File, "Meeting with Counsel for Micron Technology, Inc. and Infineon Technologies North America Corp.," dated October 20, 2005. As a follow up to the October 18, 2005, meeting, on November 2, 2005, Micron submitted a letter requesting the Department to further investigate Hynix's alleged understatement of entered value.

We invited interested parties to comment on the *Preliminary Results*. On October 24, 2005, we received a case brief and request for a hearing from Hynix and case briefs from Micron and

the Government of Korea ("GOK"). We received rebuttal briefs from Micron and Hynix on November 7, 2005. On November 14, 2005, Micron submitted comments on the bracketing of Hynix's October 24, 2005, case brief.

On November 16, 2005, we extended the time limit for the final results of this administrative review by 60 days (to March 14, 2006), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"). (See *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Notice of Extension of Time Limit for Countervailing Duty Administrative Review*, 70 FR 69514 (November 16, 2005)).

On November 30, 2005, the Department provided Hynix the opportunity to submit any additional information regarding shipments of subject merchandise to a foreign trade zone ("FTZ").

On December 6, 2005, the Department asked Micron to identify alleged inconsistencies in Hynix's bracketing. On December 7, 2005, Micron responded to the Department's December 6, 2005, letter. On December 9, 2005, the Department rejected Hynix' October 24, 2005, case brief due to improper bracketing and requested that Hynix resubmit its case brief. On December 12, 2005, Hynix resubmitted its October 24, 2005, case brief with revised bracketing. On December 14, 2005, Hynix re-filed its December 12, 2005, case brief with additional bracketing revisions.

On December 14, 2005, Hynix also provided a response to the Department's November 30, 2005, letter regarding the company's shipments to an FTZ. On December 23, 2005, the Department gave Micron the opportunity to submit comments on the new factual information contained in Hynix' November 7, 2005, rebuttal brief. On December 30, 2005, Micron submitted comments in response to the Department's December 23, 2005, letter.

A public hearing was held at the Department on January 10, 2006.

#### Scope of the Order

The products covered by this order are dynamic random access memory semiconductors (DRAMs) from Korea, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers fabricated in Korea, but assembled into finished semiconductors (DRAMs) outside Korea are also included in the scope. Processed wafers fabricated outside Korea and assembled into finished



semiconductors in Korea are not included in the scope.

The scope of this order additionally includes memory modules containing DRAMS from Korea. A memory module is a collection of DRAMS, the sole function of which is memory. Memory modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, small outline dual in-line memory modules, Rambus in-line memory modules, and memory cards or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. This order also covers future DRAMS module types.

The scope of this order additionally includes, but is not limited to, video random access memory, and synchronous graphics ram, as well as various types of DRAMS, including fast page-mode, extended data-out, burst extended data-out, synchronous dynamic RAM, rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMS. Also included in the scope of this order are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with U.S. Customs and Border Protection ("CBP") that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation or, consistent with the Memorandum from Stephen J. Claeys to David M. Spooner, "Final Scope Ruling," dated January 12, 2006, unless the importer of the motherboards certifies with CBP that the motherboard is being imported for repair or refurbishment, and that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation, except as necessary in the course of repair or refurbishment of the motherboards, in which case any subject memory modules removed from the motherboards will be destroyed.

The scope of this order does not include DRAMS or memory modules that are re-imported for repair or replacement, as stated in the *Final Scope Ruling*, provided that the importing company can demonstrate that the DRAMS or memory modules are

being re-imported for repair or replacement to the satisfaction of CBP.

The DRAMS subject to this order are currently classifiable under subheadings 8542.21.8005 and 8542.21.8020 through 8542.21.8030 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The memory modules containing DRAMS from Korea, described above, are currently classifiable under subheadings 8473.30.10.40 and 8473.30.10.80 of the HTSUS. Removable memory modules placed on motherboards, described above, are classifiable under subheading 8471.50.0085, 8517.30.5000, 8517.50.1000, 8517.50.5000, 8517.50.9000, 8517.90.3400, 8517.90.3600, 8517.90.3800, 8517.90.4400 and 8543.89.9600. Although the HTSUS subheadings are provided for convenience and customs purposes, the department's written description of the scope of this order remains dispositive.

#### Scope Rulings

On December 29, 2004, the Department received a request from Cisco Systems, Inc. ("Cisco"), to determine whether removable memory modules placed on motherboards that are imported for repair or refurbishment are within the scope of the countervailing duty ("CVD order"). The Department initiated a scope inquiry pursuant to 19 CFR 351.225(e) on February 4, 2005. On June 16, 2005, the Department issued a preliminary scope ruling, finding that removable memory modules placed on motherboards that are imported for repair or refurbishment are within the scope of the CVD order. See Memorandum from Julie H. Santoboni to Barbara E. Tillman, "Preliminary Scope Ruling," dated June 16, 2005. On July 5, 2005, and July 22, 2005, comments on the preliminary scope ruling were received from Cisco. On July 6, 2005, and July 15, 2005, comments were received from Micron.

On January 12, 2006, the Department issued a final scope ruling, finding that removable memory modules placed on motherboards that are imported for repair or refurbishment are not within the scope of the CVD order if the importer certifies that it will destroy any memory modules that are removed during repair or refurbishment. See *Final Scope Ruling*. The scope of the CVD order was clarified to CBP in message number 6037201, dated February 6, 2006.

#### Period of Review

The period for which we are measuring subsidies, *i.e.*, the period of

review ("POR"), is April 7, 2003, through December 31, 2003.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the March 14, 2006, *Issues and Decision Memorandum for the Final Results in the First Administrative Review of the Countervailing Duty Order on Dynamic Random Access Memory Semiconductors from the Republic of Korea* ("Decision Memorandum") to David M. Spooner, Assistant Secretary for Import Administration, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, Room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

#### Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for the producer/exporter, Hynix, subject to this review. For the period April 7, 2003, through December 31, 2003, we find the net subsidy *ad valorem* rate for Hynix is 58.22 percent.

#### Assessment Rates

The Department will instruct CBP, within 15 days of publication of these final results, to liquidate shipments of DRAMS by Hynix entered or withdrawn from warehouse, for consumption from April 7, 2003, through December 31, 2003, at 58.22 percent *ad valorem* of the F.O.B. invoice price. We will also instruct CBP to take into account the "provisional measures cap" in accordance with 19 CFR 351.212(d).

#### Cash Deposits

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties at 58.22 percent *ad valorem* of the F.O.B. invoice price on all shipments of the subject merchandise from Hynix, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.



We will instruct CBP to continue to collect cash deposits for non-reviewed companies covered by this order at the most recent company-specific rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the investigation. See *Notice of Amended Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 44290 (July 28, 2003). The "all others" rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested. The Department has previously excluded Samsung Electronics Co., Ltd. from this order. *Id.*

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with section 751(a)(1) of the Act. \*\*

Dated: March 14, 2006.

David M. Spooner,  
Assistant Secretary for Import  
Administration.

#### APPENDIX I

##### Comments in the Issues and Decision Memorandum

*Comment 1:* Entrustment or Direction of the December 2002 Restructuring

- A. Government of Korea Policy Towards Hynix
- B. Government of Korea Influence of Creditors
- C. Government of Korea's Influence over the Creditors' Council
- D. The Deutsche Bank Report

*Comment 2:* Whether the December 2002 Restructuring Was Commercial

*Comment 3:* Entrustment or Direction of the October 2001 Restructuring  
*Comment 4:* Private and Foreign Banks as Benchmarks

*Comment 5:* Hynix's Equityworthiness  
*Comment 6:* Hynix's Creditworthiness  
*Comment 7:* Ministerial Error Regarding Financing from Foreign Banks  
*Comment 8:* Ministerial Error Regarding KDB Fast Track Bonds  
*Comment 9:* Adjustment of Benefit to Account for Sale of Hynix's Subsidiaries  
*Comment 10:* Benefits Relating to Creditors Exercising Appraisal Rights

*Comment 11:* Ministerial Errors Regarding Benchmarks  
*Comment 12:* Value of October 2001 and December 2002 Equity  
*Comment 13:* Timing of Benefits from the December 2002 Restructuring  
*Comment 14:* Benchmark for Creditworthy Companies / Discount Rate for Debt Forgiveness  
*Comment 15:* Ministerial Errors Regarding G7/Highly Advanced National Program  
*Comment 16:* Evasion of the Countervailing Duty Order  
*Comment 17:* Hynix and the Government of Korea's Cooperation and Disclosure of Information  
[FR Doc. E6-4071 Filed 3-20-06; 8:45 am]  
BILLING CODE 3510-DS-S

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

##### U.S. Travel and Tourism Advisory Board: Meeting of the U.S. Travel and Tourism Advisory Board

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of an open meeting.

**SUMMARY:** The U.S. Travel and Tourism Advisory Board (Board) will hold a meeting to discuss a Gulf Coast Recovery Plan and a Travel and Tourism Strategic Plan. The Board was established on October 1, 2003, and reconstituted on October 1, 2005, to advise the Secretary of Commerce on matters relating to the travel and tourism industry.

**DATES:** April 12, 2006.

*Time:* 3 p.m. to 4:30 p.m. (e.s.t.)

**ADDRESSES:** Room 4832, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. This program will be physically accessible to people with disabilities. Seating is limited and will be on a first come, first served basis. Because of building security, all non-government attendees must pre-register. Requests for sign language interpretation, other auxiliary aids, or pre-registration, should be submitted no later than April 3, 2006, to J. Marc Chittum, U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, 202-482-4501, [Marc.Chittum@mail.doc.gov](mailto:Marc.Chittum@mail.doc.gov).

**FOR FURTHER INFORMATION CONTACT:** J. Marc Chittum, U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, 202-482-4501, [Marc.Chittum@mail.doc.gov](mailto:Marc.Chittum@mail.doc.gov).

Dated: March 15, 2006.

J. Marc Chittum,  
Executive Secretary, U.S. Travel and Tourism  
Advisory Board.  
[FR Doc. E6-4082 Filed 3-20-06; 8:45 am]  
BILLING CODE 3510-DR-P

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

##### North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Correction of Notice of Consent Motion to Dismiss Panel Review, published on March 14, 2006

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

**ACTION:** Correction of Notice of Consent Motion to Dismiss the Panel Review should have read "of the final affirmative countervailing duty determination made by the International Trade Administration", respecting Certain Durum Wheat and Hard Red Spring Wheat from Canada (Secretariat File No. USA-CDA-2003-1904-05).

Dated: March 15, 2006.

Caratina L. Alston,  
United States Secretary, NAFTA Secretariat.  
[FR Doc. E6-4010 Filed 3-20-06; 8:45 am]  
BILLING CODE 3510-GT-P

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

##### Market Economy Inputs Practice in Antidumping Proceedings Involving Non-Market Economy Countries

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

**ACTION:** Request for Comments

**SUMMARY:** The Department of Commerce ("the Department") is considering amending its regulations with respect to the use of market economy inputs in the calculation of normal value in antidumping proceedings involving non-market economy ("NME") countries. Specifically, in cases where an NME producer sources an input from both market-economy suppliers and from within the NME, this regulatory change would increase the Department's flexibility to value the input by weight-averaging the market economy purchase price with an appropriate surrogate value. The Department also intends to introduce an interim change in its practice that is consistent with the Department's regulations. Interested

parties are invited to comment on these proposals.

**DATES:** Comments must be submitted by April 19, 2006.

**ADDRESSES:** Written comments (original and six copies) should be sent to David Spooner, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14<sup>th</sup> Street NW., Washington, DC, 20230.

**FOR FURTHER INFORMATION CONTACT:**

Lawrence Norton, Economist, or Anthony Hill, Senior International Economist, Office of Policy, Import Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington DC, 20230, 202-482-1579 or 202-482-1843, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

In antidumping proceedings involving NME countries, the Department calculates normal value by valuing the NME producers' factors of production, to the extent possible, using prices from a market economy that is at a comparable level of economic development and that is also a significant producer of comparable merchandise. The goal of this surrogate factor valuation is to use the "best available information" to determine normal value. See section 773(c)(1) of the Tariff Act of 1930 ("the Act"); *Shangdong Huraong General Corp. v. United States*, 159 F. Supp.2d 714, 719 (CIT 2001). Where an NME producer purchases inputs from market economy suppliers and pays in a market economy currency, however, the Department normally uses the average actual price paid by the NME producer for these inputs to value the input in question, where possible. See 19 CFR 351.408(c)(1); see also *Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China*, 56 FR 55271, 55274-75 (October 25, 1991). Where a portion of the input is purchased from a market economy supplier and the remainder from a non-market economy supplier, the Department will normally use the price paid for the inputs sourced from market economy suppliers to value all of the input<sup>1</sup>, provided the volume of the market economy inputs as a share of total purchases from all sources is "meaningful," a term used in the Preamble to the Regulations but which is interpreted by the Department on a case-by-case basis. See *Antidumping*

*Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997) (Preamble). See also *Shakeproof v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001) (*Shakeproof*). This market economy input price must also reflect arms-length, *bona fide* sales. See *Shakeproof*, 268 F.3d at 1382-83.

Additionally, the Department disregards market economy input purchases when the prices for such inputs may be distorted or when the facts of a particular case otherwise demonstrate that market economy input purchase prices are not the best available information. For example, the Department disregards all input values it has reason to believe or suspect might be dumped or subsidized. See *China National Machinery Import & Export Corporation v. United States*, 293 F. Supp. 2d 1334 (CIT 2003), as aff'd by 104 Fed. Appx. 183 (Federal Circuit, July 9, 2004). The Department has also disregarded the prices of inputs that could not possibly have been used in the production of subject merchandise during the period of investigation or review. See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The Department further does not accept market economy input purchase prices when the input in question was produced within an NME. See *Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China*, 69 FR 34125 and the accompanying issues and decision memorandum at Comment 20 (June 18, 2004).

The Department published on May 26 and on August 11 two notices in the *Federal Register* requesting comment on its market economy inputs practice in NME cases (70 FR 30418 and 70 FR 46816, respectively). Drawing on the many submissions the Department has received in response to these notices, the Department is currently considering revised proposals. Under the first of these revised proposals, the Department would amend its regulations to give it greater discretion to weight average market economy input purchase prices with standard surrogate values when NME producers source an input both domestically and from market economy suppliers based upon the facts of a given case. This change would remove the regulatory requirement that the Department "normally" use market economy input prices to value an entire input and allow the Department more flexibility to consider whether the standard surrogate value is the best

available information to value the domestically purchased input. Under the second of these revised proposals, the Department would institute a rebuttable presumption that market economy input prices are the best available information for valuing an entire input when the portion of the input purchased from market economy sources exceeds 33% of the total volume of the input. This would be consistent with our current regulations directing the Department to "normally" use market economy input prices to value an entire input.

These two proposals would affect the Department's practice in cases where NME firms purchase a portion of a given input from a market economy and source the remainder domestically. In such cases, the Department must determine what the best available information is for valuing the NME-produced portion of the input, *i.e.*, the Department must continue to find an appropriate surrogate value. Whether the best available information to value the NME-produced portion of the input is the price of the firm's market economy input purchases or another surrogate value is a decision that should be made by the Department on a case-by-case basis.

While market economy purchase prices do constitute the best available information for the portion of an input sourced from a market economy, these prices may not always provide the most accurate valuation for the portion of an input that is produced from within the NME. While it may be unduly rigid to rule out using market economy purchase prices to value an entire input if the portion involved were lower than a particular threshold, neither can the Department *automatically* assume market economy purchases constitute the best available information to value the portion of the input produced in the NME. In some cases, the best available information is indeed the market economy purchase price. In other cases it may not be, and a standard surrogate value would constitute the best available information for the NME-produced portion of the input. For example, if the market economy price for an input varied dramatically over the period of investigation or review, and the NME firm only purchased from market economy sources when the market price was very low (and otherwise purchased from NME suppliers), the Department might determine that a specific, period-wide surrogate value would constitute a better surrogate value for the portion of the input that was produced from within the NME. While market economy

<sup>1</sup> See 19 CFR 351.408(c)(1)

input purchase prices present a valid price for the market economy purchases that an NME firm actually made, and the Department should use this data whenever possible to value the portion of the input purchased from market economy sources, these prices may not always be the best available information for valuing the portion of the input produced within the NME.

From the foregoing discussion, there is reason to believe that the most accurate approach would be to make case-by-case determinations concerning whether a market economy input purchase price or an alternative surrogate value constitutes the best available information for valuing the portion of an input that is produced within the NME. The regulations prescribe a preference, however, for the use of market economy input purchase prices, when they are available, over the use of traditional surrogate values. Under the regulations, the Department "normally" uses market economy input purchase prices to value an entire input when they are available, which has the effect of favoring market economy purchase prices over surrogate values and in some cases unnecessarily excludes surrogate values, even when a surrogate value might provide a more accurate valuation for the portion of the input that is produced within the NME. Therefore, the Department is considering beginning the formal procedures for amending its regulations to increase the Department's discretion to use surrogate values to value the NME-produced portion of an input. This regulatory change would increase the Department's flexibility to weight average the market economy input purchase price with an appropriate surrogate value for the NME-produced portion of the input to determine the overall value to be used for the input.

Because amending the regulation will be a lengthy process, the Department also intends to introduce an interim change in its practice that is consistent with the Department's regulations. Under this interim change, the Department would clarify that the term "meaningful," as discussed in the *Preamble*, will be interpreted by the Department as being 33 percent or more of the total volume of the input used in production of the subject merchandise, unless there are case-specific reasons to conclude otherwise. In other words, the Department would institute a flexible, rebuttable presumption that when market economy input purchases are 33 percent or more of the total volume of an input, the market economy input purchase prices represent the "best available information" to value the

entire input. Where market economy input purchases constitute less than 33 percent of the total volume of the input in question, the Department's rebuttable presumption is that the market economy input purchases do not represent the "best available information" to value the input. Instead, the Department would weight average the market economy purchase prices with an appropriate surrogate value, unless parties present evidence that the market economy purchase value constitutes the best available information to value the NME-produced portion of the input. Introducing such a flexible percentage threshold for accepting market economy purchase prices to value an entire input would improve the accuracy and predictability of the Department's current practice. The higher the ratio of the market economy-sourced portion to that produced in the NME, the more confident the Department can be that the market economy purchase prices are indeed representative of the value of the entire input.

The flexibility of the standard would allow the Department to continue to meet its statutory obligation to use the best available information while providing guidance to the public as to how normal value will be determined in such circumstances. In addition, the proposed standard of 33 percent is consistent with a threshold that the Department has defended, and the Court has upheld, as constituting a "meaningful" quantity in a prior case. See *Shakeproof*, 268 F.3d at 1382-83. A standard of 33 percent also balances two competing concerns. First, this standard would reduce the likelihood that special arrangements or short-term price fluctuations might seriously distort the valuation of the input in that the Department will only accept these prices to value the entire input when they constitute such a meaningful share of the total volume of the input. Second, a flexible 33-percent standard is consistent with our regulatory standard to "normally" use these prices. We believe there is merit in establishing general guidance on when the Department will use market economy input purchases to value an entire input and when it will rely instead on surrogate values. As discussed above, the only existing guidance on this point (beyond that developed through the Department's practice, e.g., the requirement that the input purchased from a market economy not be dumped or subsidized) is mentioned in the *Preamble* to the regulations, which indicates that the quantity involved should be "meaningful." Such vague

guidance may create an unnecessary level of uncertainty for both the Department and parties about how the Department will value a given input that an NME firm purchases both domestically and from market economy suppliers.

The Department welcomes comments on both pursuing a change in the Department's regulations and on adopting, on an interim basis, a flexible, percentage-based rebuttable presumption with respect to the use of market economy purchase prices to value a factor of production for an NME firm that purchases the input both domestically and from market economy sources. If the Department adopts such an interim approach, is 33 percent of the total volume of the input used in the production of the subject merchandise an appropriate level for this standard?

#### Comments

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of any changes to its practice. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration website at the following address: <http://ia.ita.doc.gov/>.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, email address: [webmaster-support@ita.doc.gov](mailto:webmaster-support@ita.doc.gov).

Dated: March 15, 2006.

David M. Spooner,  
Assistant Secretary for Import  
Administration.

[FR Doc. E6-4069 Filed 3-20-06; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[No. DoD-2006-OS-0045]

#### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, Department of Defense.

**ACTION:** Notice.

In compliance with section 35006(c)(2)(A) of the Paperwork Reduction Act of 1995, the Under Secretary of Defense for Acquisition, Technology, and Logistics announces the proposed extension of a public information collection for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or forms of information technology.

**DATES:** Consideration will be given to all comments received by May 22, 2006.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments,

please write to the Defense Standardization Program Office (DSPO), Defense Logistics Agency, J-307, Attention: Ms. Karen Bond, 8725 John J. Kingman Road, Mail Stop 6233, Fort Belvoir, VA 20060-6221, or contact the Defense Standardization Program Office (DSPO) at (703) 767-6871.

*Title, Associated Forms, and OMB Number:* Acquisition Management Systems and Data Requirements Control List (AMSDL); Numerous Forms; 0704-0188.

*Needs and Uses:* The Acquisition Management Systems and Data Requirements Control List (AMSDL) is a list of data requirements used in Department of Defense (DoD) contracts. The information collected will be used by DoD personnel and other DoD contractors to support the design, test, manufacture, training, operation, and maintenance of procured items, including weapons systems critical to the national defense.

*Affected Public:* Business or Other For-Profit; Not-For-Profit Institutions.

*Annual Burden Hours:* 26,915,328.

*Number of Respondents:* 944.

*Responses Per Respondent:* 432.

*Average Burden Per Response:* 66 hours.

*Frequency:* On occasion.

#### SUPPLEMENTARY INFORMATION:

##### Summary of Information Collection

The Acquisition Management Systems and Data Requirements Control List (AMSDL) is a list of data requirements used in Department of Defense contracts. Information collection requests are contained in DoD contract actions for supplies, services, hardware, and software. This information is collected and used by DoD and its component Military Departments and Agencies to support the design, test, manufacture, training, operation, maintenance, and logistical support of procured items, including weapons systems. The collection of such data is essential to accomplishing the assigned mission of the Department of Defense. Failure to collect this information would have a detrimental effect on the DoD acquisition programs and the National Security.

**Note:** The AMSDL is in coordination for cancellation. The Defense Standardization Program Office is waiting for the coordination of two Services. All others have coordinated. Once cancelled, the information used to prepare the burden hours will be contained in the ASSIST Online database.

Dated: March 13, 2006.

Patricia L. Toppings,  
Alternate OSD Federal Register Liaison  
Officer, Department of Defense.

[FR Doc. 06-2680 Filed 3-20-06; 8:45 am]

BILLING CODE 5001-06-M

## DEPARTMENT OF DEFENSE

### Defense Finance and Accounting Service, Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Finance and Accounting Service; DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Defense Finance and Accounting Service is proposing to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on April 20, 2006 unless comments are received which result in a contrary determination.

**ADDRESSES:** Freedom of Information Act/Privacy Act Program Manager, Defense Finance and Accounting Service, Denver, 6760 E. Irvington Place, Denver, CO 80279-8000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Krabbenhoft at (303) 676-6045.

**SUPPLEMENTARY INFORMATION:** The Defense Finance and Accounting Service systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 9, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).



Dated: March 15, 2006.

L.M. Bynum,  
OSD Federal Register Liaison Officer,  
Department of Defense.

#### T7340

##### SYSTEM NAME:

Defense Joint Military Pay System—  
Active Component (April 12, 1999, 64  
FR 17629)

##### CHANGES:

\* \* \* \* \*

##### SYSTEM LOCATION:

Delete Marine Corps location and  
replace with: "Director, Area Command  
Mechanicsburg, 5450 Carlisle Pike,  
Building 309, Mechanicsburg, PA  
17055-0975."

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the following in the first  
sentence: "and their dependents; retired  
and separated military personnel" and  
"former armed forces personnel who are  
entitled to receive either voluntary  
separation incentive (VSI) or special  
separation benefit (SSB)".

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Delete last sentence from the second  
paragraph.

Delete third paragraph and replace  
with: "DEDUCTIONS FROM PAY:  
Federal and state income tax  
withholding rate and amount (including  
authorization control files), withholding  
for Federal Insurance Contributions Act  
(FICA), Servicemember's Group Life  
Insurance (SGLI), and Family  
Servicemember's Group Life Insurance  
(FSGLI) deductions, Thrift Savings Plan  
(TSP) voluntary deductions, allotments  
(including allottee name and address,  
amount, term (in months), and account  
or policy number), bond authorizations  
(including bond owner and co-owner/  
beneficiary names and Social Security  
Numbers, and recipient's address),  
health care coverage deductions,  
Veterans Educational Assistance  
Program (VEAP), and Montgomery GI  
Bill allotments, indebtedness and  
collections."

\* \* \* \* \*

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add the following routine uses:

"To the Department of Justice in  
connection with litigation, law  
enforcement or other matters under the  
legal representation of the Executive  
Branch agencies."

"To Federal, state, and local  
governmental agencies in response to an

official request for information with  
respect to law enforcement,  
investigatory procedures, criminal  
prosecution, civil court action and  
regulatory order."

"To Federal, state and local revenue  
departments to credit members for taxes  
withheld."

"To the National Finance Center,  
Office of Thrift Savings Plan, for  
participating service members."

"To the Department of Veterans  
Affairs to provide payroll information  
for members who participated in  
making contributions to the Veterans  
Educational Assistance Program  
(VEAP), and the Montgomery GI Bill  
program."

\* \* \* \* \*

##### RETRIEVABILITY:

Delete entry and replace with:  
"Computerized, conventional indices,  
other identification numbers or system  
identifiers are required to retrieve  
individual records from the system.  
Normally, information is retrieved by  
individual's name and Social Security  
number."

##### SAFEGUARDS:

Delete entry and replace with:  
"Records are stored in office buildings  
protected by guards, controlled  
screening, use of visitor registers,  
electronic access, and/or locks. Access  
to records is limited to individuals who  
are properly screened and cleared on a  
need-to-know basis in the performance  
of their official duties. Passwords and  
digital signatures are used to control  
access to the systems data, and  
procedures are in place to deter and  
detect browsing and unauthorized  
access. Physical and electronic access  
are limited to persons responsible for  
servicing and authorized to use the  
record system."

##### RETENTION AND DISPOSAL:

Delete entry and replace with:  
"Records may be temporary in nature  
and destroyed when actions are  
completed, superseded, obsolete, or no  
longer needed. Other records may be cut  
off at the end of the payroll year or fiscal  
year, and destroyed 6 years and 3  
months after cutoff. Active duty pay  
records created prior to automation  
were cut off on conversion to the  
Defense Joint Military Payroll System  
(DJMS), and will be destroyed October  
1, 2033, or 56 years after  
implementation of DJMS. The records  
are destroyed by tearing, shredding,  
pulp, macerating, burnings or  
degaussing the electronic storage  
media."

##### SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: "For  
Air Force military members, the system  
manager is the Director, Military Pay  
Operations, Military and Civilian Pay  
Services, Defense Finance and  
Accounting Service, Indianapolis, 8899  
East 56th Street, Indianapolis, IN  
46249."

"For Army military members, the  
system manager is the Director, Military  
Pay Operations, Military and Civilian  
Pay Services, Defense Finance and  
Accounting Service, Indianapolis, 8899  
East 56th Street, Indianapolis, IN  
46249."

"For Navy military members, the  
system manager is the Director, Military  
Pay Operations, Military and Civilian  
Pay Services, Defense Finance and  
Accounting Service, Indianapolis, 8899  
East 56th Street, Indianapolis, IN  
46249."

"For Marine Corps active duty  
military members see the Marine Corps'  
Privacy Act system notice MFD00003,  
Marine Corps Total Forces System  
(MCTFS) on the procedures for  
obtaining your personnel and payroll  
records."

\* \* \* \* \*

#### T7340

##### SYSTEM NAME:

Defense Joint Military Pay System—  
Active Component.

##### SYSTEM LOCATION:

Air Force military member records are  
located at the Defense Accounting and  
Finance Service—Denver Center, 6760  
East Irvington Place, Denver, CO 80279—  
3000.

Army military members records are  
located at the Defense Finance and  
Accounting Service—Indianapolis  
Center, 8899 E. 56th Street,  
Indianapolis, IN 46249-0001.

Navy military member records are  
located at the Defense Finance and  
Accounting Service—Cleveland Center,  
1240 East Ninth Street, Cleveland, OH  
44199-2055.

Marine Corps military member  
records are located at the Director, Area  
Command Mechanicsburg, 5450 Carlisle  
Pike, Building 309, Mechanicsburg, PA  
17055-0975.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military members officers  
of the Air Reserve, Army Reserve, and  
Air National Guard on extended active  
duty; officers and airmen of the Air  
Reserve and Air National Guard on  
active duty where strength  
accountability remains with the reserve



component; individuals to whom active duty military personnel authorize a direct payment of a portion of their pay; military academy cadets; Navy Reserve on extended active duty; and Armed Forces Health Professions Scholarship Program (AFHPSP) students.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Types of Records: Master individual military pay accounts; wage and tax summaries; leave and earnings statements; Basic Military Training master record; and other generated records substantiating or authorizing Active Component military pay and allowance entitlement, deduction, or collection actions.

Pay Entitlement and Allowances: Base pay; allowances (such as basic allowance for subsistence, basic allowance for quarters, family separations, clothing maintenance, and monetary allowances); death gratuities; time-in-service; special compensation for positions such as medical, dental, veterinary, and optometry; special pay and bonus, such as foreign duty, proficiency, hostile fire, and diving duty; incentive pay such as flying duty, parachute duty, and submarine duty; and other entitlement in accordance with the DoD Pay and Allowance Entitlement Manual.

Deduction from Pay: Federal and state income tax withholding rate and amount (including authorization control files), withholding for Federal insurance Contributions Act (FICA), Servicemember's Group Life Insurance (SGLI), and Family Servicemember's Group Life Insurance (FSGLI) deductions, Thrift Savings Plan (TSP) voluntary deductions, allotments (including allottee name and address, amount, term (in months), and account or policy number), bond authorizations (including bond owner and co-owner/beneficiary names and Social Security Numbers, and recipient's address), health care coverage deductions, Veterans Educational Assistance Program (VEAP), and Montgomery GI Bill allotments, indebtedness and collections.

Other Pay Information: Name, pay grade, Social Security Number, check issue, pay dates, leave account, payment address, and Form W-2 address.

Duty Status: Status adjustments relating to leave, entrance on active duty, absent without leave, confinement, desertion, sick, injured, mentally incompetent, missing, interned, promotions and demotions, and separation document code; and Armed Forces Health Professions Scholarship Program gain.

Personnel Information: Rank; enlistment contract or officer acceptance from identification; duty information (duty station, personnel assignment, and unit); security investigation; test scores; language proficiency; military and civilian off-duty education; training; awards, combat tours; aviation, pilot, and flying time data; lineal precedence number; limited duty officer/warrant officer footnote; temporary active duty data; power of attorney; years in service; promotional data.

Personal Information: Date of birth, citizenship, marital status, home of record, dependent information, record of emergency data, population group, sex, ethnic group, and health care coverage.

Supporting Documentation: Includes, but is not limited to, travel orders and requests; payroll attendance lists and rosters; document records establishing, supporting, reducing, or canceling entitlement; certificates and statements changing address, name, military assignment, and other individual data necessary to identify and provide accurate and timely military pay and performance credit; allotment start, stop, or change records; declarations of benefits and waivers; military pay and personnel orders; medical certifications and determinations; death and disability documents; check issuing and cancellation records and schedules; payroll vouchers; money lists and accounting records; pay adjustment authorization records; system input certifications; member indebtedness and tax levy documentation; earnings statements; employees; wage and tax reports and statements; casual payment authorization and control logs; and other documentation authorizing or substantiating Active Component military pay and allowances, entitlement, deductions, or collections. Also inquiry files, sundry lists, reports, letters, correspondence, and rosters including, but not limited to, Congressional inquiries, Internal Revenue Service notices and reports, state tax and insurance reports, Social Security Administration reports, Department of Veterans Affairs reports, inter-DoD requests, Treasury Department reports, and health education and institution inquiries.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 37 U.S.C.; and E.O. 9397 (SSN).

#### PURPOSE(S):

To ensure accurate and timely military pay and allowances to active component military members (including

those who are enrolled at a military academy and those who participate in voluntary separation pay, Armed Forces Health Professions Scholarship Program, basic military trainees or payment to a financial organization through electronic fund transfer program (including allotments and issuance and cancellation of United States treasury checks and bonds)); to document and account for military pay and allowance disbursements and collections; to verify and account for system input transactions; to identify, correct, and collect overpayment; to establish, control, and maintain member indebtedness notices and levies; and to provide timely, complete master individual pay account review; and to provide internal and external managers with statistical and monetary reports and to maintain a record of related personnel data.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Treasury Department to provide information on check issues and electronic funds transfers.

To the Internal Revenue Service to report taxable earnings and taxes withheld, and tax audits, and to compute or resolve tax liability or tax levies.

To Federal, state, and local agencies to conduct computer matching programs regulated by the privacy act of 1974, for those programs authorized by law.

To the Social Security Administration to report earned wages by members for the Federal Insurance Contribution Act (FICA), accounting for tax audits, and death notices.

To the Department of Veterans Affairs to report compensation, waivers, and audits, life insurance accounting, disbursement and benefit determinations, and death notices.

To the American Red Cross and military relief societies to assist military personnel and their dependents in determining the status of monthly pay, dependents' allotments, loans, and related financial transactions; and to perform other relief-related duties as requested by the service member.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents

authorized by individuals to receive and deposit payments in their accounts.

To the Department of Justice in connection with litigation, law enforcement or other matters under the legal representation of the Executive Branch agencies.

To Federal, state, and local governmental agencies in response to an official request for information with respect to law enforcement, investigatory procedures, criminal prosecution, civil court action and regulatory order.

To Federal, state and local revenue departments to credit members for taxes withheld.

To the National Finance Center, Office of Thrift Savings Plan, for participating service members.

To the Department of Veterans Affairs to provide payroll information for members who participated in making contributions to the Veterans Educational Assistance Program (VEAP), and the Montgomery GI Bill program.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices also deeply to this system.

#### DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debt part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim, and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

Data is recorded on magnetic tapes and disks, computer printouts, computer output products (microform and reports); file folders, notebooks, binders, card filed, and bulk storage, and other documents.

#### RETRIEVABILITY:

Computerized, conventional indices, other identification numbers or system identifiers are required to retrieve individual records from the system. Normally, information is retrieved by individual's name and Social Security number.

#### SAFEGUARDS:

Records are stored in office buildings protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their official duties. Passwords and digital signatures are used to control access to the systems data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the record system.

#### RETENTION AND DISPOSAL:

Records may be temporary in nature and destroyed when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year or fiscal year, and destroyed 6 years and 3 months after cutoff. Active duty pay records created prior to automation were cut off on conversion to the Defense Joint Military Payroll System (DJMS), and will be destroyed October 1, 2003, or 56 years after implementation of DJMS. The records are destroyed by tearing, shredding, pulping, macerating, burnings or degaussing the electronic storage media.

#### SYSTEM MANAGER(S) AND ADDRESS:

For Air Force military members, the system manager is the Director, Military Pay Operations, Military and Civilian Pay Services, Defense Finance and Accounting Service, Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249.

For Army military members, the system manager is the Director, Military Pay Operations, Military and Civilian Pay Services, Defense Finance and Accounting Service, Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249.

For Navy military members, the system manager is the Director, Military Pay Operations, Military and Civilian Pay Services, Defense Finance and Accounting Service, Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249.

For Marine Corps active duty military members see the Marine Corps' Privacy Act system notice MFD00003, Marine Corps Total Forces System (MCTFS) on the procedures for obtaining your personnel and payroll records.

#### NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individual 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 of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individual 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 the Freedom of Information/Privacy Act Program Manager, Office of Corporate Communications, 6760 E. Irvington Place, Denver, CO 80279-8000.

#### RECORD SOURCE CATEGORIES:

Individual members; DoD staff and field installations; recruiting, disbursing, and administrative offices; allotment and bond authorization forms; Social Security Administration, Treasury Department, Internal Revenue Service, Department of Veterans Affairs, and other Federal agencies; financial, medical, and educational institutions; DoD Components; the on-line Allotment/Bond Authorization process, and the End-User Computer Equipment (EUCE); and state and local government agencies.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.  
[FR Doc. 06-2681 Filed 3-20-06; 8:45 am]

BILLING CODE 5001-06-M

## DEPARTMENT OF DEFENSE

### Defense Finance and Accounting Service; Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Finance and Accounting Service.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Defense Finance and Accounting Service is proposing to alter a system of records notice in its existing inventory of records systems subject to

the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on April 20, 2006 unless comments are received which result in a contrary determination.

**ADDRESSES:** Freedom of Information Act/Privacy Act Program Manager, Defense Finance and Accounting Service, Denver, 6760 E. Irvington Place, Denver, CO 80279-8000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Krabbenhoft at (303) 676-6045.

**SUPPLEMENTARY INFORMATION:** The Defense Finance and Accounting Service systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the *Federal Register* and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 9, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 15, 2006.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

**T7346**

**SYSTEM NAME:**

Defense Joint Military Pay System—Reserve Component (April 12, 1999, 64 FR 17629).

**CHANGES:**

\* \* \* \* \*

**SYSTEM LOCATION:**

Delete entry and replace with: "Director, Area Command Mechanicsburg, 5450 Carlisle Pike, Building 309, Mechanicsburg, PA 17055-0975.

Defense Finance and Accounting Service, Cleveland, Reserve Center of Excellence, 1240 East Ninth Street, Cleveland, OH 44199-2055."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete the third sentence in the first paragraph.

Delete second paragraph and replace with: "Reserve military on extended active duty are covered under the

Defense Joint Military Pay System—Active Component, system number T7340."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete third paragraph and replace with: "DEDUCTIONS FROM PAY: Federal and state income tax withholding rate and amount (including authorization control files), withholding for Federal Insurance Contributions Act (FICA), Serviceman's Group Life Insurance (SGLI) deductions, Thrift Savings Plan (TSP), voluntary deductions, allotments (including allottee name and address, amount, term (in months), and account or policy number), bond authorizations (including bond owner and co-owner/beneficiary names and Social Security numbers, and recipient's address), health care coverage deductions, and indebtedness and collections."

\* \* \* \* \*

**PURPOSE(S):**

In the first sentence delete the following words: "Voluntary Separation Incentive (VSI)"

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete fifth paragraph and replace with: "To the Department of Veterans Affairs to report compensation, waivers, and audits, life insurance accounting; disbursement and benefit determinations, death notices, and payroll information for members who participated in making contributions to the Veterans Educational Assistance program (YEAP), the Montgomery GI Bill program, and Reserve Educational Assistance Program (REAP)."

Add the following words to the seventh paragraph: "or-reimbursements form the state due to the member."

**ADD THE FOLLOWING NEW PARAGRAPHS:**

"To the Department of Justice in connection with litigation, law enforcement or other matters under the legal representative of the Executive Branch agencies."

"To Federal, state and local governmental agencies in response to an official request for information with respect to law enforcement, investigatory procedures, criminal prosecution, civil court action and regulatory order."

"To Federal, state and local revenue departments to credit members for taxes withheld."

"To the National Finance Center, Office of Thrift Savings Plan for participating service members."

"To states to provide information in order to reimburse reservists for their

payment of Servicemember's Group Life Insurance (SGLI) premiums."

\* \* \* \* \*

**RETRIEVABILITY:**

Delete entry and replace with: "Computerized, conventional indices, other identification numbers or system identifiers are required to retrieve individual records from the system. Normally, information is retrieved by individual's name and Social Security Number."

**SAFEGUARDS:**

Delete entry and replace with: "Records are stored in office buildings protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their official duties. Passwords and digital signatures are used to control access to the systems data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the record system."

**RETENTION AND DISPOSAL:**

Delete entry and replace with: "Records may be temporary in nature and destroyed when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year or fiscal year, and destroyed 6 years and 3 months after cutoff. Reserve pay records created prior to automation were cut off on conversion to the Joint Uniformed Military Payroll System (JUMPS), and will be destroyed 56 years after the year in which created. Records created after conversion to Defense Joint Military Pay System—Reserve Component (DJMS-RC) are cut off at end of payroll year and destroyed 56 years after year in which created. The records are destroyed by tearing, shredding, pulping, macerating, burnings or degaussing the electronic storage media."

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with: "For Navy, Air Force, and Army reserve military members, the system manager is the Director, Military Pay Operations, Military and Civilian Pay Services, Defense Finance and Accounting Service, Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249."

"For Marine Corps reserve military members see the Marine Corps' Privacy Act system notice MFD00003, Marine Corps Total Forces System (MCTFS) on

the procedures for obtaining your personnel and payroll records.”

\* \* \* \* \*

#### T7346

##### SYSTEM NAME:

Defense Joint Military Pay System—Reserve Component.

##### SYSTEM LOCATION:

Director, Area Command  
Mechanicsburg, 5450 Carlisle Pike,  
Building 309, Mechanicsburg, PA  
17055-0975.

Defense Finance and Accounting  
Service, Cleveland, Reserve Center of  
Excellence, 1240 East Ninth Street,  
Cleveland, OH 44199-2055.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Air Reserve and Air National Guard Forces in a military pay status. U.S. Army Reserve and National Guard members in a military pay status. Active Naval reservists in pay and non-pay drill units. Naval Reserve Officer Training Corps students.

Reserve military on extended active duty are covered under the Defense Joint Military Pay System—Active Component, system number T7340.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Types of Records: Master individual military pay accounts; wage and tax summaries; leave and earnings statements; and other generated records substantiating or authorizing Reserve Forces military pay and allowance entitlement, deduction, or collection actions.

Pay Entitlements and Allowances: Base pay; allowances (such as basic allowance for subsistence, basic allowance for quarters, family separations, clothing maintenance and monetary allowances); special compensation for positions such as medical, dental, veterinary, and optometry; special pay and bonus, such as foreign duty, proficiency, hostile fire, and diving duty; incentive pay such as flying duty, parachute duty, and submarine duty; and other entitlements in accordance with the DoD Financial Management Regulations, Volume 7A.

Deductions From Pay: Federal and state income tax withholding rate and amount (including authorization control files), withholding for Federal Insurance Contributions Act (FICA), Serviceman's Group Life Insurance (SGLI) deductions, Thrift Savings Plan (TSP), voluntary deductions, allotments (including allottee name and address, amount, term (in months), and account or policy number), bond authorizations (including bond owner and co-owner/

beneficiary names and Social Security numbers, and recipient's address), health care coverage deductions, and indebtedness and collections.

Other Pay Information: Name, pay grade, Social Security Number, Reserve Forces calendar day performances (drill record), check issue, pay dates, leave account, payment address, and Form W-2 address.

Duty Status: Status adjustments relating to leave, entrance on active duty, absent without leave, confinement, desertion, sick or injured, mentally incompetent, missing, interned, promotions and demotions, and separation document code.

Personnel Information: Rank; enlistment contract or officer acceptance form identification; duty information (duty station, personnel assignment, and unit); security investigation; test scores; language proficiency; military and civilian off-duty education; training; awards; combat tours; aviation, pilot, and flying time data; lineal precedence number; limited duty officer/warrant officer footnote; temporary active duty data; power of attorney; years in service; promotional data.

Personal Information: Date of birth, citizenship, marital status, home of record, dependent information, record of emergency data, population group, sex, ethnic group, and health care coverage.

Supporting Documentation: Includes, but is not limited to, travel orders and requests; payroll attendance lists and rosters; document records establishing, supporting, reducing, or canceling entitlements; certificates and statements changing address, name, military assignment, and other individual data necessary to identify and provide accurate and timely Air Reserve Forces military pay and performance credit; allotment start, stop, or change records; declarations of benefits and waivers; military pay and personnel orders; medical certifications and determinations; death and disability documents; check issuing and cancellation records and schedules; payroll vouchers; money lists and accounting records; pay adjustment authorization records; system input certifications; member indebtedness and tax levy documentation; earnings statements; employees' wage and tax reports and statements; casual payment authorization and control logs; and other documentation authorizing or substantiating Reserve Forces military pay and allowances, entitlements, deductions, or collections. Also inquiry files, sundry lists, reports, letters, correspondence, and rosters including, but not limited to, Congressional

inquiries, Internal Revenue Service notices and reports, state tax and insurance reports, Social Security Administration reports, Department of Veterans Affairs reports, Treasury Department reports, inter-DoD requests, and health education and institution inquiries.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapter 11; 37 U.S.C.; and E.O. 9397 (SSN).

##### PURPOSE(S):

To ensure accurate and timely pay and allowances to Active Reserve component military members (including those who participate in Armed Forces Health Professional Scholarship Program, Basic Military Training, and Naval Reserve Officers Training Corps programs) or payment to a financial organization through electronic fund transfer program (including allotments and issuance and cancellation of United States treasury checks and bonds); to document and account for reserve military pay and allowance disbursements and collections; to verify and account for system input transactions; to identify, correct, and collect overpayments; to establish, control, and maintain member indebtedness notices and levies; to provide timely, complete master individual pay account review; to provide internal and external managers with statistical and monetary reports and to maintain a record of related personnel data.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Treasury Department to provide information on check issues and electronic funds transfers.

To the Internal Revenue Service to report taxable earnings and taxes withheld, accounting, and tax audits; to compute or resolve tax liability or tax levies.

To the Social Security Administration to report earned wages by members for FICA; accounting or tax audits; and death notices.

To the Department of Veterans Affairs to report compensation, waivers, and audits, life insurance accounting; disbursement and benefit determinations, death notices, and



payroll information for members who participated in making contributions to the Veterans Educational Assistance Program (VEAP), the Montgomery GI Bill program, and Reserve Educational Assistance Program (REAP).

To National Guard Bureaus to furnish budget data to account for expenditures within established categories.

To individual National Guard state associations to furnish reports and associated checks regarding state sponsored life insurance premiums withheld or reimbursements from the state due to the member.

To the American Red Cross and military relief societies to assist military personnel and their dependents in determining the status of monthly pay, dependents' allotments, loans, and related financial transactions, and to perform other relief-related duties as requested by the service member.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

To Federal, state, and local agencies to conduct computer matching programs regulated by the Privacy Act of 1974 for those programs authorized by law.

To the Department of Justice in connection with litigation, law enforcement or other matters under the legal representatives of the Executive Branch agencies.

To Federal, state and local government agencies in response to an official request for information with respect to law enforcement, investigatory procedures, criminal prosecution, civil court action and regulatory order.

To Federal, state and local revenue departments to credit members for taxes withheld.

To the National Finance Center, office of Thrift Savings Plan for participating service members.

To states to provide information in order to reimburse reservists for their payment of Servicemember's Group Life Insurance (SGLI) premiums.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

#### **DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of this

disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

#### **POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

##### **STORAGE:**

Data is recorded on magnetic tapes and disks, computer printouts, computer output products (microform and reports); file folders, notebooks, binders, card files, and bulk storage, and other documents.

##### **RETRIEVABILITY:**

Computerized, conventional indices, other identification numbers or system identifiers are required to retrieve individual records from the system. Normally, information is retrieved by individual's name and Social Security Number.

##### **SAFEGUARDS:**

Records are stored in office buildings protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their official duties. Passwords and digital signatures are used to control access to the systems data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the record system.

##### **RETENTION AND DISPOSAL:**

Records may be temporary in nature and destroyed when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year or fiscal year, and destroyed 6 years and 3 months after cutoff. Reserve pay records created prior to automation were cut off on conversion to the Joint Uniformed Military Payroll System (JUMPS), and will be destroyed 56 years after the year

in which created. Records created after conversion to Defense Joint Military Pay System—Reserve Component (DJMS-RC) are cut off at end of payroll year and destroyed 56 years after year in which created. The records are destroyed by tearing, shredding, pulping, macerating, burnings or degaussing the electronic storage media.

##### **SYSTEM MANAGER(S) AND ADDRESS:**

For Navy, Air Force, and Army reserve military members, the system manager is the Director, Military Pay Operations, Military and Civilian Pay Services, Defense Finance and Accounting Service, Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249.

For Marine Corps reserve military members see the Marine Corps' Privacy Act system notice MFD00003, Marine Corps Total Forces System (MCTFS) on the procedures for obtaining your personnel and payroll records.

##### **NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act officer at the appropriate DFAS Center.

Individuals should provide name, Social Security Number, or other information verifiable from the record itself.

##### **RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide name, Social Security Number, or other information verifiable from the record itself.

##### **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 the Freedom of Information/Privacy Act Program Manager, Office of Corporate Communications, 6760 E. Irvington Place, Denver, CO 80279-8000.

##### **RECORD SOURCE CATEGORIES:**

Individual members; DoD staff and field installations; recruiting, disbursing, and administrative offices; allotment and bond authorization forms; Social Security Administration, Treasury Department, Internal Revenue Service, Department of Veterans Affairs, and other federal agencies; financial, medical, and educational institutions;



DoD components; the on-line Allotment/Bond Authorization process, and the End-User Computer Equipment (EUCE); and state and local agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 06-2682 Filed 3-20-06; 8:45 am]

BILLING CODE 5001-06-M

**DEPARTMENT OF DEFENSE**

**Defense Finance and Accounting Service**

**Privacy Act of 1974; System 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 April 20, 2006 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the FOIA/PA Program Manager, Corporate Communications, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279-8000.

**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 March 14, 2006, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 15, 2006.

**L.M. Bynum,**  
*OSD Federal Register Liaison Officer,*  
*Department of Defense.*

**T7340a**

**SYSTEM NAME:**

Battle Injured/Non-Battle Injured Pay Account Management System.

**SYSTEM LOCATION:**

Defense Finance and Accounting Service—Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249-0001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former Army military active duty personnel; military active and inactive Reserve and National Guard personnel; retired military personnel who have been injured whether Battlefield Injury, Non Battlefield Injury or Disease Non Battlefield Injury in support of Operation Iraqi Freedom and Operation Enduring Freedom.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name; Social Security number (SSN); grade or rank; injury type; military pay account status codes; records of hospitalization periods; overpayments of pay and allowances; record of travel payments; locations of active duty, reserve, and retired military soldiers.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations, 31 U.S.C., 37 U.S.C.; E.O. 9397 (SSN).

**PURPOSE(S):**

To ensure accurate and timely military pay to active and reserve component military members who have been injured whether Battlefield Injury, Non Battlefield Injury or Disease Non Battlefield Injury in support of Operation Iraqi Freedom and Operation Enduring Freedom. To Document and account for military pay and allowance disbursements and collections; to verify and account for system input transactions; to identify, correct, and collect overpayments; to establish, control, and maintain member indebtedness of pay and allowances; and to provide timely, complete master individual pay account review; and to provide internal and external managers with statistical and monetary reports, and to maintain a record of related personnel data.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs to assist military personnel and their dependents in determining the status of monthly pay and allowances, dependents' allotments and related financial transactions; and to perform other relief-related duties as requested by the service member.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices also apply to this system.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (SSN); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

**STORAGE:**

Data is recorded on magnetic tapes and disks, computer printouts, computer output products (microform and reports); file folders, notebooks, binders, card files, and bulk storage, and other documents.

**RETRIEVABILITY:**

Information is retrieved by name and Social Security Number.

**SAFEGUARDS:**

Records are stored in office buildings protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access

to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their official duties. Passwords and digital signatures are used to control access to the systems data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the record system.

#### RETENTION AND DISPOSAL:

Records in this system are maintained in accordance with the DFAS disposition schedule for 6 years and 3 months.

#### SYSTEM MANAGER(S) AND ADDRESS:

Chief, Mobilization/Demobilization, Military Pay, Defense Finance and Accounting Service, 8899 East 56th Street, Indianapolis Defense Finance and Accounting Service—Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249-0001.

#### NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Corporate Communications, Freedom of Information Act/Privacy Act Program Manager, 6760 E. Irvington Place, Denver, CO 80279-8000.

Individual should provide their full name, Social Security Number, office or organization where currently assigned, if applicable, and current address, and telephone number.

#### RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves in this system of records should address written inquiries to the Defense Finance and Accounting Service, Corporate Communications, Freedom of Information Act/Privacy Act Program Manager, 6760 E. Irvington Place, Denver, CO 80279-8000.

Individuals should provide their full name, Social Security number, office or organization where currently assigned, if applicable, current home 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 the Freedom of Information/Privacy Act Program Manager, Corporate Communications, 6760 E.

Irvington Place, Denver, CO 80279-8000.

#### RECORD SOURCE CATEGORIES:

Individual members; Department of Defense staff and field installations; Department of Veterans Affairs, Human Resource Command, Disabled Soldiers Support System, and other Federal agencies; Medical systems and institutions; Personnel Systems and institutions; Department of Defense Components; and state and local government agencies.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06-2684 Filed 3-20-06; 8:45 am]

BILLING CODE 5001-06-M

## DEPARTMENT OF DEFENSE

### Defense Information Systems Agency

#### Privacy Act of 1974; System of Records

**AGENCY:** Defense Information Systems Agency, DoD.

**ACTION:** Notice to add a system of records.

**SUMMARY:** The Defense Information Systems Agency proposes 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 proposed action will be effective without further notice on April 20, 2006 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Defense Information Systems Agency, ATTN: Records Manager (SPI21), P.O. Box 4520, Arlington, VA 22204-4502.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeanette Jenkins at (703) 681-2103.

**SUPPLEMENTARY INFORMATION:** The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the *Federal Register* and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on March 9, 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, (61 FR 6427, February 20, 1996).

Dated: March 15, 2006.

**L.M. Bynum,**  
*OSD Federal Register Liaison Officer,*  
*Department of Defense.*

**K890.09**

#### SYSTEM NAME:

Enterprise Data and Global Exchange (EDGE) Knowledge Management Portal.

#### SYSTEM LOCATION:

Defense Information Systems Agency (DISA), ATTN: SPI21, P.O. Box 4502, Arlington, VA 22204-4502.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DISA Civilian employees, Military personnel assigned or detailed to DISA, and Contractors assigned to all DISA elements, including DISA field activities.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, duty title, grade, social security number, address and phone number.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 10 U.S.C. chp 8; DoD Directive 5105.19, Defense Information Systems Agency (DISA); E.O. 9397 (SSN).

#### PURPOSE(S):

The purpose of this system is to provide valid DISA users centralized access to agency information, data and applications via web-based technology.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the DISA's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

#### STORAGE:

Records are stored in an encrypted format and maintained on magnetic tapes and disks, and are housed in a controlled computer media library.

#### RETRIEVABILITY:

Records are retrieved by name and Social Security Number.

**SAFEGUARDS:**

Buildings are secured by guards during non-duty hours. Access to records is controlled by management personnel, who are responsible for maintaining the confidentiality of the records and using the information contained therein only for official purposes. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords.

**RETENTION AND DISPOSAL:**

Records are continuously updated. Obsolete computer records are erased or overwritten.

**SYSTEM MANAGER(S) AND ADDRESS:**

Records Manager, SPI21, Defense Information Systems Agency, P.O. Box 4520, Arlington, VA 22204-4502.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Records Manager, SPI21, Defense Information Systems Agency, P.O. Box 4520, Arlington, VA 22204-4502.

The individual should make reference to the office where he/she is/was assigned or affiliated and include address and telephone number applicable to the period during which the record was maintained. Social Security Number should be included in the inquiry for positive identification.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Records Manager, SPI21, Defense Information Systems Agency, P.O. Box 4520, Arlington, VA 22204-4502.

The individual should make reference to the office where he/she is/was assigned or affiliated and include address and telephone number applicable to the period during which the record was maintained. Social Security Number should be included in the inquiry for positive identification.

**CONTESTING RECORD PROCEDURES:**

DISA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DISA Instruction 210-225-2 at 32 CFR part 316 or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individuals and Manpower Systems (MPS) records.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 06-2683 Filed 3-20-06; 8:45 am]

BILLING CODE 5001-06-M

**DEPARTMENT OF EDUCATION****Submission for OMB Review; Comment Request**

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 20, 2006.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 13, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

**Federal Student Aid**

*Type of Review:* Revision.

*Title:* Fiscal Operations Report for 2005-2006 and Application to Participate for 2007-2008 (FISAP) and Reallocation Form E40-4P.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 6,172.

*Burden Hours:* 26,939.

*Abstract:* This application data will be used to compute the amount of funds needed by each school for the 2007-2008 award year. The Fiscal Operations Report data will be used to assess program effectiveness, account for funds expended during the 2005-2006 award year, and as part of the school funding process. The Reallocation form is part of the FISAP on the Web. Schools will use it in the summer to return unexpended funds for 2005-2006 and request supplemental FWS funds for 2006-2007.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2970. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-4005 Filed 3-20-06; 8:45 am]

BILLING CODE 4000-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP05-559-003]

**Algonquin Gas Transmission, LLC; Notice of Compliance Filing**

March 14, 2006.

Take notice that on March 8, 2006, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Second Sub First Revised Sheet No. 518 to become effective on September 12, 2005.

Algonquin states that it is making this filing in compliance with an order issued by the Commission in the captioned docket on February 16, 2006.

Algonquin states that copies of its filing have been served upon all affected customers of Algonquin and interested state commissions, and all parties on the Commission's official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 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](mailto:FERCOnlineSupport@ferc.gov), or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,  
Secretary.

[FR Doc. E6-4044 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket Nos. CP05-15-001; CP05-16-001; CP05-17-001]

**Freebird Gas Storage, LLC; Caledonia Energy Partners, L.L.C.; Notice of Application**

March 14, 2006.

On March 3, 2006, Caledonia Energy Partners, L.L.C. (Caledonia) filed an application pursuant to section 7(c) of the Natural Gas Act and part 157 and 284 of the Commission's regulations requesting to amend its certificate of public convenience and necessity issued on April 19, 2005. Caledonia requests authorization for minor storage area modifications to certain storage facilities in Lowndes and Monroe Counties, Mississippi. These modifications include drilling of an additional well within a previously studied and approved well pad, enlargement of the North Drilling pad, modifying certain pipe and fittings, and changing surface casing setting and horizontal open holes. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this application should be directed to Jim Goetz, Caledonia Energy Partners, L.L.C., 2001 Timber Creek Road, Flower Mound, Texas 75028, phone: (972) 691-3332, Fax: (972) 874-8743, or Kevin J. Lipson and Christopher A. Schindler, Hogan & Hartson L.L.P., 555 Thirteenth Street, NW., Washington, DC 20004, phone: (202) 637-7159, Fax: (202) 637-5910.

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 stated below 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 in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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 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. 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.

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.

*Comment Date:* April 4, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-4047 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PH06-21-000]

#### Consolidated Energy Holdings LLC; Notice of Petition for Exemption From the Requirements of the Public Utility Holding Company Act of 2005

March 13, 2006.

Take notice that on March 2, 2006, Consolidated Energy Holdings LLC filed a Petition for Exemption of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(a), 366.4(b)(1) of the Commission's regulations.

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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on March 23, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-4030 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP06-83-000]

#### Dominion Transmission, Inc.; Notice of Application

March 14, 2006.

Take notice that on March 6, 2006, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, Virginia 23219, filed in Docket No. CP06-83-000 an application pursuant to section 7 of the Natural Gas Act and part 157 of the Commission's Rules and Regulations. DTI requests all the necessary authorizations to reclassify as gathering certain facilities located in West Virginia, 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.

Questions regarding this application should be directed to Margaret H. Peters, Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar Street, Richmond, Virginia 23289, telephone (804) 819-2277; FAX (804)819-2183; e-mail [margaret\\_h\\_peters@dopm.com](mailto:margaret_h_peters@dopm.com).

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:* April 4, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-4037 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PH06-20-000]

#### DTE Energy Company; Notice of Petition for Exemption From the Requirements of the Public Utility Holding Company Act of 2005

March 13, 2006.

Take notice that on March 7, 2006, DTE Energy Company filed a Petition for Exemption of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(b)(4) 366.4(b)(1) of the Commission's regulations.

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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on March 28, 2006.

Magalie R. Salas,  
Secretary.

[FR Doc. E6-4029 Filed 3-20-06; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-221-000]

#### Duke Energy Marketing America, LLC, Gas Transmission Northwest Corporation, El Paso Natural Gas Company, Northwest Pipeline Corporation, Questar Southern Trails Pipeline Company and Transwestern Pipeline Company, LLC; Notice of Joint Petition for Expedited Grant of Limited Waivers

March 14, 2006.

Take notice that on February 15, 2006, as clarified March 10, 2006, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, Duke Energy Marketing America, LLC (DEMA), Gas Transmission Northwest Corporation (GTN), El Paso Natural Gas Company (El Paso), Northwest Pipeline Corporation (Northwest), Questar Southern Trails Pipeline Company (Questar Southern Trails), and Transwestern Pipeline Company, LLC (Transwestern) (collectively, Petitioners) tendered for

filing a Joint Petition for Expedited Grant of Limited Waivers.

DEMA, GTN, El Paso, Northwest, and Transwestern jointly petition the Commission for a grant of a limited waiver, to the extent required, of (i) the Commission's Order No. 636-A policy regarding the "tying" of non-jurisdictional gas transmission and gas commodity contracts to released transportation capacity, (ii) the applicable capacity release tariff provisions of the Petitioners, and (iii) any and all other waivers deemed necessary by the Commission.

The Petitioners state that the requested waivers will enable DEMA to effectuate the permanent transfer of two portfolios of DEMA assets consisting of Commission-regulated transportation capacity, associated upstream Canadian pipeline capacity, and various related gas supply and delivery contracts to DEMA's Prearranged Replacement Shipper or to some other third-party replacement shipper who may prevail in the capacity release bidding process. Petitioners further request expedited action on the requested waivers, so that the transportation releases may be made effective no later than May 1, 2006.

The Petitioners state that copies of their filings have been served on their jurisdictional customers and upon affected state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the

"eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on March 20, 2006.

Magalie R. Salas,  
Secretary.

[FR Doc. E6-4046 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97-13-024]

#### East Tennessee Natural Gas, LLC; Notice of Compliance Filing

March 13, 2006.

Take notice that on February 22, 2006, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing a negotiated rate agreement that reflects the renegotiation of a negotiated rate transaction approved with conditions by the Commission on August 16, 2005.

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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,  
Secretary.

[FR Doc. E6-4026 Filed 3-20-06; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP05-552-003]

#### East Tennessee Natural Gas, LLC; Notice of Compliance Filing

March 14, 2006.

Take notice that on March 8, 2006, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Sub Original Sheet No. 316A, to become effective on September 12, 2005.

East Tennessee states that it is making this filing in compliance with an order issued by the Commission in the captioned docket on February 16, 2006.

East Tennessee states that copies of its filing have been served upon all affected customers of East Tennessee and interested state commissions, and all parties on the Commission's official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,  
Secretary.

[FR Doc. E6-4042 Filed 3-20-06; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP05-553-003]

#### Egan Hub Storage, LLC; Notice of Compliance Filing

March 14, 2006.

Take notice that on March 8, 2006, Egan Hub Storage, LLC (Egan Hub) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Second Revised Sheet No. 107 and Second Sub First Revised Sheet No. 108, to become effective on September 12, 2005.

Egan Hub states that it is making this filing in compliance with an order issued by the Commission in the captioned docket on February 16, 2006.

Egan Hub states that copies of its filing have been served upon all affected customers of Egan Hub and interested state commissions, and all parties on the Commission's official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to

the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,  
Secretary.

[FR Doc. E6-4043 Filed 3-20-06; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ES06-28-000]

#### NewCorp Resources Electric Cooperative, Inc.; Notice of Filing

March 14, 2006.

Take notice that on March 6, 2006, NewCorp Resources Electric Cooperative, Inc. filed an application, pursuant to section 204 of the Federal Power Act, for authority to enter into a \$15 million five-year, secured revolving credit facility from RBC Capital Markets and Royal Bank of Canada.

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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on March 27, 2006.

Magalie R. Salas,  
Secretary.

[FR Doc. E6-4038 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-268-000]

#### Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 14, 2006.

Take notice that on March 8, 2006, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective April 8, 2006:

Third Revised Volume No. 1  
Ninth Revised Sheet No. 1  
Eleventh Revised Sheet No. 231  
Original Volume No. 2  
Fifteenth Revised Sheet No. 1  
Sixteenth Revised Sheet No. 1  
Eighth Revised Sheet No. 1-B  
Fourteenth Revised Sheet No. 1-C  
Twenty-Sixth Revised Sheet No. 2  
Fourth Revised Sheet No. 105  
Second Revised Sheet No. 191  
Sixth Revised Sheet No. 209  
Second Revised Sheet No. 434  
Second Revised Sheet No. 1134

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,  
Secretary.

[FR Doc. E6-4035 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ES06-29-000]

#### NorthWestern Corporation; Notice of Filing

March 14, 2006.

Take notice that on March 6, 2006, NorthWestern Corporation (NorthWestern) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to: (1) Borrow proceeds from the sale by the City of Forsyth, Rosebud County, Montana, not to exceed \$170,205,000 principal amount of the Pollution Control Revenue Refunding Bonds Series 2006 (Series 2006 PCRRBs); (2) provide for the repayment thereof; and (3) issue and deliver to the Trustee a like principal

amount of a new series of its First Mortgage Bonds to secure payment of the Series 2006 PCRRBs.

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 "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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on March 24, 2006.

Magalie R. Salas,  
Secretary.

[FR Doc. E6-4039 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
Commission

[Docket No. PH06-17-000]

**RGC Resources, Inc.; Notice of  
Petition for Exemption From the  
Requirements of the Public Utility  
Holding Company Act of 2005**

March 13, 2006.

Take notice that on March 6, 2006, RGC Resources, Inc. filed a Petition for Exemption of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(b), 366.4(b)(1) of the Commission's regulations.

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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on March 27, 2006.

Magalie R. Salas,  
Secretary.

[FR Doc. E6-4028 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
Commission

[Docket No. RP06-188-001]

**Southern Star Central Gas Pipeline,  
Inc.; Notice of Compliance Filing**

March 14, 2006.

Take notice that on March 8, 2006, Southern Star Central Gas Pipeline, Inc., (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective March 1, 2006.

Substitute First Revised Sheet No. 270  
Substitute First Revised Sheet No. 430  
Substitute First Revised Sheet No. 476

Southern Star states that copies of the filing were served on parties on the official service list.

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 § 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,  
Secretary.

[FR Doc. E6-4045 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
Commission

[Docket No. RP06-231-000]

**Norstar Operating, LLC; Complainant  
v. Columbia Gas Transmission  
Corporation; Respondent; Notice of  
Complaint**

February 27, 2006.

Take notice that on February 22, 2006, Norstar Operating, LLC (Norstar) filed a Complaint against Columbia Gas Transmission Corporation (Columbia) pursuant to Rule 206 of the Commission's Rules of Practice and Procedures, 18 CFR 385.206 (2005). Norstar alleges that Columbia violated the Natural Gas Act and Columbia's Tariff by refusing to accept deliveries of natural gas based upon a gas quality specification not set forth in Columbia's Tariff.

Norstar states that copies of the complaint were served on Columbia's counsel and on the contacts for Columbia 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 March 9, 2006.

Magalie R. Salas,  
Secretary.

[FR Doc. E6-4033 Filed 3-20-06; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

March 13, 2006.

Take notice that the Commission received the following electric rate filings

*Docket Numbers:* ER01-1305-011  
*Applicants:* Westar Generating, Inc.  
*Description:* Westar Generating, Inc submits corrections to two previously submitted informational filings and a refund report.

*Filed Date:* 03/07/2006.

*Accession Number:* 20060309-0018  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 28, 2006.

*Docket Numbers:* ER03-775-004;  
ER00-136-003

*Applicants:* FortisOntario, Inc; FortisUS Energy Corporation.  
*Description:* FortisOntario Inc & FortisUs Energy Corp submit a response to the informal request for information received by FERC Staff re the acquisition by Fortis Inc of Princeton Light & Power Co Limited.

*Filed Date:* 03/07/2006.

*Accession Number:* 20060309-0038  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 28, 2006.

*Docket Numbers:* ER05-1475-004  
*Applicants:* Midwest Independent Transmission System Operator, Inc.  
*Description:* Midwest Independent Transmission System Operator Inc submits a revised Attachment X—Large Generator Interconnection Procedures and Large Generator Interconnection Agreement of its OATT and EMT.

*Filed Date:* 03/08/2006.

*Accession Number:* 20060310-0193  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 29, 2006.

*Docket Numbers:* ER06-189-001  
*Applicants:* Electric Energy, Inc.  
*Description:* Electric Energy, Inc submits an amended and restated copy of the Power Supply Agreement which incorporates all changes after September 1987 which remained in effect as of 1/1/03.

*Filed Date:* 03/08/2006.

*Accession Number:* 20060310-0188  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 29, 2006.

*Docket Numbers:* ER06-301-001  
*Applicants:* Xcel Energy Services Inc.  
*Description:* Xcel Energy Services, Inc on behalf of itself and the Xcel Energy Operating Companies responds to FERC's 2/6/06 letter re its Joint Operating Agreement.

*Filed Date:* 03/08/2006.

*Accession Number:* 20060310-0184  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 29, 2006.

*Docket Numbers:* ER06-306-001  
*Applicants:* Pennsylvania Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company.

*Description:* Jersey Central Power & Light Co, Metropolitan Edison Co and Pennsylvania Electric Co submit a compliance filing pursuant to FERC's 2/6/06 Order.

*Filed Date:* 03/08/2006.

*Accession Number:* 20060310-0189  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 29, 2006.

*Docket Numbers:* ER06-486-001  
*Applicants:* Central Illinois Public Service Company; Illinois Power Company; Union Electric Company.

*Description:* Ameren Services Co on behalf of Central Illinois Public Service Co et al submit revisions to the designation of the two modified Facility Use Agreements pursuant to FERC's 3/2/06 letter order.

*Filed Date:* 03/07/2006.

*Accession Number:* 20060309-0015  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 28, 2006.

*Docket Numbers:* ER06-515-001  
*Applicants:* Mirant Peaker, LLC.

*Description:* Mirant Peaker, LLC amends the Notice of Cancellation of its FERC Electric Tariff, First Revised Volume 1.

*Filed Date:* 03/07/2006.

*Accession Number:* 20060309-0017  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 17, 2006.

*Docket Numbers:* ER06-700-000  
*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corp submits an amendment to their Simplified and Reorganized Tariff.

*Filed Date:* 03/07/2006.

*Accession Number:* 20060309-0032  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 28, 2006.

*Docket Numbers:* ER06-706-000  
*Applicants:* Entergy Services, Inc.  
*Description:* Entergy Services, Inc on behalf of Entergy Arkansas, Inc submits

the 2006 Wholesale Formula Rate Update in accordance with the Power Coordination, Interchange and Transmission Service Agreements.

*Filed Date:* 03/08/2006.

*Accession Number:* 20060310-0192  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 29, 2006.

*Docket Numbers:* ER06-707-000  
*Applicants:* Entergy Services, Inc.  
*Description:* Entergy Services, Inc on behalf of Entergy Arkansas, Inc submits the 2006 Wholesale Formula Rate update.

*Filed Date:* 03/08/2006.

*Accession Number:* 20060310-0191  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 29, 2006.

*Docket Numbers:* ER06-708-000  
*Applicants:* Midwest Independent Transmission System.

*Description:* Midwest Independent Transmission System Operator, Inc submits a Large Generator Interconnection Agreement with Northern States Power Co dba Xcel Energy-Generation Function et al.

*Filed Date:* 03/08/2006.

*Accession Number:* 20060310-0190  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 29, 2006.

*Docket Numbers:* ER94-1188-039; ER99-1623-008; EL05-99-003; ER98-4540-008; ER98-1279-010

*Applicants:* LG&E Energy Marketing Inc.; Kentucky Utilities Company; Louisville Gas & Electric Company; Western Kentucky Energy Corporation.  
*Description:* LG&E Marketing Inc, Louisville Gas & Electric Co et al submit a compliance filing pursuant to FERC's 2/15/06 Letter Order.

*Filed Date:* 03/08/2006.

*Accession Number:* 20060310-0187  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 29, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.



The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,  
Secretary.

[FR Doc. E6-4032 Filed 3-20-06; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PF06-13-000]

#### Downeast LNG, Inc.; Notice of Intent To Prepare an Environmental Impact Statement for the Downeast LNG Project, Request for Comments on Environmental Issues and Notice of a Joint Public Meeting

March 13, 2006.

The Federal Energy Regulatory Commission (FERC or Commission) and the U.S. Department of Homeland Security, U.S. Coast Guard (Coast Guard) are in the process of evaluating the Downeast Liquefied Natural Gas (LNG) Project planned by Downeast LNG, Inc. (Downeast). The project would consist of an onshore LNG import and storage terminal, located on the south side of Mill Cove in the Town of Robbinston, near the confluence of Passamaquoddy Bay and the St. Croix

River, in Washington County, Maine; and an approximately 31-mile-long natural gas sendout pipeline, extending from the terminal to the existing Maritimes & Northeast (M&NE) pipeline system at the Baileyville, Maine, compressor station.

As a part of this evaluation, FERC staff will prepare an environmental impact statement (EIS) that will address the environmental impacts of the project and the Coast Guard will assess the maritime safety and security of the project. As described below, the FERC and the Coast Guard will hold a joint public meeting to allow the public to provide input to these assessments.

The Commission will use the EIS in its decision-making process to determine whether or not to authorize the project. This Notice of Intent (NOI) explains the scoping process we<sup>1</sup> will use to gather information on the project from the public and interested agencies and summarizes the process that the Coast Guard will use. Your input will help identify the issues that need to be evaluated in the EIS and in the Coast Guard's maritime safety and security assessment. Please note that scoping comments are requested by April 17, 2006.

Comments on the project may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this NOI. In lieu of sending written comments, we invite you to attend the public scoping meeting scheduled as follows: Tuesday, March 28, 2006, 6:30 p.m. Robbinston Grade School, 904 U.S. Route 1, Robbinston, ME 04671. 207-454-3694.

The public scoping meeting listed above will be combined with the Coast Guard's public meeting regarding the maritime safety and security of the project. At the meeting, the Coast Guard will discuss: (1) The waterway safety assessment that it will conduct to determine whether or not the waterway can safely accommodate the LNG carrier traffic and operation of the planned LNG marine terminal; and (2) the security assessment it will conduct in accordance with the requirements of the Maritime Transportation Security Act. The Coast Guard will not be issuing a separate meeting notice for the maritime safety and security aspects of the project.

The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety

of facilities or equipment located in or adjacent to navigable waters up to the last valve immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval, and compliance verification as provided in Title 33 CFR part 105, and recommendation for siting as it pertains to the management of vessel traffic in and around the LNG facility.

Upon receipt of a letter of intent from an owner or operator intending to build a new LNG facility, the Coast Guard Captain of the Port (COTP) conducts an analysis that results in a letter of recommendation issued to the owner or operator and to the state and local governments having jurisdiction, addressing the suitability of the waterway to accommodate LNG vessels. Specifically the letter of recommendation addresses the suitability of the waterway based on:

- The physical location and layout of the facility and its berthing and mooring arrangements.
- The LNG vessels' characteristics and the frequency of LNG shipments to the facility.
- Commercial, industrial, environmentally sensitive, and residential area in and adjacent to the waterway used by the LNG vessels en route to the facility.
- Density and character of the marine traffic on the waterway.
- Bridges or other manmade obstructions in the waterway.
- Depth of water.
- Tidal range.
- Natural hazards, including rocks and sandbars.
- Underwater pipelines and cables.
- Distance of berthed LNG vessels from the channel, and the width of the channel.

In addition, the Coast Guard will review and approve the facility's operations manual and emergency response plan (33 CFR 127.019), as well as the facility's security plan (33 CFR 105.410). The Coast Guard will also provide input to other Federal, state, and local government agencies reviewing the project.

In order to complete a thorough analysis and fulfill the regulatory mandates cited above, the COTP Sector Northern New England will be conducting a formal risk assessment evaluating the various safety and security aspects associated with the Downeast LNG proposed project. This risk assessment will be accomplished through a series of workshops focusing on the areas of waterways safety, port security, and consequence management, with involvement from a broad cross-

<sup>1</sup> "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

section of government and port stakeholders with expertise in each of the respective areas. The workshops will be by invitation only. However, comments received during the public comment period will be considered as input in the risk assessment process.

This NOI is being sent to Federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Indian tribes and regional Native American organizations; commentors and other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.<sup>2</sup>

### Summary of the Proposed Project

Downeast proposes to construct and operate an LNG import terminal and storage facility, and associated natural gas sendout pipeline with a nominal capacity of about 500 million standard cubic feet of natural gas per day (mmscfd) with peak deliveries up to 625 mmscfd. More specifically, Downeast's facilities would consist of:

- A marine LNG terminal, including a single berth, 3,862-foot-long pier, capable of handling about 50 LNG tankers per year, ranging in size from 70,000 to 220,000 cubic meters (m<sup>3</sup>) per ship;
- Three 16-inch-diameter unloading arms and one vapor return line on the unloading platform, with an unloading capacity rate of 14,000 m<sup>3</sup> of LNG per hour;
- One insulated LNG storage tank, with a capacity of 160,000 m<sup>3</sup>;
- Boil-off gas management system, and sendout pumps;
- Submerged combustion vaporizers to re-vaporize LNG to natural gas;
- Electrical power distribution, including power substations and transformers;
- Ancillary terminal facilities, including control room, maintenance shop, warehouse, office, security, and safety systems;
- Measurement controls and natural gas metering facilities;
- A 31-mile-long, 20 or 24-inch-diameter natural gas sendout pipeline, extending from the LNG terminal to the

existing M&NE pipeline system at the Baileyville, Maine, compressor station; and

- Comprehensive hazard monitoring system incorporating flammable gas detectors, high and low temperature detectors, smoke detectors, and local emergency shut-down controls.

A location map depicting Downeast's proposed facilities, including its preferred pipeline route and two pipeline options, is attached to this NOI as Appendix 1.<sup>2</sup>

### The EIS Process

The NEPA requires the Commission to take into account the environmental impacts that could result from an action when it considers whether or not an LNG import terminal or an interstate natural gas pipeline should be approved. The FERC will use the EIS to consider the environmental impacts that could result if it issues project authorizations to Downeast under sections 3 and 7 of the Natural Gas Act. The 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 EIS on the important environmental issues. With this NOI, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EIS. All comments received will be considered during preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction, operation, maintenance, and abandonment of the proposed project under these general headings:

- Geology and Soils.
- Water Resources.
- Aquatic Resources.
- Vegetation and Wildlife.
- Threatened and Endangered Species.
- Land Use, Recreation, and Visual Resources.
- Cultural Resources.
- Socioeconomics.
- Marine Transportation.
- Air Quality and Noise.
- Reliability and Safety.
- Cumulative Impacts.

In the EIS, we will also evaluate possible alternatives to the proposed project or portions of the project, and

make recommendations on how to lessen or avoid impacts on affected resources.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to Federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Indian tribes and regional Native American organizations; commentors; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. We will consider all comments on the final EIS before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this NOI.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under its pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. In addition, the Coast Guard, which would be responsible for reviewing the maritime safety and security aspects of the planned project and regulating maritime safety and security if the project is approved, has initiated its review of the project as well.

With this NOI, we are asking Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues, especially those identified in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided in Appendix 2.

### Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on a preliminary review of the project area and the planned facility information provided by Downeast. This preliminary list of issues, which is presented below, may be revised based on your comments and our continuing analyses.

- Impact of LNG ship traffic on other Passamaquoddy Bay and St. Croix River

<sup>2</sup> The appendices referenced in this notice are not being printed in the *Federal Register*. Copies are available on the Commission's Web site (excluding maps) at the "e-Library" link or from the Commission's Public Reference Room or call (202) 502-8371. For instructions on connecting to e-Library refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

<sup>2</sup> The appendices referenced in this notice are not being printed in the *Federal Register*. Copies are available on the Commission's Web site (excluding maps) at the "e-Library" link or from the Commission's Public Reference Room or call (202) 502-8371. For instructions on connecting to e-Library refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

users, including fishing and recreational boaters.

- Safety issues relating to LNG ship traffic, including transit through Head Harbor Passage and Western Passage, and along the St. Croix River.
- Potential impacts on residents in the project area, including safety issues at the import and storage facility, noise, air quality, and visual resources.
- Project impacts on threatened and endangered species and the Moosehorn National Wildlife Refuge.
- Project impacts on wetlands, vegetation, and wildlife habitat.
- Project impacts on cultural resources.

#### Public Participation

You can make a difference by providing us with your specific comments or concerns about the planned project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of OEP/DG2E/Gas Branch 3, DG2E.
- Reference Docket No. PF06-13-000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before April 17, 2006. Appropriate copies will be provided to the Coast Guard.

The Commission strongly encourages electronic filing of any comments in response to this NOI. For information on electronically filing comments, please see the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide as well as information in 18 CFR 385.2001(a)(1)(iii). Before you can file comments you will need to create a free account, which can be accomplished on-line.

The public scoping meeting (date, time, and location listed above) is designed to provide another opportunity to offer comments on the proposed

project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues that they believe should be addressed in the EIS. A transcript of the meeting will be generated so that your comments will be accurately recorded.

Once Downeast formally files its application with the Commission, you may want to become an "intervenor," which is an official party to the proceeding. Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-Filing" link on the Commission's Web site. Please note that you may *not* request intervenor status at this time. You must wait until a formal application is filed with the Commission.

#### Environmental Mailing List

If you wish to remain on the environmental mailing list, please return the attached Mailing List Retention Form (Appendix 3 of this NOI). Also, indicate on the form your preference for receiving a paper version in lieu of an electronic version of the EIS on CD-ROM. If you do not return this form, we will remove your name from our mailing list.

#### Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC (3372) or on the FERC Internet Web site (<http://www.ferc.gov>) using the "eLibrary link." Click on the eLibrary link, select "General Search" and enter the project docket number excluding the last three digits (i.e., PF06-13) in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1-866-208-3676, TTY (202) 502-8659, or by e-mail at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov). The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submissions in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with

notification of these filings, document summaries, and direct links to the documents. To register for this service, go to <http://www.ferc.gov/esubscribenow.htm>.

Public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

Finally, Downeast has established an Internet Web site for this project at <http://www.downeastlng.com/index.htm>. The Web site includes a project overview, status, potential impacts and mitigation, and answers to frequently asked questions. You can also request additional information by calling Downeast directly at 207-214-5926.

Magalie R. Salas,

Secretary.

[FR Doc. E6-4027 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

#### DEPARTMENT OF ENERGY

#### Federal Energy Regulatory Commission

[Docket No. CP06-60-000]

#### Enbridge Pipelines L.L.C. (Midla); Notice of Intent To Prepare an Environmental Assessment for the Proposed T-1 Mainline Segment Abandonment and Request for Comments on Environmental Issues

March 14, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Enbridge Pipelines L.L.C.'s (Midla) T-1 Mainline Segment Abandonment involving abandonment of natural gas pipeline facilities and associated surface appurtenances.<sup>1</sup> The T-1 Mainline segment that would be abandoned originates at the Desiard Compressor Station in Ouachita Parish, Louisiana and extends in a southeasterly direction to the intersection of Holdiness Road, approximately 1.9 miles northeast of Alto, Richland Parish, Louisiana. This EA will be used by the Commission in its decision-making process to determine whether the proposed abandonment is in the public convenience and necessity.

<sup>1</sup> Midla's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

### Summary of the Proposed Abandonment

Midla requests to:

(1) Abandon in place 21.6 miles of 22-inch-diameter pipeline, that includes the grouting of the pipe or casing under 22 parish or private roads, seven state maintained roads, three railroads and one interstate highway;

(2) remove 3,899 feet of 22-inch-diameter pipeline at the request of six private landowners, 180 feet of pipeline from six surface exposures and valves at nine locations;

(3) remove surface appurtenances including out-of-service risers and one out-of-service meter; and

(4) relinquish the easement to the current landowners.

The general location of the facilities that would be abandoned is shown in Appendix 1.<sup>2</sup> If you are interested in obtaining detailed maps of a specific portion of the proposed abandoned facilities, send in your request using the form in Appendix 3.

### 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<sup>3</sup> will discuss impacts that could occur as a result of the proposed abandonment of the pipeline facilities under general headings which may include the following:

- Geology and soils.

<sup>2</sup> The appendices referenced in this notice are not being printed in the *Federal Register*. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

<sup>3</sup> "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Hazardous waste.
- Public safety.

We will also evaluate possible alternatives to the proposed abandonment or portions of the abandonment, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be 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 below.

### Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentator, your concerns will be addressed in the EA/EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- 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. CP06-60-000.
- Mail your comments so that they will be received in Washington, DC on or before April 14, 2006.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR

385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created 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). Intervenor has 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 email 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 abandonment. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for abandonment 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 2, to express their interest in becoming cooperating agencies for the preparation of the EA.



### Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Magalie R. Salas,

Secretary.

[FR Doc. E6-4036 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PF06-11-000]

#### Quoddy Bay, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Quoddy Bay LNG Project, Request for Comments on Environmental Issues and Notice of Public Scoping Meetings

March 14, 2006.

The Federal Energy Regulatory Commission (FERC or Commission) and the U.S. Department of Homeland Security, U.S. Coast Guard (Coast Guard) are in the process of evaluating the Quoddy Bay L.L.C. (Quoddy Bay) Liquefied Natural Gas (LNG) Import and Regasification Terminal project (the Project) which involves the construction and operation of facilities by Quoddy Bay on the western shore of Passamaquoddy Bay in Washington County, Maine. The Project would consist of an onshore LNG import terminal located in Pleasant Point, ME with an approximate eight-mile-long pipeline connecting to a storage facility

located in Perry, Maine, and 35-mile-long natural gas sendout pipeline interconnecting with the Maritimes and Northeast (M&NE) Pipeline system.

As part of this evaluation, FERC staff will prepare an environmental impact statement (EIS) that will address the environmental impacts of the project and the Coast Guard will assess the maritime safety and security of the Project. As explained further in the Public Participation Section of this notice, the FERC and Coast Guard will hold joint public scoping meetings to allow the public and interested agencies the opportunity to provide input to these assessments.

This notice explains the scoping process that will help us<sup>1</sup> determine which issues/impacts need to be evaluated in the EIS. This EIS will be used by the Commission in its decision-making process to determine whether the Project is in the public convenience and necessity. Please note that the scoping period for the Project will close on April 28, 2006.

The FERC will be the lead Federal agency in the preparation of an EIS that will satisfy the requirements of the National Environmental Policy Act (NEPA). The Coast Guard; the U.S. Army Corps of Engineers; and Department of Interior, Bureau of Indian Affairs will serve as cooperating agencies during preparation of the EIS. In addition, we have invited the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service; the U.S. Environmental Protection Agency; the U.S. Department of the Interior, Fish and Wildlife Service; the Advisory Council on Historic Preservation, the Natural Resources Conservation Service; the Maine Department of Environmental Protection; the Maine Department of Marine Resources; and the Maine Division of Inland Fisheries and Wildlife.

Comments may be submitted in written form or verbally. In lieu of or in addition to sending written comments, you are invited to attend the public scoping meetings that have been scheduled in the Project area. Further instructions on how to submit written comments and additional details of the public scoping meetings are provided in the public participation section of this NOI.

The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety

of facilities or equipment located in or adjacent to navigable waters up to the last valve immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval, and compliance verification as provided in Title 33 CFR 105, and recommendation for siting as it pertains to the management of vessel traffic in and around the LNG facility.

Upon receipt of a letter of intent from an owner or operator intending to build a new LNG facility, the Coast Guard Captain of the Port (COTP) conducts an analysis that results in a letter of recommendation issued to the owner or operator and to the state and local governments having jurisdiction, addressing the suitability of the waterway to accommodate LNG vessels. Specifically the letter of recommendation addresses the suitability of the waterway based on:

- The physical location and layout of the facility and its berthing and mooring arrangements.
- The LNG vessels' characteristics and the frequency of LNG shipments to the facility.
- Commercial, industrial, environmentally sensitive, and residential area in and adjacent to the waterway used by the LNG vessels en route to the facility.
- Density and character of the marine traffic on the waterway.
- Bridges or other manmade obstructions in the waterway.
- Depth of water.
- Tidal range.
- Natural hazards, including rocks and sandbars.
- Underwater pipelines and cables.
- Distance of berthed LNG vessels from the channel, and the width of the channel.

In addition, the Coast Guard will review and approve the facility's operations manual and emergency response plan (33 CFR 127.019), as well as the facility's security plan (33 CFR 105.410). The Coast Guard will also provide input to other Federal, state, and local government agencies reviewing the project.

In order to complete a thorough analysis and fulfill the regulatory mandates cited above, the COTP Sector Northern New England will be conducting a formal risk assessment evaluating the various safety and security aspects associated with the Quoddy Bay's LNG proposed project. This risk assessment will be accomplished through a series of workshops focusing on the areas of waterways safety, port security, and consequence management, with involvement from a broad cross-section

<sup>1</sup> "We," "us", and "our" refer to the environmental staff of the Office of Energy Projects.



of government and port stakeholders with expertise in each of the respective areas. The workshops will be by invitation only. However, comments received during the public comment period will be considered as input in the risk assessment process.

This notice is being sent to affected landowners within 0.5 mile of the proposed LNG Terminal; landowners within 200 feet of the pipeline route under consideration; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers; and other interested parties.

Some affected landowners may be contacted by a project representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. If so, Quoddy Bay and the affected landowners should seek to negotiate a mutually acceptable agreement. In the event that the Project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the facilities. Therefore, if easement negotiations fail to produce an agreement, Quoddy Bay 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?" addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (<http://www.ferc.gov>).

#### Summary of the Proposed Project

Quoddy Bay proposes to site, construct, and operate an LNG terminal and storage facility, and associated natural gas sendout pipeline with a capacity of 2.0 billion cubic feet per day. More specifically, Quoddy Bay's facilities would consist of:

- An LNG import and marine LNG terminal, including a double, staggered berth, 1,700-foot-long pier, capable of handling about 90 LNG tankers per year, ranging in size from 135,000 to 200,000 cubic meters (m<sup>3</sup>) per ship;
- An onshore storage and regasification facility which includes three full-containment insulated storage tanks with a capacity of 160,000 m<sup>3</sup> each.
- LNG being unloaded from either of two berths. Each berth has four identical unloading arms, three in liquid service and one in vapor service. Each arm is provided with an emergency release

system. Tankers can be unloaded at 4,000 to 12,000 cubic meters per hour;

- The platform on the unloading pier will be equipped with submerged combustion vaporizers which can vaporize the LNG on site and send gas directly to the sendout line bypassing the shore side storage facility;

- The electrical power distribution, including power substations, transformers, switchgear, multiple voltage distribution, emergency and UPS power systems;

- Ancillary terminal facilities being located on the pier, including enclosed control rooms, and platform firefighting capability;

- A computer-based distributed control system, measurement controls and natural gas metering facilities;

- LNG being pumped via a cryogenic transfer line approximately 6,000 ft., crossing under a state highway, across a small inlet bay to the storage facility.

- A comprehensive hazard monitoring system incorporating flammable gas detectors, high and low temperature detectors, smoke detectors, and local emergency shut-down controls.

- The proposed sendout pipeline would consist of a 35.1 miles of 36-inch diameter pipeline that would extend from the Import Facility through the Storage Facility and interconnect with the M&NE Pipeline in Princeton, Maine.

A map depicting the general location of the Project facilities and pipeline is shown in Appendix 1.<sup>2</sup>

Quoddy Bay is requesting approval such that the pier facilities are completed and placed into service in 2009 with the storage facilities being placed into service in 2010.

#### Land Requirements for Construction

Construction of the project would disturb about 993 acres of land. Following construction, about 337 to 340 acres of the total would be retained for the operation of the LNG Terminal and Sendout Pipeline.

As proposed, the Import Facility would be constructed on submerged lands that extend from mean low water at Split Rock eastward towards the United States shore between Pleasant Point, Maine and Deer Island in New Brunswick Canada. Construction of this facility would require approximately 431 acres of land, of this amount, 30 acres consists of submerged lands that

<sup>2</sup>The appendices referenced in this notice are not being printed in the *Federal Register*. Copies are available from the Commission's Public Reference and Files Maintenance Branch, at (202) 502-8371. For instructions on connecting to eLibrary refer to the last page of this Notice.

would be permanently impacted by the operation of the facility.

The Support Facility would be located on Split Rock within the Passamaquoddy Indian Reservation in Pleasant Point, Maine. About 4 acres of land would be temporarily impacted by the construction of the Support Facility, of which about 2.5 acres of land would be permanently impacted by the operation of the proposed facility.

Construction of the LNG Transfer System would temporarily impact about 8 acres of land and would including a segment of submerged land in Half Moon Cove. About 6 acres would be required for operation of the LNG Transfer System.

The Storage Facility would be located in the town of Perry, Maine and affect about 100 acres of land. About 88 acres would be affected by operation.

The 35.1-mile-long, 36-inch-diameter sendout pipeline in Washington County, Maine would temporarily affect about 430 to 450 acres of land during construction. About 210 to 213 acres would be required for operations. Quoddy Bay would use a maximum 100-wide right-of-way for construction, of this amount 50 feet would consist of permanent right-of-way and 50 feet would consist of temporary workspace. The construction right-of-way near wetlands and water bodies would be limited to 75 feet and in residential areas to 50 feet.

#### The EIS Process

The Project is currently in the preliminary stages of design, and at this time a formal application has not been filed with the Commission. For this proposal, the Commission is initiating the National Environmental Policy Act (NEPA) review prior to receiving the application. This allows interested stakeholders to become involved early in project planning and to identify and resolve issues before an application is filed with the FERC. A docket number (PF06-11-000) has been established to locate in the public record information filed by Quoddy Bay and related documents issued by the Commission.<sup>3</sup> Once a formal application is filed with the FERC, a new docket number will be established.

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 under Section 7 of the Natural Gas Act. NEPA also requires us to

<sup>3</sup>To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

identify and address concerns the public would have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EIS on important environmental issues and reasonable alternatives. By this Notice of Intent, the Commission staff requests agency and public comments on the scope of the issues to be addressed in the EIS. All comments received are considered during the preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction, operation, maintenance, and abandonment of the proposed project under these general headings:

- Geology and Soils,
- Water Resources,
- Fish, Wildlife, and Vegetation,
- Endangered and Threatened Species,
- Cultural Resources,
- Land Use, Recreation and Special Interest Areas, and Visual Resources,
- Socioeconomics,
- Marine Transportation,
- Air Quality and Noise,
- Reliability and Safety, and
- Alternatives.

Our independent analysis of the issues will be included in the draft EIS. The draft EIS will be published and mailed to Federal, state, and local agencies, Native American tribes, 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 of the draft EIS. We will consider all timely comments on the draft EIS and revise the document, as necessary, before issuing a final EIS.

We have already started to meet with Quoddy Bay, agencies, and other interested stakeholders to discuss the Project and identify issues/impacts and concerns. Between February 13 and 17, 2006, representatives of FERC staff participated in public open houses sponsored by Quoddy Bay in the Project area to explain the NEPA environmental review process to interested stakeholders and take comments about the Project. In addition, the Coast Guard, which would be responsible for reviewing the safety and security aspects of the planned project and regulating safety and security if the project is approved, has initiated its review of the project as well.

With this notice, we are asking other Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues in the project area to formally cooperate with us in the preparation of the EIS.

These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments described later in this notice. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

#### Currently Identified Environmental Issues

We have identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the information provided by Quoddy Bay. This preliminary list of issues may be changed based on your comments and our analysis.

- Impact of LNG ship traffic on other water-body users, including recreational boaters, tour-boats, and commercial fishing vessels.
- Potential impacts on regional aquaculture and commercial fishing activities.
- Safety and security issues relating to LNG ship traffic, including transits through Head Harbor Passage.
- Potential impacts on the residents of neighboring communities, including safety issues at the import and storage facility, noise, air quality, and visual resources.
- Project impacts on threatened and endangered species and nearby National Wildlife Refuges.
- Project impacts on cultural resources.

We will make recommendations on how to lessen or avoid impacts on the various resource areas and evaluate possible alternatives to the proposed Project or portions of the Project.

#### Public Participation

You are encouraged to become involved in this process and provide your specific comments or concerns about Quoddy Bay's proposal. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- 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 1.
- Reference Docket No. PF06-11-000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before April 28, 2006 (Applicable copies will be provided to the Coast Guard).

Please note that the Commission encourages electronic filing of comments. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at <http://www.ferc.gov> under the "eFiling" link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on "Login to File" and then "New User Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings we will conduct in the Project area.<sup>4</sup> The locations for these meetings are listed below. All meetings are scheduled to begin at 7 p.m.:

Wednesday, April 5, 2006, 7 p.m.  
Pleasant Point Recreational Dept./  
Sipayik Boy's and Girl's Club,  
Passamaquoddy Drive, Perry, ME  
04667, 207-853-6161.

Thursday, April 6, 2006, 7 p.m.  
Perry School, 1587 U.S. Route 1,  
Perry, ME 04667, 207-853-2522.

The scoping meetings listed above will be combined with the Coast Guard's public meeting regarding the safety and security of the project. At the meetings, the Coast Guard will discuss (1) the waterway safety assessment that it will conduct to determine whether or not the waterway can safely accommodate the LNG carrier traffic and operation of the planned LNG marine terminal, and (2) the security assessment it will conduct in accordance with the requirements of the Maritime Transportation Security Act. The Coast Guard will not be issuing a separate meeting notice for the maritime safety and security aspects of the project.

The joint public scoping meetings are designed to provide state and local agencies, interested groups, affected

<sup>4</sup> The Quoddy Bay scoping meetings were originally scheduled for March 28 and 29, 2006. However, due to scheduling conflicts for the FERC staff, the meetings were moved as noted above.

landowners, and the general public with another opportunity to offer your comments on the Project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EIS and LNG vessel transit safety concerns for consideration by the Coast Guard. A transcript of each meeting will be made so that your comments will be accurately recorded.

All public meetings will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

When Quoddy Bay submits its application for authorization to construct and operate the project, the Commission will publish a Notice of Application in the **Federal Register** and will establish a deadline for interested persons to intervene in the proceeding. Because the Commission's Pre-Filing Process occurs before an application to begin a proceeding is officially filed, petitions to intervene during this process are premature and will not be accepted by the Commission.

#### Environmental Mailing List

If you received this notice, you are on the environmental mailing list for this Project and will continue to receive Project updates including the draft and final EISs. If you want your contact information corrected or you do not want to remain on our mailing list, please return the Correct or Remove From Mailing List Form included as Appendix 3.

To reduce printing and mailing costs, the draft and final EISs will be issued in both CD-ROM and hard copy formats. The FERC strongly encourages the use of the CD-ROM format in its publication of large documents. If you wish to receive a paper copy of the draft EIS instead of a CD-ROM, you must indicate that choice on the return postcard (Appendix 3).

#### Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The

eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribe.htm>.

Finally, Quoddy Bay L.L.C. LNG has established an Internet Web site for this project at <http://www.quoddylng.com>. The website includes a project overview, status, and answers to frequently asked questions. You can also request additional information by calling Quoddy Bay LNG at 207-853-6631, or by e-mail at [ABarstow@quoddylng.com](mailto:ABarstow@quoddylng.com).

Magalie R. Salas,

Secretary.

[FR Doc. E6-4041 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

March 13, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* Non-Project Use of Project Lands and Waters.
- b. *Project No.:* 516-418.
- c. *Date filed:* February 21, 2006.
- d. *Applicant:* South Carolina Electric and Gas Company.
- e. *Name of Project:* Saluda Hydroelectric Project.
- f. *Location:* On the Saluda River, near the Town of Delmar, Saluda County, South Carolina.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and sections 799 and 801.
- h. *Applicant Contact:* Beth Trump, South Carolina Gas and Electric Co., Land Management (MZ6), Columbia, SC 29218, telephone (803) 217-7912, fax (803) 933-7520, e-mail [btrump@scana.com](mailto:btrump@scana.com).
- i. *FERC Contact:* Brandi Sangunett; telephone (202) 502-8393, e-mail [brandi.sangunett@ferc.gov](mailto:brandi.sangunett@ferc.gov).

j. *Deadline for filing comments and or motions:* April 14, 2006.

k. *Description of Proposal:* South Carolina Electric and Gas Company is requesting Commission approval to authorize the use by Saluda County Water and Sewer Authority (SCWSA) of project lands for the withdrawal of up to 15 million gallons per day of water from the project reservoir for public drinking water, and to convey 0.23 acres of project property along with a 40-foot wide ingress and egress easement for the purpose of constructing a raw water pumping station and associated facilities. The water withdrawal would involve an inter-basin transfer from the Saluda River basin for use and discharge into the Lower Savannah River basin and the Edisto River basin. No lands presently reserved for public recreation will be affected.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing 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 (p-516) to access the document. You may also register online at <http://www.ferc.gov/docs-filing/subscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov), for TTY, call (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 (p-516-418). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., 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.

q. 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 at <http://www.ferc.gov> under the "e-Filing" link.

Magalie R. Salas,  
Secretary.

[FR Doc. E6-4031 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments for an Applicant Prepared Environmental Assessment Using the Alternative Licensing Process

March 14, 2006.

a. *Subject*: Alternative Licensing Process for a New Major License.

b. *Project No.*: 12478-000.

c. *Applicant*: Gibson Dam Hydroelectric Company, LLC.

d. *Name of Project*: Gibson Dam Hydroelectric Project.

e. *Location*: The proposed hydroelectric generating facility would be located at Gibson dam on the Sun River approximately 18 miles northwest of Augusta, MT in Teton and Lewis and Clark counties. The project power generating facilities would be constructed at or near the base of Gibson dam on U.S. Bureau of Reclamation lands. Gibson dam lies within the Lewis

and Clark National Forest, administered by the U.S. Forest Service.

f. *The application would be filed pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

g. *Applicant Contact*: Steven C. Marmon, Project Manager, Gibson Dam Hydroelectric Company, LLC, 3633 Alderwood Avenue, Bellingham, WA 98225, [smarmon@tollhouseenergy.com](mailto:smarmon@tollhouseenergy.com), 360.738.9999 X 122.

h. *FERC Contact*: David Turner, [david.turner@ferc.gov](mailto:david.turner@ferc.gov), 202.502.6091.

i. *Deadline for filing scoping comments*: May 12, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

j. The hydroelectric project would be located at or near Gibson dam on the Sun River approximately 18 miles northwest of Augusta, MT. Gibson dam is an existing water storage and supply facility owned and operated by the U.S. Bureau of Reclamation through a Memorandum of Understanding with the U.S. Forest Service. The project power generating facilities would be constructed at or near the base of Gibson dam on U.S. Bureau of Reclamation lands, and would consist of a powerhouse, a 5-35 kilovolt (kV) transformer located near the powerhouse, a 35kV transmission line extending from the transformer to a 35-69kV-substation, and a 69kV overhead transmission line extending from the substation to the existing South Augusta substation.

Three alternative powerhouse configurations are currently under consideration. All three designs would involve an approximately 60 foot (ft) by 160 ft powerhouse, which would house two 6-megawatt (MW) and two 1.5-MW horizontal shaft Francis-type turbine/generators. Specifically, the alternatives are: (1) Upstream Alternative, with the

powerhouse located just downstream of and parallel to the Gibson dam; (2) Upstream Alternative, with the powerhouse located just downstream of and perpendicular to the Gibson dam; and (3) Downstream Alternative, with the powerhouse located adjacent to the access road approximately 250 ft downstream from the base of the dam.

k. *Scoping Process*. Gibson Dam Hydroelectric Company, LLC (GDHC) intends to utilize the Federal Energy Regulatory Commission's (Commission) alternative licensing process (ALP). Under the ALP, GDHC will prepare an applicant prepared Environmental Assessment (EA) and license application for the Gibson Dam Hydroelectric Project.

GDHC expects to file with the Commission, the applicant prepared EA and the license application for the Gibson Dam Hydroelectric Project by March 2007. Although GDHC's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) would be necessary to complete the NEPA process. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meetings identified below, and to solicit your scoping comments.

#### Scoping Meetings

GDHC and the Commission staff will hold two scoping meetings—one in the evening and one in the morning—to help us identify the scope of issues to be addressed in the applicant prepared EA. The evening scoping meeting will be oriented primarily for the public, while the morning scoping meeting will focus on resource agency and non-governmental organization concerns. All interested individuals, organizations, tribes, and agencies are invited to attend one or both of the meetings, and to assist the Commission staff in identifying the environmental issues that should be analyzed in the applicant prepared EA. The times and locations of these meetings are as follows:

#### Evening Meeting

Tuesday, April 11, 2006, 7 p.m. to 9 p.m. (MST), Fairfield Community Center, Fairfield, MT.

#### Morning Meeting

Wednesday, April 12, 2006, 9 a.m. to 12 p.m. (MST), Montana Association of Counties Building, 2715 Skyway Drive, Helena, MT.

To help focus discussions, copies of SD1 outlining the subject areas to be



addressed in the applicant prepared EA were distributed to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings. SD1 is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@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 this or other pending projects. For assistance, contact FERC Online Support.

Based on all comments received, a Scoping Document 2 (SD2) may be issued. SD2 will include a revised list of issues, based on the scoping sessions.

#### Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the applicant prepared EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the applicant prepared EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the applicant prepared EA; and, (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

#### Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, tribes, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist GDHC in defining and clarifying the issues to be addressed in the applicant prepared EA.

#### Site Visit

Commission staff and GDHC will conduct a site visit to the Gibson dam at 9 a.m. on April 11, 2006. All interested individuals, organizations, and agencies are invited to attend. Any person interested in attending the site visit should contact Steve Marmon no

later than Friday April 7, 2006, at: Steven C. Marmon, Project Manager, Gibson Dam Hydroelectric Company, LLC, 3633 Alderwood Avenue Bellingham, WA 98225, 360-738-9999 X 122, [smarmon@tollhouseenergy.com](mailto:smarmon@tollhouseenergy.com).

Magalie R. Salas,

Secretary.

[FR Doc. E6-4040 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER02-2001-000]

#### Electric Quarterly Reports; Notice of Electric Quarterly Reports Users Group Meeting

March 7, 2006.

On April 25, 2002, the Commission issued Order No. 2001,<sup>1</sup> a final rule which requires public utilities to file Electric Quarterly Reports. Order 2001-C, issued December 18, 2002, instructs all public utilities to file these reports using Electric Quarterly Report Submission Software. This notice announces a meeting for the EQR Users Group to be held Wednesday, March 29, 2006, at FERC headquarters, 888 First Street, NW., Washington, DC. The meeting will run from 10 a.m. to 4 p.m.

At the workshop, Commission staff and EQR users will review and update the technical compliance process and review clarifications and additions to the EQR Requirements Guide. A detailed agenda and other relevant documents will be provided at <http://www.ferc.gov/docs-filing/eqr/groups-workshops.asp> prior to the meeting.

All interested parties are invited to attend. For those unable to attend in person, limited access to the workshop will be available by teleconference. Those interested in participating are asked to register on the FERC Web site at <https://www.ferc.gov/whats-new/registration/eqr-03-29-form.asp>. There is no registration fee.

Interested parties wishing to file comments may do so under the above-captioned Docket Number. Those filings will be available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "eLibrary" link. Enter the docket number excluding the

<sup>1</sup> Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002); *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reconsideration and clarification denied*, Order No. 2001-B, 100 FERC ¶ 61,342 (2002).

last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or via phone at (866) 208-3676 (toll-free). For TTY, contact (202) 502-8659.

For additional information, please contact Brenda Devine of FERC's Office of Market Oversight & Investigations at (202) 502-8522 or by e-mail at [eqr@ferc.gov](mailto:eqr@ferc.gov).

Magalie R. Salas,

Secretary.

[FR Doc. E6-4034 Filed 3-20-06; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-ORD-2005-0504; FRL-8047-8]

### Notice of Expert Peer Review Meeting on the Nanotechnology White Paper External Review Draft

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is announcing that Versar, Inc., an EPA contractor for external peer review, will convene a panel of experts and will organize and conduct an independent expert external peer review meeting to review the draft document entitled "Nanotechnology White Paper External Review Draft." The draft document was prepared by the Nanotechnology Workgroup of EPA's Science Policy Council and has recently undergone public review and comment. Versar, Inc. invites the public to register to attend this meeting as observers. In addition, Versar, Inc. invites the public to give oral comments or provide written comments at the external peer review meeting regarding the draft document under review. The panel will review the draft document and consider public comments received in the official public docket for this activity under docket ID number EPA-HQ-ORD-2005-0504 as well as comments made by the public at the meeting. The draft document and peer review charge are available through EPA's Science Inventory at <http://cfpub.epa.gov/si/> and at <http://www.epa.gov/osa/nanotech.htm>. In preparing a final document, EPA will consider Versar, Inc.'s report of the comments and recommendations from the external peer-review meeting, as well as public comments. EPA plans to issue a final white paper on nanotechnology in mid-2006.



This notice announces the independent expert external peer review meeting location and dates, and how to participate in the meeting.

**DATES:** Versar, Inc. will hold the independent expert external peer review meeting from April 19, 2006 to April 20, 2006. The meeting is scheduled to begin at 9 a.m. and end at 5 p.m., Eastern Time, on both days. The public may attend the expert external peer review meeting. Members of the public in attendance will be allowed to make brief (no longer than 5 minutes) oral statements during the meeting's public comment period.

**ADDRESSES:** The independent expert external peer review meeting will be held at the Marriott at Metro Center, located at 775 12th Street, NW., Washington, DC 20005; telephone 202-737-2200.

#### How Can I Request To Participate in This Meeting?

Versar, Inc., an EPA contractor, is organizing, convening, and conducting the expert peer review meeting. To attend the meeting, register by April 15, 2006, by visiting <http://epa.versar.com/nanotech>. You may also contact Mr. Andrew Oravetz of Versar, Inc., 6850 Versar Center, Springfield, VA, 22151, at 703-642-6832 or via e-mail at [Aoravetz@versar.com](mailto:Aoravetz@versar.com), or by sending a facsimile to 703-642-6954 to his attention. You will be asked for your name, contact information, whom you represent, and your title. Please indicate if you intend to make an oral statement during the public comment period at the meeting.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding logistics for the external peer review meeting should be directed to Mr. Andrew Oravetz, Versar, Inc., 6850 Versar Center, Springfield, VA, 22151; telephone: 703-642-6832; facsimile: 703-642-6954; or via e-mail at [Aoravetz@versar.com](mailto:Aoravetz@versar.com). If you have questions about the draft document, please contact Dr. Kathryn Gallagher, Office of the Science Advisor, Mail Code 8105-R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564-1398; fax number: (202) 564-2070, e-mail: [Gallagher.kathryn@epa.gov](mailto:Gallagher.kathryn@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA is submitting the Nanotechnology White Paper External Review Draft for independent, external peer review. On December 21, 2006, the draft document was announced in the **Federal Register** (70 FR 75812) and made available for a public comment period that ended January 31, 2006. The comment period

was subsequently extended to March 1, 2006 (71 FR 6774, February 9, 2006). Public comments received in the docket will be shared with the external peer review panel for their consideration. Although EPA is under no obligation to do so, EPA may consider comments received after the close of the comment period. The public release of this draft document is solely for the purpose of seeking public comment and peer review. This draft white paper does not represent and should not be construed to represent any EPA policy, viewpoint, or determination.

The Nanotechnology White Paper External Review Draft identifies data gaps that need to be filled and recommends research for both environmental applications and implications of nanotechnology that would inform the appropriate regulatory safeguards for nanotechnology. The draft white paper describes the technology and provides a discussion of potential environmental benefits of nanotechnology. Risk management issues and the Agency's statutory mandates are outlined, following an extensive discussion of risk assessment issues. The draft white paper concludes with recommendations on next steps for addressing science policy issues and research needs. Supplemental information is provided in a number of appendices. Following the expert external peer review, EPA plans to issue a final white paper on nanotechnology in mid-2006.

Dated: March 15, 2006.

**William H. Farland,**  
Chief Scientist, Office of the Science Advisor.  
[FR Doc. E6-4066 Filed 3-20-06; 8:45 am]  
BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-ORD-2006-0031; FRL-8047-4]

### Board of Scientific Counselors, Executive Committee Meeting—April 2006

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92-463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting (via conference call) of the Board of Scientific Counselors (BOSC) Executive Committee.

**DATES:** The conference call will be held on Thursday, April 6, 2006 from 2 p.m.

to 4 p.m. eastern time, and may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations during the call will be accepted up to 1 business day before the conference call.

**ADDRESSES:** Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the calls from Lorelei Kowalski, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2006-0031, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: [ORD.Docket@epa.gov](mailto:ORD.Docket@epa.gov), Attention Docket ID No. EPA-HQ-ORD-2006-0031.
- *Fax:* Fax comments to: (202) 566-0224, Attention Docket ID No. EPA-HQ-ORD-2006-0031.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Executive Committee Meeting—February 2006 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-ORD-2006-0031.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA-HQ-ORD-2006-0031.

**Note:** This is not a mailing 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-HQ-ORD-2006-0031. 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](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the

body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Board of Scientific Counselors, Executive Committee—February 2006 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the ORD Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Code 8104-R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564-3408; via fax at: (202) 565-2911; or via email at: [kowalski.lorelei@epa.gov](mailto:kowalski.lorelei@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation during the conference call may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each

individual making an oral presentation will be limited to a total of three minutes.

The purpose of this conference call is to review, discuss, and potentially approve a draft report prepared by the BOSC Water Quality Subcommittee. Proposed agenda items for the conference call include, but are not limited to: Discussion of the Subcommittee's draft responses to the charge questions, and general report content. The conference call is open to the public.

**Information on Services for Individuals with Disabilities:** For information on access or services for individuals with disabilities, please contact Lorelei Kowalski at (202) 564-3408 or [kowalski.lorelei@epa.gov](mailto:kowalski.lorelei@epa.gov). To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 14, 2006.

**Kevin Y. Teichman,**

*Director, Office of Science Policy.*

[FR Doc. E6-4067 Filed 3-20-06; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8007-3]

### Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Guidance.

**SUMMARY:** EPA's Office of Civil Rights is publishing the *Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)* as final. This guidance revises the previous *Draft Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Final Recipient Guidance)* issued for public comment in March 2005. The revisions made in this document reflect and include public involvement considerations suggested in written comments the Office of Civil Rights (OCR) received on the *Draft Final Recipient Guidance*. This guidance has been developed for recipients of EPA assistance that implement environmental permitting programs. It

discusses various approaches and suggests tools recipients may use to help enhance the public involvement aspects of their current permitting programs and address potential issues related to Title VI of the Civil Rights Act of 1964 (Title VI) and EPA's regulations implementing Title VI.

**DATES:** *Effective Date:* March 21, 2006.

**ADDRESSES:** Copies of the written comments received on the Draft Final Recipient Guidance as well as EPA's responses to the written comments may be obtained by contacting the Office of Civil Rights at: U.S. Environmental Protection Agency, Office of Civil Rights (1201A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460-1000.

#### FOR FURTHER INFORMATION CONTACT:

Karen Randolph, U.S. Environmental Protection Agency, Office of Civil Rights (1201A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460-1000, telephone (202) 343-9679.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- A. Preamble
- B. Review of Public Comments and Revisions to the Draft Guidance
- C. Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)

##### A. Preamble

Today's *Federal Register* document contains the guidance document entitled, the *Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)*. It offers recipients of U.S. Environmental Protection Agency assistance, suggestions on public involvement approaches they may use to help enhance their current environmental permitting programs to better address potential issues related to Title VI of the Civil Rights Act of 1964, as amended, (Title VI) and EPA's Title VI implementing regulations.<sup>1</sup> The *Recipient Guidance* addresses and incorporates public involvement suggestions EPA's Office of Civil Rights (OCR) received on the *Draft Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Final Recipient Guidance)*. This Recipient Guidance will replace the *Draft Final Recipient Guidance* which was issued in March 2005.<sup>2</sup> Much of the

<sup>1</sup> Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 252 (codified as amended at 42 U.S.C. 2000d to 2000d-7); 40 CFR part 7.

<sup>2</sup> 70 FR 10625 (2005).

information in this Recipient Guidance is based on EPA's commitment to early and meaningful public involvement throughout the entire permitting process.

The *Draft Final Recipient Guidance* was developed to revise the *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance)* published in June 2000. Prior to issuing the *Draft Recipient Guidance*, EPA considered public input, the work of the Title VI Implementation Advisory Committee of EPA's National Advisory Council for Environmental Policy and Technology (NACEPT)<sup>3</sup>, the work of the Environmental Council of States (ECOS)<sup>4</sup>, particularly its October 9, 1998 draft *Proposed Elements of State Environmental Justice Programs*, and input from available state environmental justice programs. The *Draft Recipient Guidance* discussed approaches to complaints alleging discrimination during the public participation portion of the permitting process, as well as complaints alleging discriminatory human health effects, environmental effects and adverse disparate impacts resulting from the issuance of permits. The *Draft Recipient Guidance* also discussed how these approaches could be used to address concerns before the filing of complaints.

EPA also published the *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigative Guidance)* in June 2000. The *Draft Revised Investigation Guidance* discussed how OCR would process complaints alleging adverse disparate health impacts from the issuance of environmental permits. To avoid redundancy, OCR decided that the *Recipient Guidance* would only focus on approaches recipients can use to enhance the public involvement portion of their permitting programs. Discussions on disparate and other

<sup>3</sup>NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations to the Administrator of EPA on a broad range of environmental policy, technology, and management issues regarding new strategies that the Agency is developing. The Council is a proactive, strategic panel of experts that identifies emerging challenges facing EPA and responds to specific charges requested by the Administrator and the program office managers.

<sup>4</sup>The mission of ECOS involves championing the role of the States in environmental protection and articulating state positions to Congress, Federal agencies and the public on environmental issues. This mission is often advanced by writing letters, making presentations, and working in coalition with other groups to advocate on behalf of the states on environmental matters.

adverse impacts may be included in guidance to be published at a later date. Today, EPA is issuing the *Recipient Guidance* as final.

## B. Review of Public Comments and Revisions to the Draft Guidance

EPA received few comments regarding the *Draft Final Recipient Guidance*. Some of the comments received pertained to the public involvement practices suggested in the *Draft Final Recipient Guidance*. Other comments focused on how OCR should interpret and implement EPA's Title VI regulations. OCR only addressed comments that pertained to the focus of this guidance, which is suggested public involvement practices recipients can use to help ensure that federal funding is used in compliance with the provisions of Title VI and EPA's Title VI implementing regulations. As a result of some of the comments received, OCR revised the document to include a discussion on the need and importance of ensuring a level playing field for all stakeholders before coming to the table to negotiate issues in the Alternative Dispute Resolution (ADR) process, further explanations regarding some of the suggested approaches to help address potential siting issues, revisions on how OCR intends to conduct their "due weight" analysis, and an additional section on The Interface Between Public Involvement and The Rehabilitation Act. OCR has decided to address the comments by revising and incorporating new language into the final version of this guidance.

## C. Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)

- I. Introduction
  - A. Purpose of This Guidance
  - B. Title VI of the Civil Rights Act of 1964
  - C. EPA's Guiding Principles for Title VI and the Recipient Guidance
  - D. The Interface Between Public Involvement and Title VI
  - E. The Interface Between Public Involvement and the Rehabilitation Act
  - F. Scope and Flexibility
- II. Approaches to Meaningful Public Involvement
  - A. Developing and Implementing an Effective Public Involvement Plan
  - B. Training Staff
  - C. Involving the Public Early and Often Throughout the Permitting Process
  - D. Encouraging Stakeholder and Intergovernmental Involvement
  - E. Equipping Communities With Tools to Help Ensure Effective Public Involvement
  - F. Making Assistance/Grants Available to the Public

- G. Using Alternative Dispute Resolution Techniques
- III. Suggested Approaches for Reducing Some Common Title VI Complaints
  - A. Language
  - B. Siting
  - C. Insufficient Public Notices
  - D. Information Repository
- IV. Evaluating Approaches for Meaningful Public Involvement
- V. Due Weight
- VI. Conclusion
- VII. Bibliography

## I. Introduction

### A. Purpose of This Guidance

This guidance is written for recipients<sup>5</sup> of U.S. Environmental Protection Agency assistance<sup>6</sup> that administer environmental permitting programs. It offers suggestions on approaches and ways to address public involvement situations to ensure that federal funding is used in compliance with the provisions of Title VI of the Civil Rights Act of 1964, as amended (Title VI)<sup>7</sup> and EPA's Title VI implementing regulations.<sup>8</sup> The approaches discussed in this guidance may be used to create new public involvement activities or to enhance existing public involvement activities to address allegations of discriminatory public participation practices during the permitting process.

This is a guidance document, not a regulation. This document offers suggestions to recipients about enhancing public involvement processes in environmental permitting, and addressing potential Title VI issues before complaints arise. Recipients remain free to use approaches other than the ones suggested here. In addition, EPA recipients may consider other approaches and ideas, either on their own or at the suggestion of

<sup>5</sup>"Recipient" is defined as "any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, other entity, any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance." 40 CFR 7.25.

<sup>6</sup>EPA assistance is defined as "any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which EPA provides or otherwise makes available assistance in the form of: (1) Funds; (2) Services of personnel; or (3) Real or personal property or any interest in or use of such property, including (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and (ii) Proceeds for a subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA."

<sup>7</sup>Public Law 88-352, 78 Stat. 252 (codified as amended at 42 U.S.C. 2000d to 2000d-7).

<sup>8</sup>40 CFR part 7, Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency.

interested parties. Interested parties are free to raise questions and objections regarding this guidance and the appropriateness of using these recommendations in a particular situation. EPA will take into consideration whether the recommendations are appropriate in that situation. This document does not change or act as a substitute for any legal requirements. Rather, the sources of authority and requirements for Title VI programs are the relevant statutory and regulatory provisions.

#### B. Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin under any program or activity of a Federal financial assistance recipient. Title VI itself prohibits intentional discrimination. However Congress directed that its policy against discrimination by recipients of Federal assistance be implemented, in part, through administrative rulemaking. Since 1964, regulations promulgated by Federal agencies implementing Title VI have uniformly prohibited conduct or actions by a recipient which have the effect of discriminating on the basis of race, color or national origin. Title VI "delegated to the agencies in the first instance the complex determination of what sorts of disparate impacts upon minorities constituted sufficiently significant social problems, and were readily enough remediable, to warrant altering the practices of the Federal grantees that had produced those impacts."<sup>9</sup>

EPA initially issued Title VI regulations in 1973 and revised them in 1984.<sup>10</sup> Entities applying for EPA financial assistance submit assurances with their applications stating that they will comply with the requirements of EPA's regulations implementing Title VI with respect to their programs or activities.<sup>11</sup> When the recipient receives EPA assistance, they accept the obligation to comply with EPA's Title VI implementing regulations. Recipients must also adopt grievance procedures that assure the prompt and fair

resolution of complaints which allege violations of EPA's Title VI regulations.<sup>12</sup> When an applicant receives EPA assistance, they may not issue permits that are intentionally discriminatory, or use "criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, or national origin."<sup>13</sup> Persons, or their authorized representatives, who believe Federal financial assistance recipients are not administering their programs in a nondiscriminatory manner may file administrative complaints with EPA or other relevant Federal agencies. The complaint must be filed within 180 calendar days of a particular action taken by the recipient (for example, the issuance of an environmental permit) that allegedly has a discriminatory purpose or effect.<sup>14</sup>

The filing or acceptance for investigation of a Title VI complaint does not suspend an issued permit. Title VI complaints concern the programs and activities being implemented by Federal financial assistance recipients, and any EPA investigations of such a complaint primarily concerns the actions of recipients rather than permittees. While a particular permitting decision may act as a trigger for a complaint, allegations may involve a wider range of issues or alleged adverse disparate impacts within the legal authority of recipients. The primary means of enforcing compliance with Title VI is through voluntary compliance agreements. Suspension or termination of funding is a means of last resort.

Executive Order 12250 directs Federal agencies to issue appropriate Title VI implementing directives, either in the form of policy guidance or regulations consistent with requirements prescribed by the Department of Justice's Assistant Attorney General for Civil Rights.<sup>15</sup> This guidance was developed as a result of the nature of Title VI complaints received in EPA's Office of Civil Rights coupled with requests for guidance from state and local agencies. This guidance focuses on public involvement approaches recipients may use to ensure that federal funding is used in compliance with the provisions of Title VI and EPA's Title VI implementing regulations.

#### C. EPA's Guiding Principles for Title VI and the Recipient Guidance

To ensure stakeholder involvement in the development of the *Draft Recipient Guidance*, EPA established a Title VI Implementation Advisory Committee (Title VI Advisory Committee) under the National Advisory Council for Environmental Policy and Technology (NACEPT) in March 1998. The Title VI Advisory Committee was comprised of representatives from communities, environmental justice groups, state and local governments, industry, and other interested stakeholders. EPA asked the committee to review and evaluate existing techniques that EPA funding recipients could use to administer environmental permitting programs in compliance with Title VI. Techniques evaluated could include tools for assessing potential Title VI concerns and mitigating impacts where they occur.

Core components of the Recipient Guidance are based on several threshold principles NACEPT included in their April 1999, *Report of the Title VI Implementation Advisory Committee: Next Steps for EPA, State, and Local Environmental Justice Programs*.<sup>16</sup> EPA established guiding principles for implementing Title VI and developing the *Draft Recipient Guidance*. In implementing Title VI and developing this final guidance, EPA is reaffirming its commitment to the following principles:

- All persons regardless of race, color or national origin are entitled to a safe and healthful environment.
- Strong civil rights enforcement is essential in preventing Title VI violations and complaints.
- Enforcement of civil rights laws and environmental laws are complementary, and can be achieved in a manner consistent with sustainable economic development.
- Early, preventive steps, whether under the auspices of state and local governments, in the context of voluntary initiatives by industry, or at the initiative of community advocates, are strongly encouraged to prevent potential Title VI violations and complaints.
- Meaningful outreach and public participation early and throughout the decision-making process is critical to identify and resolve issues, and to also assure proper consideration of public concerns.
- Intergovernmental and innovative problem-solving provide the most comprehensive response to many concerns raised in Title VI complaints.

<sup>9</sup> *Alexander v. Choate*, 469 U.S. 287, 293-294 (1985).

<sup>10</sup> See memo dated October 26, 2001 from Ralph F. Boyd Jr., Assistant Attorney General for the Civil Rights Division, to the "Heads of Departments and Agencies General Counsels and Civil Rights Directors" which states the Department of Justice's position that the Sandoval decision at 532 U.S. 286 does not alter the validity of enforcing Title VI regulations or limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations.

<sup>11</sup> 40 CFR 7.80, EPA Form 4700-4 and Standard Form 424.

<sup>12</sup> 40 CFR 7.90.

<sup>13</sup> 40 CFR 7.35(b).

<sup>14</sup> 40 CFR 7.120(b)(2).

<sup>15</sup> Executive Order 12250, 45 FR 72995 (1980) (section 1-402).

<sup>16</sup> For a copy of this report, see: <http://www.epa.gov/civilrights/t6faca.htm>.



#### D. The Interface Between Public Involvement and Title VI

Public involvement should be an integral part of the permit decision-making process to help the public understand and assess how issues affect their communities. The degree of public involvement in the permitting process can directly affect the likelihood of the filing of complaints alleging discrimination. Meaningful public involvement consists of informing, consulting, and working with potentially affected and affected communities at various stages of the permitting process to address their concerns. Appropriate collaboration during the permitting process can foster trust, and help establish credible, solid relationships between permitting agencies and communities. Such collaboration may serve to ensure that concerns are identified and addressed in a timely manner to possibly reduce the filing of some Title VI complaints.

The fundamental premise of EPA's 2003 Public Involvement Policy is that "EPA should continue to provide for meaningful public involvement in all its programs, and consistently look for new ways to enhance public input. EPA staff and managers should seek input reflecting all points of view and should carefully consider this input when making decisions. EPA also should work to ensure that decision-making processes are open and accessible to all interested groups, including those with limited financial and technical resources, English proficiency, and/or past experience participating in environmental decision-making. Such openness to the public increases EPA's credibility, improves the Agency's decision-making processes, and can impact final decision outcomes. At the same time, EPA should not accept any recommendation or proposal without careful, critical examination."<sup>17</sup> OCR suggests that EPA recipients consider using a similar approach when implementing their environmental permit programs.

The interface between public involvement and Title VI often arises when racial or ethnic communities believe that they've been discriminated against as a result of a decision made in the permitting process. OCR believes that many of these assertions of discrimination arise from a failure to adequately involve the public in the pre-decisional process prior to permit issuance. Violations of Title VI or EPA's Title VI regulations can be based solely

on discriminatory actions in the procedural aspects of the permitting process. Many Title VI complaints center around allegations of discrimination that may have been prevented, mitigated, or resolved if certain public involvement practices had been implemented by recipient agencies. OCR believes that having recipients focus on early, inclusive and meaningful public involvement throughout the entire permitting process will help ensure that Federal funding is used in compliance with the provisions of Title VI and EPA's Title VI implementing regulations.

In 1999 the Office of Solid Waste conducted a series of seven case studies to determine if the redevelopment of EPA Brownfields<sup>18</sup> Pilots had been impeded by Title VI complaints, and to address concerns of whether these complaints may deter businesses from redeveloping Brownfields sites. The study, "Brownfields Title VI Case Studies,"<sup>19</sup> indicated that community residents are not likely to file Title VI complaints when the redevelopment process provides for early and meaningful community involvement, and creates a benefit for the local community. In several of the case study Pilots, communities were involved in identifying and helping to resolve issues during the early stages of the process which helped build trust between stakeholders and a sense of ownership for community members. According to those interviewed, community outreach and involvement served to prevent the filing of Title VI complaints and other opposition to development projects.

#### E. The Interface Between Public Involvement and the Rehabilitation Act

It is important that recipients provide access and accommodation to individuals with disabilities who wish to take part in public involvement activities. Recipients may consult Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and EPA's implementing regulations, 40 CFR Part 7. Additional documents which list information to assist recipients in providing access and accommodation are included in Section VII of this

<sup>18</sup> EPA defines Brownfields as real property that is expanded, redeveloped, or reused which may contain or potentially contain a hazardous substance, pollutant or contaminant. Cleaning and reinvesting these properties takes development pressures off of undeveloped, open land which help to improve and protect the environment. For more information on Brownfields Cleanup and Redevelopment, see: <http://www.epa.gov/swerosps/bf/index.html>

<sup>19</sup> For a copy of this report, see: <http://www.epa.gov/oswer/ej/ejndx.htm#titlevi> or call the hotline at 1-800-424-9346.

guidance, "Bibliography." Many of the documents listed in the bibliography refer to Title II of the Americans with Disabilities Act, 42 U.S.C. 12131 *et seq.*, but also have applicability to Section 504.

#### F. Scope and Flexibility

This guidance was written at the request of the states and is intended to offer suggestions to help EPA state and local recipients develop and enhance the public involvement portion of their existing permitting programs. This guidance offers a flexible framework of public involvement approaches. The information and tools discussed in this guidance include proactive approaches to enhance the public involvement aspects of their current permitting program and to help ensure that federal funding is used in compliance with the provisions of Title VI and EPA's Title VI implementing regulations.

EPA knows that because recipients may have different Title VI concerns in communities within their jurisdiction, different levels of resources, and different organizational structures, a "one-size-fits-all" Title VI public involvement approach will not adequately address every program's needs. Recipients are therefore encouraged to use the activities or approaches in this guidance that will be most beneficial in addressing each situation accordingly. While this guidance is intended to focus on issues related to public involvement in environmental permitting, recipients may also consider developing proactive approaches to promote equitable compliance assurance and enforcement of environmental laws within individual jurisdictions. However, compliance with environmental laws does not ensure compliance with Title VI. Even though recipients are not required to implement the Title VI public involvement approaches described in this guidance, they are required to operate their programs in compliance with the non-discrimination requirements of Title VI and EPA's implementing regulations.<sup>20</sup>

#### II. Approaches to Meaningful Public Involvement

This guidance suggests a number of public involvement approaches recipients may want to adopt and implement to help address Title VI related concerns in their permitting programs. The approaches described here are not intended to be mutually exclusive. The objective of these

<sup>20</sup> 42 U.S.C. 2000d to 2000d-7, 40 CFR 7.30 and 7.35.

<sup>17</sup> For a copy of this report, see: <http://www.epa.gov/publicinvolvement/policy2003/finalpolicy.pdf>



approaches is to have recipients fully engage as many members of the affected community as possible in the discussions and decisions made regarding issues in their community. Because of differences in culture, levels of experience, knowledge, and financial resources, recipients are encouraged to combine portions of several, or use as many approaches to the extent appropriate to satisfy their program needs. Recipients may couple these approaches with practices already in use to better implement their Title VI programs. Recipients are also encouraged to develop and implement additional approaches not mentioned in this guidance. OCR may consider the outcomes of any approaches in the analysis of a Title VI complaint that relate to programs, activities or methods of administration.<sup>21</sup> Suggested approaches are listed below.

#### A. Developing and Implementing an Effective Public Involvement Plan

A Public Involvement Plan (PIP) is a document that serves as the basic foundation of any good public involvement program. PIPs serve as early involvement tools to identify community concerns and lay out approaches recipients plan to take to address those concerns through various outreach activities. An effective PIP includes discussions of what recipients plan to do to ensure that the needs and concerns of the affected community are addressed. In addition, an effective PIP strives to keep the community informed of the public involvement opportunities available to them during the decision-making process. An effective PIP expedites the flow of information for unexpected events, answers basic questions on issues related to the community's concerns, and helps ensure better decision outcomes to benefit the affected community. Equally important, an effective PIP provides members of the affected communities with a sense of partnership in the decision-making process underlying the permitting process. For these reasons, communities and other affected groups should be included in the development of the PIP. Recipients may decide to take the lead in contacting the necessary groups and developing their PIP as an agency, or may use a neutral third party to convene the relevant groups and facilitate the process. Either way, communities and all those affected by the decision outcome should be involved in developing the PIP, as well

as ensuring that the planning efforts of the recipient agency address those issues that are important to them.<sup>22</sup> An effective PIP includes the following information:

- (1) An overview of the recipient's plan of action for addressing the community's needs and concerns,
- (2) A description of the community (including demographics, history, and background),
- (3) A contact list of agency officials with phone numbers and email addresses to allow the public to communicate via phone or internet,
- (4) A list of past and present community concerns (including any Title VI complaints),
- (5) A detailed plan of action (outreach activities) recipient will take to address concerns,
- (6) A contingency plan for unexpected events,
- (7) Location(s) where public meetings will be held (consider the availability and schedules of public transportation),
- (8) Contact names for obtaining translation of documents and/or interpreters for meetings,
- (9) Appropriate local media contacts (based on the culture of the community), and
- (10) Location of the information repository.

A PIP may change from one affected community group to another or for the same community group over time depending on the types of facilities in the community and the environmental issues faced by the community. PIPs are public documents that should always be available for public viewing. PIPs should be living documents that can easily be revised at any time to effectively address the needs and concerns of the affected community. Hard copies of PIPs should be made available for the public in areas that would be easily accessible to the community (e.g., libraries, community centers, etc.). Because of the informative/exchange age in which we live, PIPs should also be made available for the public electronically by way of the internet.

#### B. Training Staff

To understand the importance of building relationships with communities, recipients may need to make internal commitments to tailor their programs so that public involvement becomes a part of the

culture of how staff are trained and programs operate. A successful public involvement program should consist of a team of knowledgeable agency staff (possibly from different program offices within the recipient agency e.g., Permitting, Environmental Justice, etc.) who are committed to, and have the ability to reach out and engage the community early in the permitting process. Because the public may sometimes harbor frustration towards public agency officials who may not be certain about how to properly address an issue within the scope of a public meeting, it is critical for those on the public involvement team to have broad-based skills. Such skills include knowing how to communicate, understand, and address concerns of the general public. In addition, the team should be able to work well together and make sure that everyone thoroughly understands and is able to articulate agency policy, perspectives, and operating procedures of their program in a manner which the public can understand. To be most effective, the public involvement team should include at a minimum, staff capable of serving in permitting and community liaison roles. Although some staff may not have readily acquired public involvement understanding or outreach skills to communicate and work out disputes between their agency and the public in a polished manner, through training, many can acquire them.

Training should include ensuring that there is a thorough knowledge of all of the applicable requirements as well as how to engage the public throughout the entire permitting process. Team members or program staff should know and be able to explain 'what to do, how to do it, and when to do it' for the programs they work in. In addition, training should include sessions on how to actively listen to the public's concerns, the importance of seriously considering the public's opinions, and addressing the public's questions in an understandable, prompt and respectful manner. Training that emphasizes these points among others may reduce the likelihood of controversy, permitting delays and the filing of Title VI complaints. While training alone does not guarantee that delays in the permitting process or the filing of Title VI complaints will no longer occur, it is a helpful adjunct to any dispute avoidance and resolution process.

Basic elements for an effective public involvement training program that will help ensure that federal funding is used in compliance with the provisions of Title VI and EPA's Title VI implementing regulations include:

<sup>21</sup> For further discussion of the concept of giving "due weight" to a recipient's compliance efforts in the context of a Title VI complaint, see Section V.

<sup>22</sup> For suggestions on how to develop a Public Involvement Plan, see: <http://www.epa.gov/epaoswer/hazwaste/permit/pubpart/manual.htm>, [http://www.epa.gov/superfund/tools/cag/ci\\_handbook.pdf](http://www.epa.gov/superfund/tools/cag/ci_handbook.pdf), and <http://web.em.doe.gov/ftplink/public/doeguide.pdf>.

- Step by step training on how to explain the applicable environmental program regulations to the public in a clear and concise manner;
- Cultural and community relations sensitization;
- How to engage in a dialogue and collaboration, as well as how to build and maintain trust and mutual respect with communities;
- Skills and techniques to enable staff to effectively address community concerns in a clear and concise manner;
- A basic use of available technological communication tools such as the internet, databases, GIS tools and site maps, etc. to help identify and address potential issues in affected communities that may give rise to Title VI concerns; and
- Alternative dispute resolution techniques to enable staff to design and carry out a collaborative and informal process that can help resolve Title VI concerns.<sup>23</sup>

#### *C. Involving the Public Early and Often Throughout the Permitting Process*

Public involvement done early and often, is essential for the success of any permitting program. Public input is a valuable element which can influence decisions made in communities hosting proposed and permitted facilities. Early involvement is not only helpful to communities, but to recipients as well, because it encourages information exchange and gives time for both parties to consider and better understand the others viewpoints before actual decisions are made.

Some regulations require permitting programs to include public involvement opportunities during certain stages of the permitting process.<sup>24</sup> While such requirements are designed to ensure that community input is obtained at critical stages of the process, the public may sometimes feel as though these opportunities do not include them as active, ongoing partners. Consider tailoring and integrating public involvement practices that engage communities into as many stages of the process as appropriate, so that public involvement becomes more of a "culture" of how agencies think and operate, as opposed to a list of measures to check off as they are completed. Examples of ways to encourage early public involvement include:

- When soliciting community input regarding upcoming decisions, take steps to get feedback from as many members of the affected community as

possible, prior to the meeting. This may mean finding out from community members, who will and will not attend the meeting. Based on that information, provide communities with alternate means of participating for those who would not be able to attend the meeting. For example, some members may want to, and have the time to attend every meeting to hear discussions of the issues every step of the way; while others, due to time constraints, would be satisfied submitting written comments or completing agency questionnaires regarding the issues, while trusting that their opinions and concerns will be considered during discussions and when decisions are made.

- Requiring facilities to hold pre-application meetings with the public prior to submitting their application to the permitting agency. Such an activity, which is required in the RCRA program,<sup>25</sup> can open the dialogue between the permit applicant and the community in the very early stages of the process. This gives the facility an opportunity to share information with the community and hear and respond to their concerns with greater sensitivity prior to submitting the permit application. Involving the public in identifying potential issues upfront and in discussions regarding possible solutions may help promote "ownership" of decisions and policies made affecting their community. This practice can help maintain community support over the life of the permit. Even though some decisions may not always fully reflect the community's views, if communities are involved early and throughout the process, they may be more willing to accept the decisions made and continue to participate in discussions to help prevent future issues. Such community involvement may help reduce the likelihood of communities challenging permit decisions toward the end of the permitting process, or filing Title VI complaints alleging discrimination.

#### *D. Encouraging Stakeholder and Intergovernmental Involvement*

Stakeholder involvement is the process of bringing together those people or groups who may be affected by decisions made regarding concerns in a community. Stakeholder groups identify, discuss and work toward resolving concerns in a collaborative manner. Groups may include but are not limited to communities, businesses, environmental justice groups, Federal, state and local governments, tribes, academia, and environmental and trade

organizations. Stakeholder involvement is vital in establishing and maintaining a successful public involvement program. Effective stakeholder involvement ensures that diverse interests are considered and gives community members from various backgrounds and cultures opportunities to take active roles to effectively contribute and possibly influence decisions affecting them and their community. As stakeholders continue to work together, they become more familiar with the character of the community and are better able to collaboratively mitigate or resolve issues as they arise.

Depending on the scope of authority, resources and expertise, the representatives in stakeholder groups can be very broad. It is important to plan and carefully consider beforehand, which stakeholders to include in the meetings, and to seek out the groups and individuals who will be most affected by the proposed action. Contacting some groups and individuals may be difficult because of their cultural or economic lifestyles, while locating and including other groups will be easier due to their known interest in the decision outcome. For instance, some Title VI concerns may involve zoning or traffic patterns. Collaborating with the governmental units responsible for regulating zoning and traffic patterns, along with the communities that will be affected by any new potential driving routes, may increase the likelihood of achieving more effective solutions to concerns raised in the Title VI context. The earlier all appropriate parties are identified, and brought into the process, including other governmental agencies, the greater the likelihood of reaching effective solutions

#### *E. Equipping Communities With Tools To Help Ensure Effective Public Involvement*

Often the public does not get involved in decision-making because of their lack of understanding or knowledge of issues affecting their community. Alternatively, the public may not articulate or formulate their concerns in a manner that clearly fits into the decision-making process underlying the issuance of a permit. As a result, the public may feel as if their views were not valued or seriously considered when final permit decisions were made. It is important that the public be equipped with necessary tools to allow them to effectively participate in the permit decision-making process. Consider offering training to educate the public on process and basic technical issues that are relevant in making

<sup>23</sup> See section II. G, "Using Alternative Dispute Resolution Techniques".

<sup>24</sup> See 40 CFR part 25 and part 124, Subpart A.

<sup>25</sup> See 40 CFR 124.31(b).

permitting decisions. Training that emphasizes the procedures, options and available information, may encourage community members to assume a more active role when participating in permitting discussions affecting them and their community. Doing so can affect how issues are resolved at the local and state levels. For instance, the benefits of holding educational workshops that clarify public involvement opportunities in the permitting process would create a greater understanding of the permitting process by the public and may increase the level of public involvement; which could lead to a reduction in the number of Title VI complaints filed. An effective training/information program for communities may include the following:

- An information packet with useful information or fact sheets regarding applicable environmental regulations, the public involvement opportunities in the different environmental permitting programs, and the important role community involvement plays in helping to address community concerns early in the permit decision-making process, as opposed to later in a Title VI complaint.

- Targeted or one-day training sessions on different subject matters relating to public involvement and permitting. These sessions could include presentations/discussions on the importance of public involvement or a walk through of steps included in the permit review stage, while focusing on public involvement options and opportunities in the permitting process. For example, such a session could consist of discussions on the types of information needed to review a pending permit and points on how to prepare effective technical and legal comments.

- Specific "how to" sessions for the public that illustrate through role playing how they can effectively participate and influence decisions during the public involvement process.

#### *F. Making Assistance/Grants Available to the Public*

The complex and technical nature of many permitting programs may sometimes impede effective public involvement during the permitting process. To help bridge the gap in capacity between community groups and other stakeholders, several agencies have begun to provide resources in the form of grants and free technical assistance. These types of educational resources serve to help empower communities to better equip them to actively participate in discussions and offer solutions to help address potential Title VI issues in their community.

Grants such as Technical Assistance Grants (TAGs)<sup>26</sup> and assistance through programs such as Technical Outreach Services for Communities (TOSC)<sup>27</sup> have been very successful in educating communities on technical and process issues. In addition to grants, local colleges and universities within the communities can also serve as a major resource because of their technical expertise, research capabilities and historical knowledge of issues faced by the affected communities in the past.

#### *G. Using Alternative Dispute Resolution Techniques*

The ability to address potential impacts in a timely and collaborative fashion is critical to resolving problems that may form the basis for a Title VI complaint. The handling of Title VI concerns through the formal administrative process can consume a substantial amount of time and resources for all parties involved. Therefore, EPA strongly encourages recipients to consider and use Alternative Dispute Resolution (ADR)<sup>28</sup> techniques where appropriate to prevent and address concerns regarding public involvement in the permitting process. ADR refers to voluntary procedures used to prevent and settle controversial issues by developing and implementing an outcome agreeable to all parties. The goal of ADR is for stakeholders to collaborate and resolve issues acceptable to everyone involved.

ADR includes using a wide range of processes to resolve controversial issues. All ADR techniques involve a neutral third party who assists others in designing and conducting a process for reaching possible agreement. The neutral third party should not have a stake in the substantive outcome of the process and is equally accountable to all participants in the ADR process. Often

<sup>26</sup> A TAG provides money for activities that help communities participate in decision making at eligible Superfund sites. An initial grant up to \$50,000 is available to qualified community groups so they can hire independent technical advisors to interpret and help them understand technical information about their site. TAGs may also be used to attend approved training and obtain relevant supplies and equipment. For more information, see: <http://www.epa.gov/superfund/tools/tag/index.htm>.

<sup>27</sup> The TOSC program provides free, independent, non-advocate, technical assistance to communities living near hazardous waste contaminated sites. The goal of the TOSC program is to help communities understand the underlying technical issues associated with contaminated sites in their neighborhoods so that they may be able to substantively participate in the decision-making process regarding issues in their community. For more information on TOSC, see: <http://www.epa.gov/superfund/tools/tosc/index.htm>.

<sup>28</sup> For more information on ADR techniques, contact EPA's Conflict Prevention and Resolution Center at <http://www.epa.gov/adr>.

the use of ADR includes dialogue between parties to reach acceptable solutions. Effective ADR can result in new understandings of and innovative ideas to address issues of concern. It is also particularly helpful in building better relationships that may be important for future interactions between the parties. Typically, all aspects of ADR are voluntary, including the decision to participate, the type of process used, and the content of any final agreement. For actual or potential Title VI matters, ADR can provide parties with a forum to discuss a full range of issues that may not be possible to address through formal administrative processes. Examples of ADR approaches that may be particularly relevant for Title VI concerns include:

- Facilitation—Facilitation is a process used to help parties constructively discuss complex or potentially controversial issues. Facilitators are often used to guide meetings, design approaches for discussing issues, improve communication between parties, create options, keep the parties focused on the issues at hand, and help avoid and overcome contentious situations.

- Mediation—Mediation is a process in which a neutral third party (the mediator) assists the parties in conflict, in reaching a mutually satisfying settlement of their differences. Mediators are very useful in guiding the dynamics of a negotiation especially when discussions are not productive enough to reach a mutual agreement. Good mediators are skillful at assisting parties in constructively expressing emotions, encouraging information exchange, providing new perspectives on the issues at hand, and helping to redefine issues in ways that may lead to mutual gains. Mediators often provide facilitation as well as mediation services.

- Joint Fact-Finding—Joint fact-finding is a process in which parties commit to building a mutual understanding of disputed scientific, technical, legal or other information. A neutral third party assists the group in identifying a mutually agreeable set of questions and selecting one or more substantive experts to provide information concerning the questions.

A number of factors can contribute to a successful ADR process in the Title VI context and help provide all parties with confidence to maximize their opportunity to reach resolution. These factors include:

- Designing a process for selecting a neutral third party who will be able to meet the needs of all parties. For

example, parties may need to engage a neutral third party who is bilingual or who has past experience successfully assisting in the resolution of Title VI complaints.

- Using a neutral third party to conduct a confidential situation assessment; including interviewing all parties to identify the issues and making recommendations for the ADR process prior to beginning any dialogue.

- Using a neutral third party's assistance to develop and agree on a set of guidelines or ground rules for the process to ensure that expectations of all the participants are clear from the beginning.

- Considering participants' needs for information and expertise, before coming to the table and during the process, to enhance their dialogue. For example, design a process that will allow all parties to provide necessary information in good faith and in some cases secure independent technical expertise to assist some of the parties prior to any negotiations.

Incorporating ADR early in the process when developing a Public Involvement Plan, may prevent the need to use ADR at a later stage of the process when conflicts may have escalated. Involving all affected parties in the ADR process can help ensure that the agreements reached provide solutions to reduce or eliminate: (1) Discriminatory effects resulting from the issuance of permits; and/or (2) discrimination during the public involvement process associated with the permitting process.

### III. Suggested Approaches for Reducing Some Common Title VI Complaints

Listed below are four common issues often seen as part of Title VI complaints received in EPA's Office of Civil Rights. A brief statement is included explaining each allegation, along with suggestions for approaches recipients may take to reduce future complaints of a similar nature. In offering these suggestions, EPA is not addressing the merits of any specific complaint or any overarching issue. Rather, EPA is suggesting ways to improve public involvement.

#### A. Language

Issue: Complaints frequently note a failure to provide printed information in other languages or appropriate interpreters at meetings for non-English speaking community members to ensure their full participation in the public involvement process.

Using written translation and oral interpreters in communities with non-English speaking members help ensure broader participation from the affected community. In June 2004, EPA

published the *Guidance to Environmental Protection Agency's Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance)*.<sup>29</sup> According to the LEP Guidance, individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be Limited English Proficient, or "LEP" and may be entitled to language assistance with respect to a particular type of service, benefit or encounter. The intent of this guidance is to suggest a balance that ensures meaningful linguistic access to LEP persons to critical services while not imposing an undue burden on small businesses, small local governments, or small nonprofit organizations. The guidance suggests four factors recipients may consider to determine if different language assistance measures are sufficient for the different types of programs and activities administered by the recipient. The use of this guidance would be helpful to recipients when determining what level of measures are needed to accommodate the LEP persons in affected communities to ensure maximum participation in the permitting process. The guidance encourages recipients to develop an implementation plan to address the identified needs of the LEP populations they serve.

Additional suggestions on approaches recipients may use to reduce and possibly avoid complaints regarding language issues include:

- While preparing your Public Involvement Plan, work with the community and consult EPA's LEP guidance to determine if translation and/or interpretation services may be needed to ensure meaningful participation. Examples of populations to consider when planning language services include, but are not limited to, persons near a plant or facility that is permitted or regulated by an EPA recipient, persons subject to or affected by environmental protection, clean-up, and enforcement actions of an EPA recipient, or persons who seek to enforce or exercise their rights under Title VI or environmental statutes and regulations. Consider whether the

affected community's ability to participate in the process may be limited by the ability of their community members to speak or understand English.

- Plan and budget in advance for translation and interpreter services. If resources are limited, consider the sharing of language assistance materials and services among and between recipients, advocacy groups, Federal grant agencies, and business organizations. Where appropriate, train and/or test the competency of bilingual staff to act as limited or ad hoc interpreters and translators.

- If in-house or local resources are not available, contact nearby colleges or universities for possible assistance for translation of interpreter services and identifying other competent but cost effective resources.

- Use multilingual fact sheets, notices, signs, maps, etc. regularly to provide meaningful access by LEP persons to information in as many aspects of the permitting process as appropriate.

#### B. Siting

Issue: Complaints frequently refer to the siting of facilities in neighborhoods that already host similar and often more facilities than neighborhoods in nearby communities. Complainants believe that many of these siting decisions are based on zoning regulations that are in need of revision.

Local zoning and planning authorities typically make land use zoning decisions and approve development plans to ensure they conform with existing zoning regulations. Some of the zoning regulations were enacted several decades ago. State and local environmental permitting agencies are responsible for minimizing the environmental impacts to local communities and ensuring that their practices and policies are implemented in a nondiscriminatory manner. However, some of the environmental permitting agencies may not be involved in local zoning decisions. To improve the relationship between communities and state/local governments, some permitting agencies have begun working with their local land use and planning boards to try to integrate the environmental, social and economic needs of communities early in the process, beginning in the site planning stage.<sup>30</sup>

<sup>29</sup> For more information regarding improving access to services for persons with limited English proficiency, see Executive Order 13166, 65 FR 50121 (2000), and *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 69 FR 35602 (2004). Recipients, Federal agencies and community organizations may also find information at: <http://www.LEP.gov>.

<sup>30</sup> For examples on how some state and local agencies are working together to address community concerns regarding siting, see the National Academy of Public Administration's July 2003 report entitled "Addressing Community Concerns: How Environmental Justice Relates to



Some approaches that may be considered to help address potential siting issues include:

- Acknowledging concerns communities have with existing facilities near residential areas and working with those communities to develop outreach strategies to address their concerns.
- Working with the appropriate authorities to ensure that data regarding the demographics and location of existing facilities in communities are considered before making local land-use and planning decisions. Understanding the existing environmental and health impacts as well as the demographics, in the areas under consideration for the siting of new facilities, may help recipients ensure they do not issue permits in a discriminatory manner.
- Revising or developing state level regulations or policies that list land-use objectives and practices to guide local zoning agencies when making siting decisions.
- Working with appropriate authorities to identify locations for new facilities that avoid net increases of pollution in communities with disproportionately high exposures or that already host a number of facilities. Title VI and EPA's implementing regulations do not expressly prohibit the siting of facilities in facility-dense areas. Recipients may choose to consider making facility density one criterion in their siting and permitting analysis to help identify communities where the potential environmental and health impacts could be significant.
- Working with local land-use and planning boards to review current land use practices in heavily populated areas, and begin developing strategies to reduce future impacts on those affected communities.
- Having state environmental agencies provide outreach and technical assistance (through training workshops) to local governments on how to engage communities in siting decisions made.
- Sharing environmental data with local governments to help them project and evaluate future impacts of proposed land use plans on existing communities before decisions are finalized.

#### C. Insufficient Public Notices

**Issue:** Complaints frequently allege the lack of meaningful opportunities for communities to participate in the public involvement process because notices are not publicized broadly enough to reach all communities.

Land Use Planning and Zoning" at <http://www.napawash.org>.

Community input plays an integral role in any successful permitting program. Public notices serve as a means to inform the public and ensure community input. Inadequate public notices can result in a lack of trust between communities and state/local agencies, permitting delays, and the filing of Title VI complaints.

Suggested approaches for reducing future complaints regarding insufficient public notices include:

- Seeking community input to find the most effective ways of getting information out to particular communities.
- Choosing outlets that are most widely used by members of the affected community (e.g., community-based church bulletins, culturally-based community newspapers, grocery stores, libraries, foreign-language radio for reaching non-English-speaking communities, the internet and other places frequently visited by members of the affected community).
- Notifying communities multiple times prior to the event (e.g., 10 to 14 days before, one week before and one day before the event is held via radio, phone, email, newspaper, etc.) to ensure the greatest level of participation.
- Announcing times, dates and locations of events clearly in the appropriate languages.
- Providing sufficient information on the purpose and scope of the meeting by listing the types of information to be discussed, along with the type of feedback/input the agency is seeking from the public.
- Providing names, addresses (including email addresses), and telephone numbers of agency contact persons.

#### D. Information Repository

**Issue:** Complaints frequently discuss the lack of an information repository or insufficient notice regarding the location and/or hours for reviewing permit information in the repository, or selection of an inconvenient location for the repository.

Information repositories should provide the public with access to accurate, detailed, and current data about facilities in their community.<sup>31</sup>

<sup>31</sup> Federal, state and local government officials may access risk management plans (RMP) (describing potential accidental releases) and Off-site Consequence Analysis (OCA) information for official use by contacting their Implementing Agency or EPA's contractor-operated RMP Reporting Center at 301-429-5018 (e-mail: [userrmp.usersupport@csc.com](mailto:userrmp.usersupport@csc.com)). OCA information is available to the public at Federal reading rooms located throughout the United States and its territories. EPA also makes available RMPs without the OCA data elements that might significantly

Although states have the authority to require that facilities establish information repositories, many states do not include it as a mandatory activity in their regulations. The existence of an information repository in a community shows a responsiveness and commitment to the community's needs for comprehensive information regarding a facility. Information repositories greatly improve public participation by making important information readily accessible to communities interested in participating in the permitting process or merely wanting to keep abreast of activities at facilities in their neighborhoods. Suggestions on approaches recipients may use to reduce complaints regarding information repositories include:

- Establishing, or requiring that facilities establish information repositories, especially in cases where a significant amount of public concern is expected or has surfaced, or when the community has unique information needs;
- Choosing locations for information repositories in places most convenient and accessible to the public (e.g. local public libraries, community centers, churches, etc.);
- Establishing an online information repository for public access;
- Ensuring that the existence of the information repository is well publicized;
- Ensuring that repositories are placed in well lit and secure locations;
- Ensuring that the hours for reviewing information in the repository are convenient to the public;
- If a permitting activity is controversial or is expected to raise a lot of community interest, suggesting that the facility consider providing several copies of key documents in the repository so many people can review the information at the same time; and
- Ensuring that the repository is updated as new information is generated regarding the facility.

#### IV. Evaluating Approaches for Meaningful Public Involvement

It is important to periodically evaluate any implemented public involvement approach from the beginning stages of the process to identify and address areas

assist someone in targeting a chemical facility. State Emergency Response Commissions and Local Emergency Planning Committees may also provide the public with read-only access to OCA information for local facilities. Private individuals can find contact information for a local committee or get a list of facilities that have opted to make their OCA information available to the public without restriction at <http://www.epa.gov/ceppo/lepclist.htm> or by calling the EPA hotline at (800) 424-9346.



in need of improvement. The evaluation process is a fundamental part of any public involvement process. Evaluating the public involvement program on an ongoing basis gives the recipient a sense of where things are, and an indication of where things are going. Evaluating the program can also help the recipient determine whether set goals were met, make sure that the process stays on track, and allow for changes as the process moves forward.

Tools used for evaluating public involvement programs may include:

- **Informal Feedback**—Informal feedback is unstructured communication on a routine basis between the recipient agency, the community, and facilities to give everyone a chance to express how the process went, is going, and how it can be improved.
- **Questionnaires**—Questionnaires are very useful and usually consist of short to-the-point questions to determine whether the participants felt the activity was useful. Questionnaires are often used at the end of an event such as a public meeting.
- **Interviews**—Interviews are usually done under a more formal setting when feedback is needed from a larger group. Feedback obtained from interviews may be used to help construct additional and more defined tools (e.g., PIPs).
- **Debriefs**—Debriefs are very useful methods for receiving internal feedback from staff members on a process. Debriefs are most successful when done shortly after the process concludes to ensure that all major issues are addressed, and suggestions for improvements can be implemented into future activities.
- **Surveys**—Surveys are very useful to obtain data or statistical information.

#### V. Due Weight

Many recipients, have asked OCR to provide "incentives" to help them develop proactive Title VI related approaches. Some recipients have asked OCR to recognize, and to the maximum extent possible, rely on the results of any such approaches in assessing Title VI complaints filed with EPA. While EPA encourages efforts to develop proactive Title VI-related approaches, under the Civil Rights Act of 1964, the Federal government is charged with assuring compliance with Title VI. Consequently, OCR cannot completely defer to a recipient's own assessment of whether Title VI or EPA's Title VI implementing regulations have been violated. In addition, OCR cannot rely entirely on an assertion that a Title VI approach has been followed or delegate its responsibility to enforce Title VI to

its recipients.<sup>32</sup> Thus, regarding the processing of Title VI complaints, EPA retains the ability to:

- Decide whether to investigate the complaint using the recipient's analysis as supplemental information;
- Investigate a complaint or initiate a compliance review notwithstanding any informal resolution reached by the recipient and complainant; and
- Initiate its own enforcement actions as a general matter.

Nevertheless, EPA believes that it can, under certain circumstances, recognize the results of information submitted by recipients and give it appropriate due weight. For example, if during the course of an investigation, results of adopted approaches are submitted as evidence that EPA's Title VI regulations have not been violated, EPA will review the approach and results to determine how much weight to give the submission in its investigation.<sup>33</sup>

Some recipients may develop procedures for their permitting programs that meet certain criteria designed to ensure a nondiscriminatory public involvement process. The weight given any evidence related to the public involvement process and the extent to which OCR may rely on it in its decision will likely vary depending upon:

- Whether the criteria that formed the basis for the program were sufficient to ensure a nondiscriminatory process;
- If the overall permitting process met those criteria; and
- The relevance of the recipients' public involvement programs to the allegation(s) and the thoroughness of documentation of how the recipient's process addresses the allegations.

The value that OCR expects to give public involvement approaches will likely range from no weight for procedures that have significant deficiencies, to significant weight for procedures depending on the outcome of OCR's review. Some weight would

likely be given to procedures that fall between these two extremes, such as recipient efforts to resolve specific allegations before the complaint was filed with EPA. If OCR finds that a recipient's public involvement process warrants the greatest weight, then OCR would consider the recipient's input in subsequent decisions. However, OCR reserves the right to investigate future allegations regarding complaints against recipients with comprehensive public involvement programs, without relying exclusively on input from those recipients when making subsequent decisions. In addition, OCR may conduct an investigation in cases where there is an allegation or information reveals that the public involvement process used was inadequate or improperly implemented.

#### VI. Conclusion

This guidance suggests approaches that recipients of EPA financial assistance may use to help enhance the public involvement aspects of their current permitting program and ensure that federal funding is used in compliance with the provisions of Title VI of the Civil Rights Act of 1964 and EPA's Title VI regulations. It emphasizes community involvement early and often in the permitting process. It examines four common allegations in Title VI complaints and offers suggestions on how to reduce the likelihood of future complaints of a similar nature. EPA believes that the approaches suggested in this guidance will help improve relations between EPA recipients and communities, enable communities to better participate in the public involvement portion of the permitting process, and give direction to EPA recipients and local decision-makers on possible ways to ensure that EPA funding is used in compliance with the provisions of Title VI and EPA's Title VI implementing regulations.

Dated: March 13, 2006.

**Karen D. Higginbotham,**  
Director, Office of Civil Rights.

#### VII. Bibliography

- EPA, 2003, Public Involvement Policy of the U.S. Environmental Protection Agency, Office of Policy, Economics and Innovation, Washington, DC, EPA 223-B-03-002, <http://www.epa.gov/publicinvolvement/policy2003/finalpolicy.pdf>.
- EPA, 1999, Report of the Title VI Implementation Advisory Committee: Next Steps for EPA, State and Local Environmental Justice Programs, Office of Environmental Cooperative Management, Washington, DC 20460, <http://www.epa.gov/ocem/nacept/titleVI/titlerpt.html>.

<sup>32</sup> See 28 CFR 50.3(b) ("Primary responsibility for prompt and vigorous enforcement of Title VI rests with the head of each department and agency administering programs of Federal financial assistance."); Memorandum from Bill Lann Lee, Acting Assistant Attorney General, U.S. Department of Justice, to Executive Agency Civil Rights Directors (Jan. 28, 1999) (titled *Policy Guidance Document: Enforcement of Title VI of the Civil Rights Act of 1964 and Related Statutes in Block Grant-Type Programs*) ("It is important to remember that Federal agencies are responsible for enforcing the nondiscrimination requirements that apply to recipients of assistance under their programs.")

<sup>33</sup> In addition to the analyses and procedures described in this section, OCR also intends to consider other available and relevant evidence from both the recipient and complainant, such as meeting minutes, correspondence, empirical data, interviews, etc., as appropriate.

- EPA, 1999, Brownfields Title VI Case Studies: Summary Report, Office of Solid Waste and Emergency Response, Washington, DC, EPA 500-R-99-003, <http://www.epa.gov/oswer/ej/ejndx.htm#titlevi>.
- EPA, 2002, Superfund Community Involvement Toolkit, Office of Solid Waste and Emergency Response, Washington, DC, EPA 540-K-01-004, <http://www.epa.gov/superfund/tools/index.htm>.
- EPA, 2004, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons, <http://www.epa.gov/civilrights/lepaccess.htm>.
- EPA, 1996, RCRA Expanded Public Participation Rule, Office of Solid Waste, Washington, DC, 40 CFR parts 9, 124 & 270, <http://www.epa.gov/epaoswer/hazwaste/permit/pubpart.htm>.
- EPA, 1996, RCRA Public Participation Manual, Office of Solid Waste, Washington, DC <http://www.epa.gov/epaoswer/hazwaste/permit/pubpart/manual.htm>.
- EPA, 2002, Enhancing Facility-Community Relations, Office of Solid Waste, Washington, DC, EPA/530/F-02-037, <http://www.epa.gov/epaoswer/hazwaste/tsds/site/f02037.pdf>.
- EPA, 2000, Social Aspects of Siting RCRA Hazardous Waste Facilities, Office of Solid Waste and Emergency Response, Washington, DC, EPA530-K-00-005, <http://www.epa.gov/epaoswer/hazwaste/tsds/site/k00005.pdf>.
- DOE, 1999, How to Design a Public Participation Program, Office of Intergovernmental and Public Accountability (EM-22) Washington DC, <http://web.em.doe.gov/ftplink/public/doeguide.pdf>.
- EPA, 2000, Engaging the American People: A Review of EPA's Public Participation Policy and Regulations with Recommendations for Action, Office of Policy, Economics, and Innovation, Washington, DC, EPA 240-R-00-005, [http://www.epa.gov/stakeholders/pdf/eap\\_report.pdf](http://www.epa.gov/stakeholders/pdf/eap_report.pdf).
- EPA, 2001, Community Involvement Policy Directive 9230.0-99: Early and Meaningful Community Involvement, Office of Solid Waste and Community Response, Washington, DC, <http://www.epa.gov/superfund/resources/early.pdf>.
- EPA, 1990, Community Involvement Policy Directive 9230.0-08: Planning for Sufficient Community Relations, Office of Solid Waste and Community Response, Washington, DC, <http://www.epa.gov/superfund/tools/cag/directives/planning.pdf>.
- EPA, 2003, Moving Towards Collaborative Problem-Solving: Business and Industry Perspectives and Practices on Environmental Justice, Office of Environmental Justice, Washington, DC, EPA/300-R-03-003, [http://www.epa.gov/compliance/resources/publications/ej/ej\\_annual\\_project\\_reports.html](http://www.epa.gov/compliance/resources/publications/ej/ej_annual_project_reports.html).
- NAPA, 2002, Models for Change: Efforts by Four States to Address Environmental Justice, National Academy of Public Administration, Washington, DC.
- EPA, 1990, Sites for Our Solid Waste: A Guidebook for Effective Public Involvement, Office of Solid Waste, Washington, DC, <http://www.epa.gov/epaoswer/non-hw/muncpl/sites/toc.pdf>.
- IAP2, 2003, Planning for Effective Public Participation, International Association for Public Participation, The Perspectives Group, Alexandria, VA., <http://www.theperspectivesgroup.com>.
- EPA, 1995, The Decision Maker's Guide to Solid Waste Management, Volume II, Office of Solid Waste and Emergency Response, Washington, DC, EPA530-R-95-023, <http://www.epa.gov/epaoswer/non-hw/muncpl/dmg2.htm>.
- EPA, 2000, Public Involvement in Environmental Permits: A Reference Guide, Office of Solid Waste and Emergency Response, Washington, DC, EPA-500-R-00-007, <http://www.epa.gov/epaoswer/hazwaste/permit/epmt/publicguide.pdf>.
- EPA, 2003, 2001-2002 Biennial Report: Constructive Engagement and Collaborative Problem-Solving, Office of Environmental Justice, Washington, DC, EPA 300-R-03-001, [http://www.epa.gov/compliance/resources/publications/ej/ej\\_annual\\_project\\_reports.html](http://www.epa.gov/compliance/resources/publications/ej/ej_annual_project_reports.html).
- ELI, 2001, Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authorities, Environmental Law Institute, Washington, DC, ISBN No. 1-58576-031-5. ELI Project No. 981623, <http://www.eli.org>.
- State and Environmental Dispute Resolution Programs, <http://www.policyconsensus.org>.
- U.S. Department of Justice ADA Home Page, <http://www.usdoj.gov/crt/ada/adahome1.htm>.
- U.S. Department of Justice ADA Title II Technical Assistance Manual Covering State and Local Government Programs and Services, <http://www.usdoj.gov/crt/ada/taman2.htm>.
- U.S. Department of Education Disability and Business Technical Assistance Centers, <http://www.adata.org>.
- U.S. Department of Labor Job Accommodation Network, <http://www.jan.wvu.edu> ("State and Local Government Employers").
- U.S. Access Board, <http://www.access-board.gov>.
- The New Freedom Initiative's Online Resource for Americans with Disabilities, <http://www.DisabilityInfo.gov>, ("Community Life-Accessibility and State and Local Governments").
- [FR Doc. 06-2691 Filed 3-20-06; 8:45 am]
- BILLING CODE 6560-50-P**

**ACTION:** Notice of final determination of adequacy.

**SUMMARY:** The U.S. Environmental Protection Agency Region 5 is approving a modification to Wisconsin's approved municipal solid waste landfill (MSWLF) permit program. The modification allows the State to issue research, development and demonstration (RD&D) permits to owners and operators of MSWLF units in accordance with its state law.

**DATES:** This final determination is effective March 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Susan Mooney, mailcode DW-8J, Waste Management Branch, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886-3585, [mooney.susan@epa.gov](mailto:mooney.susan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On March 22, 2004, EPA issued a final rule amending the municipal solid waste landfill criteria in 40 CFR part 258 to allow for research, development and demonstration (RD&D) permits (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through state-issued RD&D permits. RD&D permits are only available in states with approved MSWLF permit programs which have been modified to incorporate RD&D permit authority. While States are not required to seek approval for this new provision, those States that are interested in providing RD&D permits to owners and operators of MSWLFs must seek approval from EPA before issuing such permits. Approval procedures for new provisions of 40 CFR part 258 are outlined in 40 CFR 239.12.

Wisconsin's MSWLF permit program was approved on November 20, 1996 (61 FR 59096). On November 8, 2005, Wisconsin applied for approval of its RD&D permit provisions. On January 20, 2006, EPA published a proposed determination of adequacy (71 FR 3293) of Wisconsin's RD&D permit requirements. The notice provided a public comment period that ended on February 21, 2006. EPA received no comments on the proposed adequacy determination.

**B. Decision**

After a thorough review, EPA Region 5 has determined that Wisconsin's RD&D permit provisions as defined under NR 514.10 are adequate to ensure compliance with the Federal criteria as defined in 40 CFR 258.4.

**Authority:** This action is issued under the authority of section 2002, 4005 and 4010(c)

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8046-9]

**Adequacy of Wisconsin Municipal Solid Waste Landfill Program**

**AGENCY:** Environmental Protection Agency (EPA).

of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: March 9, 2006.

**Bharat Mathur,**

*Deputy Regional Administrator, Region 5.*

[FR Doc. E6-4064 Filed 3-20-06; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8046-8]

### Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for the Commonwealth of Virginia

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of tentative approval and Solicitation of Requests for a Public Hearing.

**SUMMARY:** Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act as amended, and the rules governing National Primary Drinking Water Regulations Implementation that the Commonwealth of Virginia has revised its approved Public Water System Supervision Program and revised its regulations for issuing variances and exemptions. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

**DATES:** Comments or a request for a public hearing must be submitted by April 20, 2006. This determination shall become effective on April 20, 2006 if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

**ADDRESSES:** Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. Comments may also be submitted electronically to Ghassan Khaled at [khaled.ghassan@epa.gov](mailto:khaled.ghassan@epa.gov). All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

- Office of Drinking Water, Virginia Department of Health, 109 Governor Street, Room 632, Richmond, VA 23219.

**FOR FURTHER INFORMATION CONTACT:** Ghassan Khaled, Drinking Water Branch (3WP22) at the Philadelphia address given above; telephone (215) 814-5780 or fax (215) 814-2318.

**SUPPLEMENTARY INFORMATION:** All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by April 20, 2006, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: March 13, 2006.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. E6-4065 Filed 3-20-06; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL ELECTION COMMISSION

[Notice 2006-3]

### Price Index Increases for Coordinated Party Expenditure Limitations

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of coordinated party expenditure limit increases.

**SUMMARY:** As mandated by provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), the Federal Election Commission ("the Commission") is adjusting the coordinated party expenditure limits set forth in the Federal Election Campaign Act of 1971, as amended, to account for increases in the consumer price index.

Additional details appear in the supplemental information that follows.

**DATES: Effective Date:** The effective date for the limits is January 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory J. Scott, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694-1100; Toll Free (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** Under the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*, as amended by the Bipartisan Campaign Reform Act of 2002, Public Law 107-155, 116 Stat. 81 (March 27, 2002), coordinated party expenditure limits (2 U.S.C. 441a(d)(3)(A) and (B)) are adjusted annually by the consumer price index. See 2 U.S.C. 441a(c)(1). The Commission is publishing this notice to announce the limits for 2006.

### Coordinated Party Expenditure Limits for 2006

Under 2 U.S.C. 441a(c), the Commission must adjust the expenditure limitations established by 2 U.S.C. 441a(d) (the limits on expenditures by national party committees, State party committees, or their subordinate committees in connection with the general election campaign of candidates for Federal office) annually to account for inflation. This expenditure limitation is increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 1974).

#### 1. Expenditure Limitation for House of Representatives

Both the national and state party committees have an expenditure limitation for each general election held to fill a seat in the House of Representatives. The formula used to calculate the expenditure limitation in a state with more than one congressional district multiplies the base figure of \$10,000 by the price index (3.961), rounding to the nearest \$100. Based upon this formula, the expenditure limitation for 2006 House elections in those states is \$39,600. The formula used to calculate the expenditure limitation in a state with only one congressional district multiplies the base figure of \$20,000 by the price index (3.961), rounding to the nearest \$100. Based upon this formula, the expenditure limitation for 2006 House elections in these states is \$79,200.

#### 2. Expenditure Limitation for Senate

Both the national and state party committees have an expenditure limitation for a general election held to fill a seat in the Senate. The formula used to calculate the Senate expenditure

limitation considers not only the price index but also the voting age population ("VAP") of the state. The expenditure limitation is the greater of: the base

figure (\$20,000) multiplied by the price index (which totals \$79,200); or \$0.02 multiplied by the VAP of the state, multiplied by the price index. Amounts

are rounded to the nearest \$100. The chart below provides the state-by-state breakdown of the 2006 expenditure limitations for Senate elections.

## SENATE EXPENDITURE LIMITATIONS.—2006 ELECTIONS

State	VAP (in thousands)	VAP × .02 multiplied by the price index (3.961)	Expenditure limit (the greater of the amount in column 3 or \$79,200)
Alabama	3,468	\$274,700	\$274,700
Alaska	475	37,600	79,200
Arizona	4,359	345,300	345,300
Arkansas	2,104	166,700	166,700
California	26,430	2,093,800	2,093,800
Colorado	3,485	276,100	276,100
Connecticut	2,675	211,900	211,900
Delaware	648	51,300	79,200
Florida	13,722	1,087,100	1,087,100
Georgia	6,710	531,600	531,600
Hawaii	975	77,200	79,200
Idaho	1,055	83,600	83,600
Illinois	9,522	754,300	754,300
Indiana	4,669	369,900	369,900
Iowa	2,296	181,900	181,900
Kansas	2,070	164,000	164,000
Kentucky	3,193	252,900	252,900
Louisiana	3,376	267,400	267,400
Maine	1,044	82,700	82,700
Maryland	4,197	332,500	332,500
Massachusetts	4,941	391,400	391,400
Michigan	7,597	601,800	601,800
Minnesota	3,903	309,200	309,200
Mississippi	2,173	172,100	172,100
Missouri	4,422	350,300	350,300
Montana	731	57,900	79,200
Nebraska	1,327	105,100	105,100
Nevada	1,794	142,100	142,100
New Hampshire	1,007	79,800	79,800
New Jersey	6,556	519,400	519,400
New Mexico	1,439	114,000	114,000
New York	14,709	1,165,200	1,165,200
North Carolina	6,542	518,300	518,300
North Dakota	500	39,600	79,200
Ohio	8,705	689,600	689,600
Oklahoma	2,695	213,500	213,500
Oregon	2,791	221,100	221,100
Pennsylvania	9,613	761,500	761,500
Rhode Island	831	65,800	79,200
South Carolina	3,228	255,700	255,700
South Dakota	588	46,600	79,200
Tennessee	4,572	362,200	362,200
Texas	16,534	1,309,800	1,309,800
Utah	1,727	136,800	136,800
Vermont	490	38,800	79,200
Virginia	5,743	455,000	455,000
Washington	4,803	380,500	380,500
West Virginia	1,434	113,600	113,600
Wisconsin	4,240	335,900	335,900
Wyoming	395	31,300	79,200

Dated: March 14, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. E6-4052 Filed 3-20-06; 8:45 am]

BILLING CODE 6715-01-P

#### FEDERAL RESERVE SYSTEM

#### Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E6-3708) published on page 13398 of

the issue for Wednesday, March 15, 2006

Under the Federal Reserve Bank of San Francisco heading, the entry for Bruce Hsiu-I Shen family, Rancho Palos Verdes, California, is revised to read as follows:

**A. Federal Reserve Bank of San Francisco** (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *The Shen Group, consisting of Bruce Hsiu-I Shen, Su Chin Lin Shen, Sen Fu Shen, Faye Shen*, Rancho Palos Verdes, California; Ted Tai-Hsi Shen and Allison Chiang, San Marino, California, and Hsinya Shen, Palo Alto, California; to retain voting shares of American Premier Bancorp, Arcadia, California, and thereby indirectly retain voting shares of American Premier Bank, Arcadia, California.

Comments on this application must be received by March 30, 2006.

Board of Governors of the Federal Reserve System, March 16, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6-4062 Filed 3-20-06; 8:45 am]

BILLING CODE 6210-01-S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications

must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 14, 2006.

**A. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Capitol Bancorp, Ltd.*, Lansing, Michigan; to acquire through its subsidiary, Capitol Bancorp Development Limited, Lansing, Michigan, 51 percent of the voting shares of Sunrise Bank of Atlanta (in organization), Atlanta, Georgia.

Board of Governors of the Federal Reserve System, March 16, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6-4063 Filed 3-20-06; 8:45 am]

BILLING CODE 6210-01-S

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 12 p.m., Monday, March 27, 2006

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**FOR FURTHER INFORMATION CONTACT:** Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202-452-2955.

**SUPPLEMENTARY INFORMATION:** You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, March 17, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 06-2789 Filed 3-17-06; 2:30 pm]

BILLING CODE 6210-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Program Peer Review Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR): Teleconference.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), CDC, NCEH/ATSDR announces the following subcommittee meeting:

**Name:** Program Peer Review Subcommittee (PPRS).

**Time and Date:** 12:30 p.m.–2 p.m. eastern daylight time, April 10, 2006.

**Place:** The teleconference will originate at NCEH/ATSDR in Atlanta, Georgia. To participate, dial (877) 315-6535 and enter conference code 383520.

**Purpose:** Under the charge of the BSC, NCEH/ATSDR, the PPRS will provide the BSC, NCEH/ATSDR with advice and recommendations on NCEH/ATSDR program peer review. They will serve the function of organizing, facilitating, and providing a long-term perspective to the conduct of NCEH/ATSDR program peer review.

**Matters To Be Discussed:** Discussion of the Division of Toxicology and Environmental Medicine Peer Review; an update of the discussion with NCEH/ATSDR Director on direction of the peer review process; a discussion of the evaluation of the peer review process; and a review of action items from this meeting.

Agenda items are subject to change as priorities dictate.

#### FOR FURTHER INFORMATION CONTACT:

Sandra Malcom, Committee Management Specialist, Office of Science, NCEH/ATSDR, M/S E-28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 498-0622.

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 NCEH/ATSDR.



Dated: March 14, 2006.

Alvin Hall,

Director, Management Analysis and Services  
Office, Centers for Disease Control and  
Prevention.

[FR Doc. 06-2652 Filed 3-20-06; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Board of Scientific Counselors,  
Centers for Disease Control and  
Prevention (CDC), National Center for  
Environmental Health/Agency for Toxic  
Substances and Disease Registry (NCEH/  
ATSDR): Meeting.

In accordance with section 10(a)(2) of  
the Federal Advisory Committee Act  
(Pub. L. 92-463), CDC and NCEH/  
ATSDR announce the following  
committee meeting:

*Name:* Board of Scientific Counselors  
(BSC), NCEH/ATSDR.

*Times and Dates:* 8 a.m. -4:45 p.m.,  
May 4, 2006. 8 a.m.-12:15 p.m., May 5,  
2006.

*Place:* 1825 Century Boulevard,  
Atlanta, Georgia 30345.

*Status:* Open to the public, limited  
only by the space available. The meeting  
room accommodates approximately 75  
people.

*Purpose:* The Secretary, Department  
of Health and Human Services (HHS)  
and by delegation, the Director, CDC,  
and Administrator, NCEH/ATSDR, are  
authorized under section 301 (42 U.S.C.  
241) and section 311 (42 U.S.C. 243) of  
the Public Health Service Act, as  
amended, to: (1) Conduct, encourage,  
cooperate with, and assist other  
appropriate public authorities, scientific  
institutions, and scientists in the  
conduct of research, investigations,  
experiments, demonstrations, and  
studies relating to the causes, diagnosis,  
treatment, control, and prevention of  
physical and mental diseases and other  
impairments; (2) assist states and their  
political subdivisions in the prevention  
of infectious diseases and other  
preventable conditions and in the  
promotion of health and well being; and  
(3) train state and local personnel in  
health work. The BSC, NCEH/ATSDR  
provides advice and guidance to the  
Secretary, HHS; the Director, CDC, and  
Administrator, ATSDR; and the  
Director, NCEH/ATSDR, regarding  
program goals, objectives, strategies, and  
priorities in fulfillment of the agency's

mission to protect and promote people's  
health. The board provides advice and  
guidance that will assist NCEH/ATSDR  
in ensuring scientific quality,  
timeliness, utility, and dissemination of  
results. The board also provides  
guidance to help NCEH/ATSDR work  
more efficiently and effectively with its  
various constituents and to fulfill its  
mission in protecting America's health.

*Matters To Be Discussed:* Items will  
include but are not limited to a  
discussion of Fiscal Years 2006 and  
2007 budget implications; an update on  
the peer review of the Air Pollution and  
Respiratory Health Branch and the  
Division of Toxicology and  
Environmental Medicine; a discussion  
of the Program Peer Review  
Subcommittee process; updates on the  
Community and Tribal Subcommittee,  
the Health Department Subcommittee  
and the Delisting Workgroup; a  
discussion on the implications of the  
Office of Management and Budget Data  
Quality Guidelines and proposed  
bulletin on risk assessments; a  
discussion on the environmental health  
aspects of pandemic flu planning, the  
environmental health implications;  
discussion on future goals, directions,  
and new priorities; and an introduction  
of the Goals' Managers.

Agenda items are tentative and  
subject to change.

#### FOR FURTHER INFORMATION CONTACT:

Sandra Malcom, Committee  
Management Specialist, NCEH/ATSDR,  
1600 Clifton Road, Mail Stop E-28,  
Atlanta, Georgia 30303; telephone (404)  
498-0003, fax (404) 498-0622; E-mail:  
[smalcom@cdc.gov](mailto:smalcom@cdc.gov). The deadline for  
notification of attendance is April 24,  
2006.

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  
NCEH/ATSDR.

Dated: March 14, 2006.

Alvin Hall,

Director, Management Analysis and Services  
Office, Centers for Disease Control and  
Prevention (CDC).

[FR Doc. 06-2653 Filed 3-20-06; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Prospective Grant of Exclusive License: Dengue Virus Vaccine

**AGENCY:** Technology Transfer Office,  
Centers for Disease Control and  
Prevention (CDC), Department of Health  
and Human Services.

**ACTION:** Notice.

**SUMMARY:** This is a notice in accordance  
with 35 U.S.C. 209(e) and 37 CFR  
404.7(a)(1)(i) that the Centers for Disease  
Control and Prevention (CDC),  
Technology Transfer Office, Department  
of Health and Human Services (DHHS),  
is contemplating the grant of a  
worldwide, limited field of use,  
exclusive license to practice the  
inventions embodied in the patent  
application referred to below to  
Inviragen, LLC, having a place of  
business in Fort Collins, Colorado. The  
patent rights in these inventions have  
been assigned to the government of the  
United States of America.

**SUPPLEMENTARY INFORMATION:** In  
accordance with 35 U.S.C. 209(e) and 37  
CFR 404.7(a)(1)(i), CDC is providing  
public notice of its intention to grant an  
exclusive license. CDC will accept  
written comments concerning this  
notice for 30 days after publication of  
this notice. Applications for a license  
filed in response to this notice will be  
treated as objections to the grant of the  
contemplated license. Comments and  
objections submitted in response to this  
notice will not be made available for  
public inspection, and, to the extent  
permitted by law, will not be released  
under the Freedom of Information Act,  
5 U.S.C. 552. A signed Confidential  
Disclosure Agreement (available under  
Forms @ <http://www.cdc.gov/tto>) will be  
required to receive a copy of any  
pending patent application.

The patent application(s) to be  
licensed are:

PCT/US01/05142 entitled "Chimeric  
Dengue Viruses as Candidate Vaccines  
for Humans," filed February 16, 2001.

*Status:* Received notice of allowance.

*Issue Date:* N/A

The prospective exclusive license will  
be royalty-bearing and will comply with  
the terms and conditions of 35 U.S.C.  
209 and 37 CFR 404.7.

*Technology:*

This technology provides a new  
pathway for a dengue virus vaccine.

**ADDRESSES:** Requests for a copy of this  
patent application, inquiries, comments,  
and other materials relating to the

contemplated license should be directed to Andrew Watkins, Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K-79, Atlanta, GA 30341, telephone: (770) 488-8610; facsimile: (770) 488-8615.

Dated: March 14, 2006.

**James D. Seligman,**  
Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E6-4048 Filed 3-20-06; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: (301) 496-7057; fax: (301) 402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

#### Rapid Methods for Human Artificial Chromosome (HAC) Formation

Vladimir Larionov (NCI), Hiroshi Masumoto (NCI), Megumi Nakano (NCI), Vladimir Noskov (NCI), Natalay Kouprina (NCI), J. Carl Barrett (NCI), et al.

U.S. Provisional Application No. 60/669,589 filed April 8, 2005 (HHS Reference No. E-128-2005/0-US-01)  
*Licensing Contact:* Susan Carson, D. Phil.; 301/435-5020; [carsonsu@mail.nih.gov](mailto:carsonsu@mail.nih.gov).

Human artificial chromosomes (HACs) provide a unique opportunity to develop a new generation of vectors for therapeutic use as gene expression and

delivery systems. The advantages of a high-capacity, non-integrating chromosome-based vector capable of autonomous replication and long-term gene expression are evident for potential use in gene therapy and this area is one of active research. In particular, the generation of a functional centromere (a complex structure needed for segregation at cell division) has been recognized as key in the production of synthetic chromosomes. However, a typical human centromere extends over many millions of base pairs containing mainly alphoid satellite DNA (171 bp repeating units) organized into higher order repeats (HORs), which have been difficult to fully characterize or modify readily. There remains a need to elucidate the structural requirements of alphoid DNA arrays for efficient de novo assembly of centromere structure in order to construct HAC vectors able to carry intact mammalian genes capable of fully regulated gene expression and which can be stably maintained in the host nucleus for use in gene therapy.

The group of Dr. Larionov at the NCI and colleagues have recently developed a novel strategy to rapidly construct large synthetic alphoid DNA arrays with a predetermined structure by in vivo recombination in yeast (Nucleic Acids Res., Sep 2005; 33: e130). The invention is a two step method involving (1) rolling-circle amplification (RCA) of a short alphoid DNA multimer (e.g. a dimer) and (2) subsequent assembly of the amplified fragments by in vivo homologous recombination during transformation with a Transformation-Associated Recombination targeting vector (TAR-NV) into yeast cells. This method or Recombinational Amplification of Repeats (RAR) has been used to construct sets of different synthetic alphoid DNA arrays varying in size from 30 to 120 kb which were shown to be competent in HAC formation. Thus, these long arrays are engineered centromere-like regions that permit construction of mammalian artificial chromosomes with a predefined centromeric region structure. As any nucleotide can be easily changed into an alphoid dimer before its amplification, this new system is optimal for identifying the critical regions of the alphoid repeat for de novo centromere seeding.

The Mammalian Artificial Chromosome Portfolio [HHS Ref. No. E-128-2005/0-US-01 and HHS Ref. No. E-253-2000/0-US-03], including methods of generating engineered centromeric sequences, mammalian artificial chromosomes and methods of their use is available for licensing and

will be of direct use to those interested in vectors providing long-term regulated expression of genes used in therapy for human disease.

Related technologies available for licensing also include: the TAR cloning Portfolio [HHS Ref. No. E-121-1996/0-US-06 (USPN 6,391,642 and global IP coverage); HHS Ref. No. E-158-2001/0-US-02, U.S. Publication No. US2004/0248289 filed October 4, 2002].

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

#### Transformation-Associated Recombination (TAR) Cloning

Vladimir Larionov (NCI), Natalay Kouprina (NCI), Michael A. Resnick (NIEHS), et al.  
U.S. Patent No. 6,391,642 issued May 21, 2002 (HHS Reference No. E-121-1996/0-US-06) and global IP coverage  
*Licensing Contact:* Susan Carson, D. Phil., 301/435-5020; [carsonsu@mail.nih.gov](mailto:carsonsu@mail.nih.gov).

Transformation-Associated Recombination (TAR) cloning in yeast is a unique method for selective isolation of large chromosomal fragments or entire genes from complex genomes without the time-consuming step of library construction (PNAS (1996) 93, 491-496). The technique involves homologous recombination during yeast spheroplast transformation between genomic DNA and a TAR vector that has short (approximately 60bp) 5' and 3' gene targeting sequences (hooks). Further, because up to 15% sequence divergence does not prevent recombination in yeast, TAR cloning is highly efficient for isolation of gene homologs and synthetic regions. Using this technology, chromosomal regions up to 250kb can be rescued in yeast as circular YACs within 3-5 working days (NAR (2003) 31, e29; Current Protocols in Human Genetics (1999) 5.17.1).

NIH researchers Drs. Larionov, Kouprina and Resnick have championed the use of this technology and TAR cloning has been used to efficiently isolate haplotypes, gene families (Genome Research (2005) 15, 1477) as well as genomic regions which are not present in existing BAC libraries.

Known mutations and new modifications, including point mutations, deletions and insertions, can easily be introduced into DNA fragments hundreds of kilobases in size without introducing any unwanted alterations. The modified DNAs can then be tested functionally in mammalian cells and transgenic mice. TAR has also been used for structural

biology studies, long-range haplotyping, evolutionary studies, centromere analysis and analysis of other regions which cannot be cloned by a routine technique based on *in vitro* ligation (Kouprina and Larionov (2005) Recent Developments in Nucleic Acids Research, in press). In particular, construction of human artificial chromosome vectors and the combining of a HAC vector with a gene of interest can be effectively performed using the TAR methodology. Human genes isolated by TAR for expression in HACs include HPRT (60kb), BRCA1 (84kb), BRCA2 (90kb), PTEN (120kb), hTERT (60kb), KA11 (200kb), ASPM (70kb), SPANX-C (83kb) among others. TAR is a flexible and efficient means for employing *in vivo* recombination in yeast in order to clone entire genomic loci which can then be used for structural and functional analysis and for expression in HAC vectors for a variety of uses including for potential use in gene therapy.

The TAR cloning Portfolio [HHS Ref. No. E-121-1996/0-US-06 and HHS Ref. No. E-158-2001/0-US-02, U.S. Patent Application Publication No. US2004/0248289 filed 04 Oct 2002], including methods of use and vectors, is available for licensing and will be of direct use to those using a functional genomics approach in their work.

Related technologies available for licensing also include: the Mammalian Artificial Chromosome Portfolio [HHS Ref. No. E-128-2005/0-US-01, U.S. Provisional Patent Application No. 60/669,589 filed 08 Apr 2005 and HHS Ref. No. E-253-2000/0-US-03, U.S. Patent Application Publication No. U.S. 2004/0245317 filed April 8, 2002].

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

**Monoclonal Antibodies Which Specifically Bind to the Ligand Hepatocyte Growth Factor (HGF) and are Useful in the Treatment of Cancer.**

Boliang Cao and George Vande Woude (both of NCI)

U.S. Patent Application No. 10/129,596 filed September 30, 2002 (HHS Reference No. E-262-1999/1-US-02), which is a 371 application of PCT/US00/31036 filed November 9, 2000 and which claims priority to U.S. Provisional Application No. 60/164,173 filed November 9, 1999

Licensing Contact: Susan S. Rucker; 301/435-4478; ruckersu@mail.nih.gov.

The invention described and claimed in this patent application provides for

compositions and methods for the treatment of cancers associated with hepatocyte growth factor (HGF). In particular, the patent application describes compositions and methods which employ a combination of monoclonal antibodies which bind to HGF and prevent it from binding to its receptor met in a manner that HGF/met signaling is neutralized. The combination of monoclonal antibodies has been shown to be neutralizing in tumor-bearing nude mice.

HGF/met signaling has been most widely studied in settings related to cancer. It has been demonstrated to have a role in metastasis and angiogenesis. In addition to cancer, HGF activity has also been linked, through its role in apoptosis, to Alzheimer's disease and cardiovascular disease.

The application has been published as WO 01/34650 (May 17, 2001). The work has also been published at Cao B, et al PNAS USA 98(13):7443-8 (June 19, 2001) [<http://www.pnas.org/cgi/content/full/98/13/7443>]. The hybridomas which can be used to produce the various monoclonal antibodies have been deposited with the ATCC and are available to licensees. Only U.S. Patent protection has been sought for this technology. There are no foreign counterpart patent applications. This application is available for license only. Licenses for the development of therapeutics may be exclusive or non-exclusive. The principal investigators are no longer at the NIH and are not available for NIH collaborative projects under the CRADA mechanism.

Dated: March 14, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6-4077 Filed 3-20-06; 8:45 am]

BILLING CODE 4140-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Office of the Director, National Institutes of Health; Notice of Meeting**

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other

reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Office of AIDS Research Advisory Council.

*Date:* April 6-7, 2006.

*Time:* 8:30 a.m. to 1 p.m.

*Agenda:* A Report of the Director addressing OAR initiatives. The topic of the meeting will be addressing prevention research priorities, focusing on microbicides research.

*Place:* Fishers Lane Conference Center, 5635 Fishers Lane, Rockville, MD 20852.

*Contact Person:* Christina Brackna, Executive Secretary, Office of Aids Research, Office of the Director, NIH, 2 Center Drive, MSC 0255, Building 2, Room 4W15, Bethesda, MD 20892. (301) 402-3555. [cm53v@nih.gov](mailto:cm53v@nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: [www.nih.gov/od/oar/index.htm](http://www.nih.gov/od/oar/index.htm), where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 15, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-2728 Filed 3-20-06; 8:45 am]

BILLING CODE 4140-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Cancer Institute; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Cancer Institute Special Emphasis Panel, SBIR Topic 221 Oral Bioavailability Enhancement of Drug Candidates Using Innovative Excipients.

*Date:* March 23, 2006.

*Time:* 12 p.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call).

*Contact Person:* Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892-7405. (301) 496-7575.

This notice is being published less than 15 days prior to the meeting date due to administrative concerns regarding a non-responsive proposal.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

*Dated:* March 13, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2735 Filed 3-20-06; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Drug Abuse; Notice of Closed 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 on Drug Abuse Special Emphasis Panel; Online Buprenorphine Practice Manager for Physicians.

*Date:* March 21, 2006.

*Time:* 1:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

*Contact Person:* Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401. (301) 435-1438.

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. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

*Dated:* March 15, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2721 Filed 3-20-06; 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 Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* National Advisory Board on Medical Rehabilitation Research.

*Date:* May 4-5, 2006.

*Time:* May 4, 2006, 8:30 a.m. to 5 p.m.

*Agenda:* NCMRR Director's Report presentation, NCMRR Director Clinical Trial Networks; Connecting to our Constituents.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Time:* May 5, 2006, 8:30 a.m. to 12 p.m.

*Agenda:* Other business dealing with the NABMRR Board.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Ralph M. Nitkin, PhD, Director, BSCD, National Center for Medical, Rehabilitation Research, National Institute of Child Health and Human Development, NIH, 6100 Building, Room 2A03, Bethesda, MD 20892. (301) 402-4206.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: [www.nichd.nih.gov/about/ncmrr.htm](http://www.nichd.nih.gov/about/ncmrr.htm), where an agenda and any additional information for the meeting will be posted when available.

(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:* March 15, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2722 Filed 3-20-06; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development; Special Emphasis Panel; Generation of NC

**Stem Cells from Human Embryonic Stem Cells.**

Date: April 11, 2006.

Time: 10 a.m. to 12 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](mailto: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: March 15, 2006.

**Anna Snouffer,**

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-2723 Filed 3-20-06; 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 Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; Fragile X Syndrome Program.

Date: April 10, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Streets, Arlington, VA 22202.

Contact Person: Norman Chang, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child

Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 496-1485.

[changn@mail.nih.gov](mailto:changn@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: March 15, 2006.

**Anna Snouffer,**

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-2724 Filed 3-20-06; 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 Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child and Human Development Special Emphasis Panel; Data Coordinating and Analysis Center for the Community and Child Health Network.

Date: March 30, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, National Institute for Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20812-7510. (301) 435-8382. [hindiadm@mail.nih.gov](mailto:hindiadm@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, 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: March 15, 2006.

**Anna Snouffer,**

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-2725 Filed 3-20-06; 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 meeting.

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, Population Research Infrastructure Support.

Date: April 10-11, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, 1177 15th Street, NW, Washington, DC 20005.

Contact Person: Carla T. Walls, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 435-6898. [wallsc@nih.gov](mailto:wallsc@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: March 15, 2006.

**Anna Snouffer,**

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-2726 Filed 3-20-06; 8:45 am]

BILLING CODE 4140-01-M



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**National Institutes of Health**
**National Institute of General Medical Sciences; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or 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 General Medical Sciences Special Emphasis Panel; Pharmacology Research Center.

*Date:* April 6, 2006.

*Time:* 9:30 a.m. to 11:30 a.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:* Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN-18, Bethesda, MD 20892. (301) 594-2848. [latker@nigms.nih.gov](mailto:latker@nigms.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. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 15, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2727 Filed 3-20-06; 8:45 am]

BILLING CODE 4140-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**National Institutes of Health**
**National Institute of General Medical Sciences; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or 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 General Medical Sciences Special Emphasis Panel, Large Scale Collaborative Project.

*Date:* April 10, 2006.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Clarion Hotel Bethesda Park, 8400 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* C Craig Hyde, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AN18, Bethesda, MD 20892. 301-435-3825. [ch2v@nih.gov](mailto:ch2v@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 15, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2729 Filed 3-20-06; 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; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Cortical Development.

*Date:* March 24, 2006.

*Time:* 9:30 a.m. to 11:30 a.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:* W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529. 301-496-4056.

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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 13, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2730 Filed 3-20-06; 8:45 am]

BILLING CODE 4140-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**National Institutes of Health**
**National Institute on Aging; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Alzheimers Disease Drug Development Program.

*Date:* April 6-7, 2006.

*Time:* 4:30 p.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Louise L. Hsu, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892. (301) 496-7705. [hsul@exmur.nia.nih.gov](mailto:hsul@exmur.nia.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

*Dated:* March 13, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2731 Filed 3-20-06; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Heme Iron Transport.

*Date:* April 11, 2006.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

*Contact Person:* Carol J. Goter-Robinson, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892-5452. (301) 594-7791.

[goterrobinsonc@extra.niddk.nih.gov](mailto:goterrobinsonc@extra.niddk.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Development of Therapies for NIDDM.

*Date:* April 11, 2006.

*Time:* 12 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

*Contact Person:* Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892-5452. (301) 594-8894. [matsumotod@extra.niddk.nih.gov](mailto:matsumotod@extra.niddk.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Chemosensing in the Gastrointestinal Tract.

*Date:* April 17, 2006.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Carol J. Goter-Robinson, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892-5452. (301) 594-7791.

[goterrobinsonc@extra.niddk.nih.gov](mailto:goterrobinsonc@extra.niddk.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

*Dated:* March 13, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2732 Filed 3-20-06; 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, Fellowships and Dissertation Grants.

*Date:* March 27, 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. 301-402-8152. [mbroitma@mail.nih.gov](mailto:mbroitma@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, Development of Transgenic Mice to Study the Nervous System.

*Date:* March 31, 2006.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* A. Roger Little, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6157, MSC 9609, Rockville, MD 20852-9609. 301-402-5844. [alittle@mail.nih.gov](mailto:alittle@mail.nih.gov).

This notice is being published less than 15 days to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

*Dated:* March 13, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2733 Filed 3-20-06; 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 Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appended 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. S., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group, Obstetrics and Maternal-Fetal Biology Subcommittee.

*Date:* March 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:* Gopal M. Bhatnagar, Ph.D., Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg. Rm. 5B01, Rockville, MD 20852. (301) 435-6889. [bhatnagg@mail.nih.gov](mailto:bhatnagg@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, 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: March 13, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2734 Filed 3-20-06; 8:45 am]

BILLING CODE 4140-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Institute of Diabetes and Kidney Diseases; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Cardiovascular Complications in Type 1 Diabetes.

*Date:* April 12, 2006.

*Time:* 2 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892-5452. (301) 594-7799. [ls38oz@nih.gov](mailto:ls38oz@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 15, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2736 Filed 3-20-06; 8:45 am]

BILLING CODE 4140-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Institute of Environmental Health Sciences; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or 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 Environmental Health Sciences Special Emphasis Panel Review of Loan Payment, Clinical (L30) and Pediatric (L40).

*Date:* April 12, 2006.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709, 919/541-0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Responses to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 13, 2006

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2737 Filed 3-20-06; 8:45 am]

BILLING CODE 4140-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Institute of Environmental Health Services; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

**Name of Committee:** National Institute of Environmental Health Sciences Special Emphasis Panel Review of Conferences (R13s) and Cooperative Agreement (U13).

**Date:** April 12, 2006.

**Time:** 1 p.m. to 5 p.m.

**Agenda:** To review and evaluate grant applications.

**Place:** NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

**Contact Person:** Linda K Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709, 919/541-1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

**Dated:** March 13, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2738 Filed 3-20-06; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Library of Medicine; 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 Library of Medicine Special Emphasis Panel, Loan Repayment Program—IAR.

**Date:** April 27, 2006.

**Time:** 1 p.m. to 4 p.m.

**Agenda:** To review and evaluate grant applications.

**Place:** National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

**Contact Person:** Zoe E. Huang, MD, Health Science Administrator, Extramural Programs, National Library of Medicine, Rockledge 1 Building, 6705 Rockledge Drive, Suite 301, MSC 7968, Bethesda, MD 20892-7968. 301-594-4937. [huangz@mail.nih.gov](mailto:huangz@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medicine Library Assistance, National Institutes of Health, HHS)

**Dated:** March 15, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2720 Filed 3-20-06; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Toxicology Program (NTP), NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Announcement of an Independent Scientific Peer Review Meeting on the Use of In Vitro Testing Methods for Estimating Starting Doses for Acute Oral Systemic Toxicity Tests and Request for Comments

**AGENCY:** National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

**ACTION:** Meeting Announcement and Request for Comment.

**SUMMARY:** NICEATM in collaboration with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) announces a public, independent, scientific peer review meeting to evaluate the validation status of the *in vitro* 3T3 and normal human keratinocyte (NHK) neutral red uptake (NRU) basal cytotoxicity test methods for estimating starting doses for *in vivo* acute oral toxicity tests. These two *in vitro* cytotoxicity test methods are proposed as adjuncts to the *in vivo* acute oral toxicity tests to refine (i.e., to lessen

or avoid pain and distress) and/or reduce animal use. At this meeting, a scientific peer review panel ("Panel") will peer review the background review document (BRD) on the 3T3 and NHK cytotoxicity test methods, evaluate the extent that the BRD addresses established validation and acceptance criteria, and provide comment on the draft ICCVAM recommendations on the proposed use of these test methods, draft test method protocols, and draft performance standards. NICEATM requests public comments on the BRD, draft ICCVAM test method recommendations, draft test method protocols, and draft performance standards.

**DATES:** The meeting will be held on May 23, 2006, from 8:30 a.m. to 5 p.m. The meeting is open to the public with attendance limited only by the space available. In order to facilitate planning for this meeting, persons wishing to attend the meeting are asked to register via the ICCVAM/NICEATM Web site (<http://iccvam.niehs.nih.gov>) by May 12, 2006.

**ADDRESSES:** The meeting will be held at the National Institutes of Health (NIH), Natcher Conference Center, 45 Center Drive, Bethesda, MD 20892.

#### FOR FURTHER INFORMATION CONTACT:

Correspondence should be sent by mail, fax, or email to Dr. William S. Stokes, NICEATM Director, NIEHS, P.O. Box 12233, MD EC-17, Research Triangle Park, NC 27709, (phone) 919-541-2384, (fax) 919-541-0947, (e-mail) [niceatm@niehs.nih.gov](mailto:niceatm@niehs.nih.gov). Courier address: NICEATM, 79 T.W. Alexander Drive, Building 4401, Room 3128, Research Triangle Park, NC 27709.

#### SUPPLEMENTARY INFORMATION:

##### Background

In September 2001, ICCVAM recommended that *in vitro* basal cytotoxicity test methods be considered as tools for estimating starting doses for *in vivo* acute systemic toxicity studies (Federal Register Vol. 66, No. 189, pp. 49686-7, September 28, 2001). The recommendations were based on the *Report of the International Workshop on In Vitro Methods for Assessing Acute Systemic Toxicity* (ICCVAM, 2001a). The *Guidance Document on Using In Vitro Data to Estimate In Vivo Starting Doses for Acute Toxicity* (ICCVAM, 2001b) was also made available at that time. The guidance document provided standard procedures for two *in vitro* basal cytotoxicity test methods and instructions for using these test methods to estimate starting doses for *in vivo* testing.

U.S. Federal agencies' responses to the ICCVAM recommendations from the International Workshop were announced in 2004 (**Federal Register** Vol. 69, No. 47, pp. 11448-9, March 10, 2004). The U.S. Federal agencies agreed to encourage, to the extent applicable, the use of *in vitro* tests for determining starting doses for acute oral systemic toxicity testing. Furthermore, the U.S. Environmental Protection Agency (EPA) specifically encouraged those participating in the High Production Volume Challenge Program to consider using the recommended *in vitro* test methods as a supplemental component when conducting any new *in vivo* acute oral toxicity studies for the program (<http://www.epa.gov/chemrtk/toxprow.htm>).

In 2002, NICEATM and the European Committee on the Validation of Alternative Methods began a collaborative validation study to independently evaluate the usefulness of two *in vitro* basal cytotoxicity test methods proposed for estimating starting doses for *in vivo* rodent acute oral toxicity tests. *In vitro* NRU cytotoxicity test methods using either BALB/c 3T3 fibroblasts, a mouse cell line, or NHK cells, primary human epidermal cells, were evaluated in a multi-laboratory international validation study. During the pre-validation phases of the study, the test method protocols were standardized further and revised to improve their intra- and inter-laboratory reproducibilities. NICEATM recommended using the revised test method protocols (**Federal Register**, Vol. 69, No. 201, pp. 61504-5, October 19, 2004) rather than the standard procedures outlined in the guidance document (ICCVAM, 2001b). During the validation study, 72 reference chemicals were tested using the 3T3 and NHK NRU test methods. The *in vitro* NRU cytotoxicity test results were used to estimate acute oral LD<sub>50</sub> values, which in turn were used to identify the starting doses for simulated acute oral toxicity testing using the Up-and-Down Procedure (UDP; EPA 2002; OECD 2001a) and the Acute Toxic Class method (ATC; OECD 2001b). The *in vivo* test simulations were used to compare the number of animals used and the number of deaths expected to occur when starting with the default starting doses versus using a starting dose based on *in vitro* cytotoxicity data.

To assist in an evaluation of the usefulness of these two *in vitro* NRU basal cytotoxicity test methods for estimating starting doses for *in vivo* acute oral toxicity tests, NICEATM requested the submission of existing *in vivo* and *in vitro* acute toxicity data

(**Federal Register**, Vol. 69, No. 201, pp. 61504-5, October 19, 2004 and Vol. 65, No. 115, pp. 37400-3, June 14, 2000). In 2005, NICEATM announced a request for nominations of scientists to serve on the Panel and again requested existing *in vivo* and *in vitro* data (**Federal Register** Vol. 70, No. 54, pp. 14473-4, March 22, 2005).

#### Expert Panel Meeting

The purpose of this meeting is the scientific peer review evaluation of the validation status of the 3T3 and NHK NRU basal cytotoxicity test methods to determine starting doses for the UDP and ATC acute oral toxicity test methods in order to refine and reduce the use of animals. The Panel will first peer review the BRD on the 3T3 and NHK cytotoxicity test methods and then evaluate the extent that the BRDs address established validation and acceptance criteria (*Validation and Regulatory Acceptance of Toxicological Test Methods: A Report of the ad hoc Interagency Coordinating Committee on the Validation of Alternative Methods*, NIH Publication No. 97-3981, <http://iccvam.niehs.nih.gov>). The Panel will also be asked to provide comment on the draft ICCVAM test method recommendations, draft standardized test method protocols, and draft performance standards. Information about the Panel meeting, including a roster of the members of the Panel and the agenda, will be made available two weeks prior to the meeting on the ICCVAM/NICEATM Web site (<http://iccvam.niehs.nih.gov>) or can be obtained after that date by contacting NICEATM (see **FOR FURTHER INFORMATION CONTACT** above).

#### Attendance and Registration

The public Panel meeting will take place May 23, 2006, at the NIH Campus, Natcher Conference Center, Bethesda, MD (a map of the NIH Campus and other visitor information are available at <http://www.nih.gov/about/visitor/index.htm>). The meeting will begin at 8:30 a.m. and conclude at approximately 5 p.m. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919-541-2475 voice, 919-541-4644 TTY (text telephone), through the Federal TTY Relay System at 800-877-8339, or by e-mail to [niehsoeoo@niehs.nih.gov](mailto:niehsoeoo@niehs.nih.gov). Requests should be made at least seven business days in advance of the event.

#### Availability of the BRD and Draft ICCVAM Recommendations

NICEATM prepared a BRD on the 3T3 and NHK NRU basal cytotoxicity test methods that contains comprehensive summaries of the data generated in the validation study, an analysis of the accuracy and reliability of the two test methods, a simulation analysis of the refinement and reduction in animal use that would occur if these tests were used as adjuncts to the UDP and ATC acute oral systemic toxicity test methods, and related information characterizing the validation status of these assays. The BRD, draft ICCVAM test method recommendations, draft test method protocols, and draft test method performance standards will be provided to the Panel and made available to the public. Copies of these materials can be obtained from the ICCVAM/NICEATM Web site (<http://iccvam.niehs.nih.gov>) or by contacting NICEATM (see **FOR FURTHER INFORMATION CONTACT** above).

#### Request for Comments

NICEATM invites the submission of written comments on the BRD, draft ICCVAM test method recommendations, draft test method protocols, and draft test method performance standards. When submitting written comments, it is important to refer to this **Federal Register** notice and include appropriate contact information (name, affiliation, mailing address, phone, fax, email and sponsoring organization, if applicable). Written comments should be sent by mail, fax, or email to Dr. William Stokes, Director of NICEATM, at the address listed above not later than May 5, 2006. All comments received will be placed on the ICCVAM/NICEATM website and made available to the Panel, ICCVAM agency representatives, and attendees at the meeting.

This meeting is open to the public and time will be provided for the presentation of public oral comments at designated times during the peer review. Members of the public who wish to present oral statements at the meeting (one speaker per organization) should contact NICEATM (see **FOR FURTHER INFORMATION CONTACT** above) no later than May 12, 2006. Speakers will be assigned on a consecutive basis and up to seven minutes will be allotted per speaker. Persons registering to make comments are asked to provide a written copy of their statement by May 12, 2006, so that copies can be distributed to the Panel prior to the meeting or if this is not possible to bring 40 copies to the meeting. Written statements can supplement and expand the oral presentation. Each speaker is asked to



provide contact information (name, affiliation, mailing address, phone, fax, email and sponsoring organization, if applicable) when registering to make oral comments.

Summary minutes and a final report of the Panel will be available following the meeting at the ICCVAM/NICEATM Web site (<http://iccvam.niehs.nih.gov>). ICCVAM will consider the conclusions and recommendations from the Panel and any public comments received in finalizing test method recommendations and performance standards for these test methods.

#### Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 U.S. Federal regulatory and research agencies that use or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products while refining (less pain and distress), reducing, and replacing animal use. The ICCVAM Authorization Act of 2000 (Pub. L. 106-545, available at <http://iccvam.niehs.nih.gov/about/PL106545.htm>) establishes ICCVAM as a permanent interagency committee of the NIEHS under the NICEATM. NICEATM administers the ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of U.S. Federal agencies. Additional information about ICCVAM and NICEATM can be found at the ICCVAM/NICEATM Web site: <http://iccvam.niehs.nih.gov>.

#### References

- EPA. 2002a. Health Effects Test Guidelines OPPTS 870.1100 Acute Oral Toxicity. EPA 712-C-02-190. Washington, DC: U.S. Environmental Protection Agency.
- ICCVAM. 2001a. Report of the international workshop on in vitro methods for assessing acute systemic toxicity. NIH Publication 01-4499. Research Triangle Park, NC: National Institute for Environmental Health Sciences. Available at: <http://iccvam.niehs.nih.gov/>.
- ICCVAM. 2001b. Guidance document on using in vitro data to estimate in vivo starting doses for acute toxicity. NIH Publication 01-4500. Research Triangle Park, NC: National Institute for Environmental Health Sciences. Available at: <http://iccvam.niehs.nih.gov/>. OECD. 2001a.

Guideline for Testing of Chemicals, 425, Acute Oral Toxicity—Up-and-Down Procedure. Paris France: OECD. Available at: <http://www.oecd.org> [accessed June 2, 2004]. OECD. 2001b. Guideline for Testing of Chemicals, 423, Acute Oral Toxicity—Acute Toxic Class Method. Paris France: OECD.

Dated: March 9, 2006.

**Samuel H. Wilson,**

*Deputy Director, National Institute of Environmental Health Sciences and National Toxicology Program.*

[FR Doc. E6-4075 Filed 3-20-06; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Skeletal Biology.

*Date:* March 27, 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:* 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) 594-1787. [chenp@csr.nih.gov](mailto:chenp@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Computational Modeling and Development.

*Date:* April 5, 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:* Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892. (301) 435-1021. [duperes@csr.nih.gov](mailto:duperes@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Musculoskeletal Rehabilitation Sciences.

*Date:* April 7, 2006.

*Time:* 1 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:* John P. Holden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016J, MSC 7814, Bethesda, MD 20892. (301) 596-8551. [holdenjo@csr.nih.gov](mailto:holdenjo@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: March 13, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2739 Filed 3-20-06; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Prospective Grant of Exclusive License: The Use of HMG-CoA Inhibitors for the Treatment of Adenocarcinomas and Ewing's Sarcoma

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent No. 6,040,334 issued March 21, 2000, entitled "Use of Inhibitors of 3-Hydroxy-3-Methylglutaryl Coenzyme A reductase as a Modality in Cancer Therapy" (HHS Reference E-146-1992/0-US-23) and related foreign applications to Nascent Oncology, Inc., which has offices in Chapel Hill, North Carolina. The patent rights in these inventions have been assigned and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the treatment of adenocarcinoma and Ewing's sarcoma with HMG-CoA inhibitors.

**DATES:** Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before May 22, 2006 will be considered.

**ADDRESSES:** Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: David A. Lambertson, PhD, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3804; Telephone: (301) 435-4632; Facsimile: (301) 402-0220; E-mail: [lambertsond@od.nih.gov](mailto:lambertsond@od.nih.gov).

**SUPPLEMENTARY INFORMATION:** The technology relates to the treatment of adenocarcinomas and Ewing's sarcoma with HMG-CoA inhibitors. Adenocarcinoma affects the inner lining or inner surface of a number of organs, and is responsible for approximately 95% of prostate cancers, over 75% of pancreatic cancers, and is the most common form of lung cancer. Ewing's sarcoma is a bone tumor typically attacking the long bones. Current methods of treating these cancers include surgery, chemotherapy, radiation therapy or a combination thereof.

The current technology involves the use of HMG-CoA inhibitors (such as lovastatin or simvastatin) to treat adenocarcinomas and Ewing's sarcoma. HMG-CoA inhibitors have been approved for use in the treatment of high cholesterol in humans, with typical doses of 10mg, 20mg or 40mg. This technology recommends using higher doses (based on the weight of the patient) for the treatment of cancer.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available

for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 13, 2006.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. E6-4074 Filed 3-20-06; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Prospective Grant of Exclusive License: The Use of IL13-PE38 for the Treatment of Asthma and Pulmonary Fibrosis

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application No. 60/337,179 filed December 4, 2001, entitled "IL-13 Receptor-Targeted Immunotoxins Ameliorates Symptoms of Asthma and of Allergy" [HHS Reference No. E-296-2001/0-US-01]; PCT Application No. PCT/US02/00616 filed February 28, 2002, entitled "Alleviating Symptoms of TH2-Like Cytokine Mediated Disorders by Reducing IL-13 Receptor-Expressing Cells in the Respiratory Tract" [HHS Reference No. E-296-2001/0-PCT-02], U.S. Patent Application No. 10/497,804 filed June 4, 2004, entitled "Alleviating Symptoms of TH2-Like Cytokine Mediated Disorders by Reducing IL-13 Receptor-Expressing Cells in the Respiratory Tract" [HHS Reference No. E-296-2001/0-US-03], Australian Patent Application No. 2002258011 filed June 8, 2004, entitled "Alleviating Symptoms of TH2-Like Cytokine Mediated Disorders by Reducing IL-13 Receptor-Expressing Cells in the Respiratory Tract" [HHS Reference No. E-296-2001/0-AU-04], Canadian Patent Application No. 2469082 filed February 28, 2002, entitled "Chimeric Molecule for the Treatment of TH2-Like Cytokine Mediated Disorders" [HHS Reference No. E-296-2001/0-CA-05], and European Patent Application No. 02727815.9 filed June 29, 2004 entitled "Alleviating Symptoms of TH2-Like

Cytokine Mediated Disorders by Reducing IL-13 Receptor-Expressing Cells in the Respiratory Tract" [HHS Reference No. E-296-2001/0-EP-06], including background patent rights to U.S. Patent No. 4,892,827, issued on January 9, 1990, entitled "Recombinant Pseudomonas Exotoxins: Construction of an Active Immunotoxin with Low Side Effects" [HHS Reference No. E-385-1986/0-US-01], U.S. Patent No. 5,919,456, issued on July 6, 1999, entitled "IL-13 Receptor Specific Chimeric Proteins" [HHS Reference No. E-266-1994/0-US-07], U.S. Patent 6,518,061, issued on February 11, 2003, entitled "IL-13 Receptor Specific Chimeric Proteins and Uses Thereof" [HHS Reference No. E-266-1994/0-US-08], to NeoPharm, Inc., which has offices in Waukegan, Illinois. The patent rights in these inventions have been assigned and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the treatment of asthma and pulmonary fibrosis with IL13-PE38.

This notice replaces the Prospective Grant notice published in the **Federal Register** on Monday, March 6, 2006 (71 FR 11213).

**DATES:** Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before May 22, 2006 will be considered.

**ADDRESSES:** Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: David A. Lambertson, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3804; Telephone: (301) 435-4632; Facsimile: (301) 402-0220; E-mail: [lambertsond@od.nih.gov](mailto:lambertsond@od.nih.gov).

**SUPPLEMENTARY INFORMATION:** The technology relates to the treatment of asthma and pulmonary fibrosis. When airway inflammation occurs (e.g., during an asthmatic attack or a response to an allergen), the number of cells that produce the receptor for IL-13 increases in the lungs. When IL-13 interacts with the receptor, an inflammatory response is induced; when this occurs in the lungs, it leads to the symptom of constricted breathing. Blocking the interaction between IL-13 and its receptors on the cells has been shown to reduce the inflammatory response.

A chimeric molecule was developed that comprised both an IL-13 domain

(capable of interacting with its cognate receptor) and a toxin domain. This molecule has the capacity to interact with and kill IL-13 receptor expressing cells. The invention relates to a method of treating asthma or pulmonary fibrosis by administering a chimeric molecule comprising a toxin linked to an IL-13 targeting moiety (e.g., IL13-PE38). By administering the toxin in this form, cells involved in airway inflammation can be selectively targeted and killed, thereby alleviating the symptom of constricted breathing.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 14, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6-4078 Filed 3-20-06; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[USCG-2006-24163]

### National Environmental Policy Act; Environmental Impact Statement on U.S. Coast Guard Pacific Area Operations

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of intent; request for public comments.

**SUMMARY:** The Coast Guard announces its intent to prepare an Environmental Impact Statement (EIS) to review possible changes to the Coast Guard's operations in the areas of responsibility for Coast Guard Districts 11 and 13 (California, Oregon and Washington) and requests public comments. The EIS

will analyze the environmental impacts of Coast Guard vessel and air operations when engaged in the following missions and activities: law enforcement, national security, search and rescue, aids to navigation, and oil pollution and vessel grounding response.

Publication of this notice begins the official scoping process that will help identify alternatives and refine the scope of environmental issues to be addressed in the EIS. This notice requests public participation in the scoping process for this Coast Guard action, provides information on how to participate, and identifies a set of preliminary alternatives to serve as a starting point for discussion.

**DATES:** Comments and related material must reach the Docket Management Facility on or before May 5, 2006.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG-2006-24163 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

- (1) Electronically through the Web site for the Docket Management System at <http://dms.dot.gov>.
- (2) By mail to the Docket Management Facility, (USCG-2006-24163), U.S. Department of Transportation, Room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.
- (3) By fax to the Docket Management Facility at 202-493-2251.
- (4) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, contact Frank Esposito, Coast Guard, ([fesposito@comdt.uscg.mil](mailto:fesposito@comdt.uscg.mil)) or 2100 2nd St., SW., Washington, DC 20593. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-493-0402.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

All comments received will be posted, without change, to <http://dms.dot.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

**Submitting comments:** If you submit a comment, please include your name and address, identify the docket number for

this notice (USCG-2006-24163) and give the reason for each comment. You may submit your comments by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period.

#### Viewing comments and documents:

To view comments, go to <http://dms.dot.gov> at any time, click on "Simple Search," enter the last five digits of the docket number for this rulemaking, and click on "Search." You may also visit the Docket Management Facility in room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Privacy Act:** Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov>.

If you wish to be added to the mailing list for this project, you may make a request through the project Web site, by mail to the docket at Docket Management Facility, (USCG-2006-24163), U.S. Department of Transportation, Room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001, or by fax to the Docket Management Facility at 202-493-2251.

#### Background

The Coast Guard is one of the country's five armed services and the nation's oldest maritime agency. Positioned within the Department of Homeland Security, the Coast Guard is the only maritime service with regulatory and law enforcement authority, military capabilities, and humanitarian operations. Coast Guard activities encompass critical elements of Homeland Security operations in littoral regions, including port security and safety, marine environmental response, maritime interception, coastal control, and maritime force protection. More than two centuries of littoral operations

at home and overseas have honed the Coast Guard's skills most needed to support the nation's military and naval strategies for the 21st century. The Coast Guard has five primary missions, including: Maritime Safety, Maritime Mobility, Maritime Security, National Defense, Protection of Natural Resources.

The Coast Guard has the authority under Federal laws to carry out programs, in consultation with the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS), to protect and conserve threatened and endangered marine species and their habitats. In doing so, the Coast Guard must balance the increasing and competing demands of environmental protection and natural resource enhancement while meeting other mission requirements.

A vital component of the Coast Guard's natural resource protection program is Ocean Steward, its 1999 strategic plan for helping the nation recover and maintain healthy populations of marine protected species. Ocean Steward has two general emphases: enforcement and conservation. Coast Guard objectives include assisting in preventing the decline of marine protected species populations, promoting the recovery of marine protected species and their habitats, partnering with other agencies and organizations to enhance stewardship of marine ecosystems and ensuring internal compliance with appropriate legislation, regulations and management practices. Another important component of the Coast Guard's natural resource protection program is Ocean Guardian, its strategic plan for fisheries management and enforcement. Its primary goal is to provide effective enforcement in support of the national goals for fisheries resource management and conservation. Ocean Steward and Ocean Guardian complement each other and provide a comprehensive framework for the Coast Guard's efforts to ensure the nation's waterways and their ecosystems remain productive by protecting all of the nation's marine protected species and marine protected areas from degradation.

#### Proposed Action

The Coast Guard may be able to change some of its operations in order to better support conservation and recovery of marine protected species and marine protected areas within the maritime and coastal areas of Coast Guard Districts 11 and 13 (California,

Oregon, and Washington). The Coast Guard is preparing an EIS to review the effects of its PACAREA operations on the maritime and coastal environment in these two districts. If the EIS leads the USCG to conclude that there will be significant negative environmental impacts without changes to internal operations as they pertain to these missions and activities, the USCG proposes, consistent with national security concerns, to employ new measures and guidance to avoid or minimize these impacts. Specifically, the EIS will focus on the environmental impacts of Coast Guard vessel and air operations on marine protected species and marine protected areas when engaged in the following routine missions and activities: law enforcement, national security, search and rescue, aids to navigation, and oil pollution and vessel grounding response. These operations will be catalogued and evaluated to determine whether there is cause to augment or modify any Coast Guard process or procedure so as to avoid or minimize significant adverse impact on the indicated environment.

As is standing policy for the Coast Guard, the agency is committed to conducting their operations in a manner that supports conservation and recovery of protected marine protected species and marine protected areas. Preparation of this EIS is a proactive measure that will provide the assessment necessary to enhance Coast Guard fulfillment of its marine resource protection mission, without compromising its ability to perform other missions. This action will further the Coast Guard environmental compliance mission while recognizing and supporting accomplishment of the missions assigned to the Coast Guard by Congress and the Executive Branch.

#### Alternatives

The Coast Guard will evaluate a range of alternatives in the Draft EIS based on a suite of mitigation measures, within its command authority, developed to minimize one or more of any determined environmental impacts incidental to Pacific Area operations within the last four years. Viable alternatives will include new measures and guidance, as well as modifications to existing PACAREA operational directives or operating procedures, which have the potential to enhance living marine resource protection by avoiding or minimizing the environmental impact of Coast Guard actions.

Examples of viable alternatives include, but are not limited to, (1) No Action Alternative; (2) enhanced

protected species and area training for vessels; (3) enhanced protected species and area training for Air Station flight crews; (4) implementation of mandatory speed restrictions for Coast Guard vessels transiting within protected species migratory or high-use areas during non-emergency operations; and (5) implementation of a mandatory Whale Reporting Program for Coast Guard vessels and aircraft. These alternatives are described in more detail below. An array of specific alternatives will be developed based on issues raised during the public scoping period. The probable environmental, biological, cultural, social, and economic consequences of these alternatives and other activities under Coast Guard command that may cumulatively impact the environment are expected to be considered in the draft EIS.

*Alternative 1—No Action Alternative:* Under this alternative, the Coast Guard would continue its existing operations, without augmentation or modification, to conserve protected marine protected species and marine protected areas by balancing its current level of effort with other mission responsibilities and operational tempo. Current protection efforts include:

- Establishing and maintaining a Protected Living Marine Resource Program (PLMRP) at each District consisting of the following:
  - Descriptions of areas of special interest including designated critical habitat, marine mammal high-use areas, national marine sanctuaries, national wildlife refuges, and areas of special biological significance.
  - Enforcement procedures and guidance specific to the protected species concerns and areas within their area of responsibility (AOR).
  - Marine animal response protocols (including notification and reporting requirements) for entangled, stranded, injured or dead animals and corresponding contact information.
  - Operating procedures and directives for Coast Guard operation of its vessels and aircraft designed to minimize negative interactions with marine protected species and within marine protected areas.
  - Identification of local NMFS-approved stranding and disentanglement networks, and notification of protected species stranding, entanglement, injury or death.
- Instituting HQ, Area, and District operating procedures and directives for Coast Guard operation of its vessels and aircraft designed to minimize negative interactions with marine protected species and within marine protected



areas, including formalized speed and approach guidance around marine mammals.

- Enforcing the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), National Marine Sanctuaries Act (NMSA), and other pertinent environmental regulations.

- Participating in regional multi-agency working groups, recovery teams, implementation teams, take reduction teams, sanctuary advisory councils and task forces.

- Maintaining properly trained look-outs aboard vessels at all times.

- Establishing Memorandums of Agreement (MOAs) with National Marine Sanctuaries (NMSs) outlining procedures for coordinating enforcement activities.

- Conducting routine surveillance of NMSs concurrently with other Coast Guard operations, and providing specific targeted or dedicated law enforcement as appropriate. Sanctuary surveillance and enforcement is incorporated into routine patrol orders where feasible.

- Providing other agencies with platforms to conduct critical marine protected species research and recovery efforts during stranding and recovery operations, subject to availability of resources.

- Providing applicable marine mammal specific training through Coast Guard Regional Fisheries Training Centers to help prevent adverse interactions with marine mammals.

- Participating in NMFS' Marine Mammal Health and Stranding Response Program as a Co-Investigator. Via this designation, Coast Guard personnel provide the following support to NMFS with regard to distressed marine mammals: (a) Temporarily restraining and/or holding in captivity, (b) disentangling, (c) transporting, (d) attaching tags, (e) euthanizing, and (f) collecting samples.

- Implementing formal guidelines for disposal of animal carcasses.

- Providing opportunistic marine mammal sighting information to the National Marine Mammal Laboratory's Platforms of Opportunity Program (POP).

- Investigating and modifying procedures as needed in response to all complaints and concerns regarding environmental disturbance incidental to operations.

**Alternative 2—Enhance protected species and area training for vessel crews:** This alternative would include all of the actions of Alternative 1, as well as possible modifications for Coast Guard Officer on Deck (OOD), boat operator and look-out training for

protected species identification, behavioral characteristic recognition, spotting techniques, and vessel operation around protected species and in protected areas. The Coast Guard would continue to post a look-out on its vessels. Posting a look-out and identifying and avoiding objects in the water are standard operating procedures aboard Coast Guard vessels of all sizes. This measure ensures the safety of the crew, minimizes vessel damage, and protects wildlife in the area. However, marine mammals and turtles are often very difficult to spot, and collisions may still occur, especially at night or if weather conditions are adverse (e.g., foggy or windy). Spotting marine mammals and turtles, and maneuvering around them is an acquired skill that comes with experience and education.

**Alternative 3—Enhance protected species and area training for Air Station flight crews:** This alternative would include all of the actions of Alternative 1, as well as possible modifications for Coast Guard Air Station flight crew training for protected species identification, behavioral characteristic recognition, spotting techniques, and aircraft operation around protected species and in protected areas.

**Alternative 4—Mandatory vessel speed restrictions for Coast Guard vessels transiting protected species migratory and high-use areas during non-emergency operations:** In addition to all the actions under Alternative 1, this alternative would establish mandatory speed limits for Coast Guard vessels operating in known protected species migratory or high-use areas under normal circumstances (not to include emergency operations). Emergency operations are defined as those operations for which rapid response is required to avoid the loss of life and property (e.g., Search and Rescue). They include urgent law enforcement incidents and matters of national security, and are defined by operational commanders on a case-by-case basis. The mandatory speed limit would only apply during non-emergency operations such as area familiarization trips, routine law enforcement patrols, and training exercises.

**Alternative 5—Mandatory Whale Reporting Program for Coast Guard vessels and aircraft:** In addition to all of the actions under Alternative 1, this alternative would establish a real-time web-based Whale Reporting Program within the Coast Guard. This program would be maintained centrally by the PACAREA Office and would collect vital information on real-time locations of live, dead, injured, or entangled

whales. All units would be required to report the following information for any whale sighting: time and location of sighting, distinctive features of the animal and its estimated length, signs of injury or entanglement, description of behavior and injuries, condition of carcass for dead whales, and contact information of reporter. Reports could be provided via phone, email, or fax. The website would allow for regional sorting so that in preparation for (or during) a patrol, units would be able to log on to the website and receive vital real-time regional sighting information for the area in which they will be transiting/patrolling.

#### Public Involvement and Scoping Meetings,

Public scoping meetings will be held as follows:

1. Tuesday, April 4, 2006, Oakland, California—Informational Open House, 4–6 p.m., Scoping Comment Meeting, 7–9 p.m., Waterfront Plaza Hotel, Ten Washington Street, Oakland, CA 94607, (415) 486–8148.

2. Thursday, April 6, 2006, 7–10 p.m., Seattle, WA—Informational Open House, 4–6 p.m., Scoping Comment Meeting, 7–9 p.m., Seattle Hilton, 1301 6th Avenue, Seattle, Washington 98101, (206) 695–6060.

**Request for Comments:** The Coast Guard provides this notice to advise the public and other agencies of the Coast Guard's intentions, to obtain suggestions and information on the scope of issues to include in the EIS, and to request comments from those parties that may be interested or affected by these proposed alternatives. Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action and all significant issues are identified. The Coast Guard requests that comments be as specific as possible. In particular, the agency requests information regarding: (1) Examples of positive and negative impacts of Coast Guard operations and activities on marine resources, species and areas within California, Oregon, and Washington, (2) suggested measures to avoided or reduce negative operational impacts on the environment (3) comments regarding alternatives already under consideration, (4) suggestions of additional alternatives to consider, and (5) maps, data sources and specific information regarding distribution and abundance of marine protected species within California, Oregon, and Washington, as well specific information about the status of or threats to these species.



Dated: March 14, 2006.

**S.D. Genovese,**

*Captain, U.S. Coast Guard, Chief, Office of Law Enforcement.*

[FR Doc. E6-4021 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4950-FA-05]

### Housing Counseling Program; Announcement of Funding Awards for Fiscal Year 2005

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C 3545), this announcement notifies the public of funding decisions made by the Department in a Super Notice of Funding Availability (NOFA) competition for funding of HUD-approved counseling agencies to provide counseling services. Appendix A contains the names and addresses of the agencies competitively selected for funding and the award amounts. Intermediaries are listed first and subsequent awards are grouped by their respective HUD Homeownership Center. Additionally, this announcement lists the noncompetitive housing counseling awards made by the Department.

**FOR FURTHER INFORMATION CONTACT:**

Ruth Román, Director, Program Support Division, Room 9274, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-0317. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service on 800-877-8339. (This is a toll free number.)

**SUPPLEMENTARY INFORMATION:** The Housing Counseling Program is authorized by Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). HUD enters into agreement with qualified public or private nonprofit organizations to provide housing counseling services to low- and moderate-income individuals and families nationwide. The services include providing information, advice and assistance to the homeless, renters, first-time homebuyers, homeowners, and senior citizens in areas such as pre-purchase counseling, financial

management, property maintenance and other forms of housing assistance to help individuals and families improve their housing conditions and meet the responsibilities of tenancy and homeownership.

HUD funding of approved housing counseling agencies is not guaranteed and when funds are awarded, a HUD grant does not cover all expenses incurred by an agency to deliver housing counseling services. Counseling agencies must actively seek additional funds from other sources such as city, county, state and federal agencies and from private entities to ensure that they have sufficient operating funds. The availability of Housing Counseling grants depends upon appropriations and the outcome of the award competition.

The 2005 grantees announced in Appendix A of this notice were selected for funding through a competition announced in a NOFA published in the *Federal Register* on March 21, 2005 (70 FR 13806) for the Housing Counseling Program. Applications were scored and selected for funding on the basis of selection criteria contained in the NOFA. HUD awarded \$41,706,033 in housing counseling grants to 383 housing counseling organizations nationwide: 349 local agencies, 18 intermediaries, and 16 State housing finance agencies. Included in this figure is: \$2,535,135 awarded to six intermediaries, sixteen State housing finance agencies (SHFAs) and thirty-one local housing counseling agencies (LHCAs) for the purpose of combating predatory lending; \$1,435,711 awarded to five intermediaries, two SHFAs and thirty-four LHCAs for counseling in conjunction with HUD's Homeownership Voucher Program; and \$394,000 awarded to three intermediaries, one SHFA and three local organizations for provision of counseling services to families and individuals living in the Colonias, unincorporated communities in the southwest border region of the United States; and \$3,000,000 awarded to the American Association of Retired Persons (AARP) to provide housing counseling services related to the Home Equity Conversion Mortgage (HECM) Program.

Additionally, HUD awarded a noncompetitive grant in the amount of \$800,000 to the National Foundation for Credit Counseling (NFCC) to provide counseling services to senior citizens that are eligible for HECM counseling.

The Catalog of Federal Domestic Assistance number for the Housing Counseling Program is 14.169.

Dated: March 3, 2006.

**Brian D. Montgomery,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

### Appendix A—Fiscal Year 2005 Housing Counseling Grants

#### Intermediary Organizations (18)

Headquarters SF-HUD

- AARP Foundation 601 E. Street, NW, Washington, DC 20049, Grant Type: Comprehensive, Amount Awarded: \$999,900.
- Acorn Housing Corporation, 846 N Broad St, 2nd floor, Philadelphia, PA 19130-2234, Grant Type: Comprehensive, Amount Awarded: \$1,197,255.
- Catholic Charities USA, 1731 King St, Ste 200, Alexandria, VA 22314-2720, Grant Type: Comprehensive, Amount Awarded: \$1,130,770.
- Citizens' Housing and Planning Association, Inc., 18 Tremont Street, Suite 401, Boston, MA 02108-, Grant Type: Comprehensive, Amount Awarded: \$801,700.
- Homefree—USA, 318 Riggs Road NE, Washington, DC 20011-2534, Grant Type: Comprehensive, Amount Awarded: \$997,804.
- Housing Opportunities, Inc., 303-305 E. 8th Avenue, Homestead, PA 15120-1517, Grant Type: Comprehensive, Amount Awarded: \$997,804.
- Mission of Peace, Windmill Place, 877 East Fifth Ave., Flint, MI 48503-, Grant Type: Comprehensive, Amount Awarded: \$826,729.
- Money Management International Inc., 9009 West Loop South, Suite 700, Houston, TX 77096-1719, Grant Type: Comprehensive, Amount Awarded: \$718,000.
- National Association of Real Estate Brokers—Investment Division, Inc., 1301 85th Ave, Oakland, CA 94621-1605, Grant Type: Comprehensive, Amount Awarded: \$931,320.
- National Council of La Raza, 1126 16th Street, NW., Washington, DC 20036-, Grant Type: Comprehensive, Amount Awarded: \$1,150,000.
- National Credit Union Foundation, 601 Pennsylvania Avenue, NW, South Building, Suite 600, Washington, DC 20004-2601, Grant Type: Comprehensive, Amount Awarded: \$701,383.
- National Foundation for Credit Counseling, Inc., 801 Roeder Road, Suite 900, Silver Spring, MD 20910-3372, Grant Type: Comprehensive, Amount Awarded: \$1,443,593.
- National Urban League, 120 Wall Street, New York, NY 10005-, Grant Type: Comprehensive, Amount Awarded: \$997,804.
- Neighborhood Reinvestment Corporation, 1325 G St NW, Suite 800, Washington, DC 20005-3104, Grant Type: Comprehensive, Amount Awarded: \$1,370,440.
- Rural Community Assistance Corporation, 3120 Freeboard Drive, Suite 201, West Sacramento, CA 95691, Grant Type: Comprehensive, Amount Awarded: \$513,364.
- Structured Employment Economic Development Co, 915 Broadway, 17th

- Floor, New York, NY 10010-, Grant Type: Comprehensive, Amount Awarded: \$997,804.
- The Housing Partnership Network, 160 State Street, 5th Fl, Boston, MA 02109-, Grant Type: Comprehensive, Amount Awarded: \$1,663,050.
- West Tennessee Legal Services, Incorporated, 210 West Main Street, P.O. Box 2066, Jackson, TN 38302-2066, Grant Type: Comprehensive, Amount Awarded: \$826,729.
- Local Housing Counseling Agencies (347)*
- Atlanta (LHCA-COMP)
- Access Living of Metropolitan Chicago, 614 Roosevelt Road, Chicago, IL 60607-, Grant Type: Comprehensive, Amount Awarded: \$17,107.
- Affordable Housing Coalition of Asheville and Buncombe Counties, Inc., 34 Wall Street, Suite 607, Asheville, NC 28801-, Grant Type: Comprehensive, Amount Awarded: \$48,436.
- Affordable Housing Corporation, 812 South Washington Street, Marion, IN 46953, Grant Type: Comprehensive, Amount Awarded: \$40,000.
- Alabama Council on Human Relations, Inc., 319 W Glenn Ave, PO Box 409, Auburn, AL 36831-0409, Grant Type: Comprehensive, Amount Awarded: \$18,000.
- Appalachian Housing Redevelopment Corporation, 800 Avenue B, Rome, GA 30162-, Grant Type: Comprehensive, Amount Awarded: \$21,322.
- Area Committee to Improve Opportunities Now, Inc., 594 Oconee Street, Athens, GA 30603, Grant Type: Comprehensive, Amount Awarded: \$29,823.
- Campbellsville Housing and Redevelopment Authority, 400 Ingram Ave, PO Box 597, Campbellsville, KY 42718-1627, Grant Type: Comprehensive, Amount Awarded: \$20,138.
- Carolina Regional Legal Services Corp, 279 W Evans St, PO Box 479, Florence, SC 29503, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- CCCS of West FL DBA Allvista Solutions, 14 Palafox Place, PO Box 950, Pensacola, FL 32502, Grant Type: Comprehensive, Amount Awarded: \$25,000.
- CDBG Operations Corporation, River Park Dr. 3rd Floor, East St Louis, IL 62201-3022, Grant Type: Comprehensive, Amount Awarded: \$43,400.
- Center for Pan Asian Community Services, Inc, 3760 Park Avenue, Doraville, GA 30340-, Grant Type: Comprehensive, Amount Awarded: \$23,500.
- Central Florida Community Development Corporation, 847 Orange Avenue, P.O. Box 15065, Daytona Beach, FL 32114-, Grant Type: Comprehensive, Amount Awarded: \$21,322.
- Central Illinois Debt Management & Credit Education, Inc., AKA CCCS of Central IL, 222 E. North Street, Decatur, IL 62523-, Grant Type: Comprehensive, Amount Awarded: \$31,941.
- Choanoke Area Development Association, 120 Sessoms Drive, Rich Square, NC 27869, Grant Type: Comprehensive, Amount Awarded: \$34,058.
- Citizens for Affordable Housing, Terrace 1, 295 Plus Park Blvd., Suite 105, Nashville, TN 37217, Grant Type: Comprehensive, Amount Awarded: \$19,215.
- City of Albany Georgia, 230 South Jackson St, Ste 315, Albany, GA 31701-, Grant Type: Comprehensive, Amount Awarded: \$49,892.
- City of Bloomington, 401 N Morton St, P.O. Box 100, zip # 47402, Bloomington, IN 47404-3729, Grant Type: Comprehensive, Amount Awarded: \$32,569.
- Clinch-Powell Resource Conservation and Development Area, P.O. Box 379, 7995 Rutledge Pike, Rutledge, TN 37861, Grant Type: Comprehensive, Amount Awarded: \$17,107.
- Cobb Housing, Incorporated, 268 Lawrence St, Suite 100, Marietta, GA 30060, Grant Type: Comprehensive, Amount Awarded: \$36,176.
- Columbus Housing Initiative, Inc., 18 11th Street, Columbus, GA 31901-, Grant Type: Comprehensive, Amount Awarded: \$23,429.
- Community Action Agency of Northwest Alabama, Inc., 745 Thompson St, Florence, AL 35630-, Grant Type: Comprehensive, Amount Awarded: \$30,000.
- Community Action Partnership of N. AL, Inc. 1909 Central Parkway SW., Decatur, AL 35601-, Grant Type: Comprehensive, Amount Awarded: \$43,660.
- Community Action Partnership, Huntsville/Madison & Limestone Counties, Inc., 3516 Stringfield Rd, PO Box 3975, Huntsville, AL 35810-1758, Grant Type: Comprehensive, Amount Awarded: \$17,107.
- Community Action Program of Evansville & Vanderburgh County, Inc., 27 Pasco Avenue, Evansville, IN 47713, Grant Type: Comprehensive, Amount Awarded: \$30,000.
- Community and Economic Development Association of Cook County Inc., 208 S La Salle St, Ste 1900, Chicago, IL 60604-1104, Grant Type: Comprehensive, Amount Awarded: \$27,706.
- Community Enterprise Investments, Incorporated, 302 North Barcelona St, Pensacola, FL 32502, Grant Type: Comprehensive, Amount Awarded: \$25,000.
- Community Housing Initiative, Inc, 3033 College Wood Drive, PO Box 410522, FL 32941-0522, Melbourne, FL 32934, Grant Type: Comprehensive, Amount Awarded: \$20,413.
- Community Investment Corporation of Decatur, Inc, 2121 S. Imboden Court, Decatur, IL 62521-, Grant Type: Comprehensive, Amount Awarded: \$21,322.
- Community Service Programs of West Alabama, Inc., 601 17th St, Tuscaloosa, AL 35401-4807, Grant Type: Comprehensive, Amount Awarded: \$34,058.
- Consumer Credit Counseling Service of Forsyth County, Inc., 8064 North Point Boulevard, Suite 204, 206 North Spruce St., Suite 2-B, Winston Salem, NC 27106, Grant Type: Comprehensive, Amount Awarded: \$100,000.
- Consumer Credit Counseling Service of WNC, Inc., 50 S French Broad Ave, Ste 227, Asheville, NC 28801-3217, Grant Type: Comprehensive, Amount Awarded: \$60,000.
- Consumer Credit Counseling Service of Central FL and the FL Gulf Coast, 3670 Maguire Boulevard, Suite 103, Orlando, FL 32803, Grant Type: Comprehensive, Amount Awarded: \$46,048.
- Cooperative Resource Center, Inc, 191 Edgewood Avenue, S.E., Atlanta, GA 30303-, Grant Type: Comprehensive, Amount Awarded: \$47,740.
- Deerfield Beach Housing Authority, 533 S. Dixie Hwy, Deerfield Beach, FL 33441, Grant Type: Comprehensive, Amount Awarded: \$25,000.
- DeKalb/Metro Housing Counseling Center, 4151 Memorial Drive, Suite 207B, Decatur, GA 30032, Grant Type: Comprehensive, Amount Awarded: \$50,000.
- Du Page Homeownership Center, Inc, 1333 N Main St, Wheaton, IL 60187-3579, Grant Type: Comprehensive, Amount Awarded: \$29,823.
- Durham Regional Financial Center DBA Durham Regional Community Development Group, 315 East Chapel Hill Street, Suite 301, Durham, NC 27701-, Grant Type: Comprehensive, Amount Awarded: \$23,429.
- East Athens Development Corporation, 410 McKinley Drive, Suite 101, Athens, GA 30601-, Grant Type: Comprehensive, Amount Awarded: \$50,825.
- Economic Opportunity for Savannah Chatham County Area, Inc., 618 W Anderson St, PO Box 1353, Savannah, GA 31415, Grant Type: Comprehensive, Amount Awarded: \$95,578.
- Elizabeth City State University, 1704 Weeksville Rd., Elizabeth City, NC 27909, Grant Type: Comprehensive, Amount Awarded: \$42,325.
- Family Counseling Center of Brevard, Inc, 220 Coral Sands Dr, Rockledge, FL 32955-2702, Grant Type: Comprehensive, Amount Awarded: \$27,706.
- Family Service Center of South Carolina, 1800 Main St, PO Box 7876, Columbia, SC 29201-2433, Grant Type: Comprehensive, Amount Awarded: \$21,322.
- Family Services Inc, 4925 Lacross St. Ste. 215, North Charleston, SC 29406-, Grant Type: Comprehensive, Amount Awarded: \$43,660.
- Financial Counselors of America, 3294 Poplar Ave., Suite 304, Memphis, TN 38111, Grant Type: Comprehensive, Amount Awarded: \$25,588.
- Gainesville-Hall County Neighborhood Revitalization, Inc, 2380 Murphy Blvd, P.O. Box 642, Gainesville, GA 30503-, Grant Type: Comprehensive, Amount Awarded: \$40,000.
- Goodwill Industries Manasota, Inc., 8490 Lockwood Ridge Road, Sarasota, FL 34243, Grant Type: Comprehensive, Amount Awarded: \$48,436.
- Greater Ocala Community Development Corporation, 1749 W. Silver Springs Boulevard, P.O. Box 5582 (zip code 34478), Ocala, FL 34475, Grant Type: Comprehensive, Amount Awarded: \$19,215.
- Greater Southwest Development Corporation, 2601 West 63rd Street, Chicago, IL 60629,

- Grant Type: Comprehensive, Amount Awarded: \$25,588.
- Greensboro Housing Coalition, 122 N. Elm Street, Suite 608, Greensboro, NC 27401, Grant Type: Comprehensive, Amount Awarded: \$35,344.
- Greenville County Human Relations Commission, 301 University Ridge, Suite 1600, Greenville, SC 29601-3660, Grant Type: Comprehensive, Amount Awarded: \$34,058.
- Gwinnet Housing Resouce Partnership D/B/A the Impact Group, 2825 Breckinridge Blvd., Suite 160, Duluth, GA 30096-, Grant Type: Comprehensive, Amount Awarded: \$95,578.
- Haven Economic Development Inc., 8612 State Road 84, Davie, FL 33324-, Grant Type: Comprehensive, Amount Awarded: \$36,176.
- HCP of Illinois, Inc., 28 E. Jackson Blvd, #1109, Chicago, IL 60604-, Grant Type: Comprehensive, Amount Awarded: \$31,941.
- Highland Family Resource Center, Inc, 1305 N. Weldon Street, P.O. Box 806, Gastonia, NC 28053-, Grant Type: Comprehensive, Amount Awarded: \$40,000.
- Hoosier Uplands Economic Development Corporaton, 521 W Main St, PO Box 9, Mitchell, IN 47446-1410, Grant Type: Comprehensive, Amount Awarded: \$20,000.
- Hope of Evansville, Inc, 608 Cherry St, Evansville, IN 47713-, Grant Type: Comprehensive, Amount Awarded: \$31,000.
- Housing and Economic Leadership Partners, Inc, 485 Huntington Road, Suite 200, Athens, GA 30606-, Grant Type: Comprehensive, Amount Awarded: \$34,058.
- Housing Authority of Birmingham District, 1826 3rd Ave S, Birmingham, AL 35233-1905, Grant Type: Comprehensive, Amount Awarded: \$36,176.
- Housing Authority of the City of Anderson, 528 West 11th St, Anderson, IN 46016-1228, Grant Type: Comprehensive, Amount Awarded: \$19,215.
- Housing Authority of the City of Fort Wayne, Indiana, 2013 S Anthony Blvd, PO Box 13489, Ft. Wayne, IN 46869-3489, Grant Type: Comprehensive, Amount Awarded: \$41,271.
- Housing Authority of the City of Hammond, 1402 173rd Street, Hammond, IN 46324-2831, Grant Type: Comprehensive, Amount Awarded: \$19,215.
- Housing Authority of the City of High Point, 500E Russell Avenue, PO Box 1779, High Point, NC 27260-, Grant Type: Comprehensive, Amount Awarded: \$50,825.
- Housing Authority of the City of Montgomery, 1020 Bell St., Montgomery, AL 36104-3056, Grant Type: Comprehensive, Amount Awarded: \$34,058.
- Housing Authority of the County of Lake, 33928 North Route 45, Grayslake, IL 60030, Grant Type: Comprehensive, Amount Awarded: \$19,215.
- Housing Authority, City of Elkhart, 1396 Benham Ave., Elkhart, IN 46516-3341, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Housing Education and Economic Development, Inc., 3405 Medgar Evers Blvd., PO Box 11853, Jackson, MS 39213-6360, Grant Type: Comprehensive, Amount Awarded: \$43,660.
- Housing Opportunities, Inc, 2801 Evans Avenue, Valparaiso, IN 46383-, Grant Type: Comprehensive, Amount Awarded: \$20,000.
- Housing Opportunity Development Corporation, 1000 Skokie Boulevard, Suite 500, Wilmette, IL 60091-, Grant Type: Comprehensive, Amount Awarded: \$17,107.
- Indianapolis Urban League, 777 Indiana Ave., Indianapolis, IN 46202-3135, Grant Type: Comprehensive, Amount Awarded: \$20,000.
- J.C. Vision and Associates, Inc., 135 G East Martin Luther King Dr., Hinesville, GA 31310, Grant Type: Comprehensive, Amount Awarded: \$29,823.
- Jacksonville Area Legal Aid, Inc., 126 W. Adams Street, Jacksonville, FL 32202-3849, Grant Type: Comprehensive, Amount Awarded: \$43,660.
- Jefferson County Housing Authority, 3700 Industrial Parkway, Birmingham, AL 35217-, Grant Type: Comprehensive, Amount Awarded: \$31,941.
- Johnston-Lee-Harnett Community Action, Inc, 1102 Massey Street, PO Drawer 711, Smithfield, NC 27577-0711, Grant Type: Comprehensive, Amount Awarded: \$20,000.
- Lake County Community Economic Development Dept., 2293 N Main St., Crown Point, IN 46307-1885, Grant Type: Comprehensive, Amount Awarded: \$23,429.
- Latin American Association, 2750 Buford Highway, Atlanta, GA 30324-, Grant Type: Comprehensive, Amount Awarded: \$31,941.
- Latin United Community Housing Association, 3541 West North Avenue, Chicago, IL 60647-, Grant Type: Comprehensive, Amount Awarded: \$46,048.
- Legal Assistance Foundation of Metropolitan Chicago, 111 West Jackson Blvd. Suite 300, Chicago, IL 60604-, Grant Type: Comprehensive, Amount Awarded: \$43,660.
- Lincoln Hills Development Corporation, 302 Main St., P.O. Box 336, Tell City, IN 47586-0336, Grant Type: Comprehensive, Amount Awarded: \$20,000.
- Memphis Area Legal Services, Inc., 109 N Main 2nd Fl, Memphis, TN 38103-, Grant Type: Comprehensive, Amount Awarded: \$34,058.
- Miami Beach Community Development Corp, 945 Pennsylvania Avenue 2nd Floor, Miami Beach, FL 33139-, Grant Type: Comprehensive, Amount Awarded: \$34,058.
- Mid-Florida Housing Partnership, Inc., 330 North Street, P.O. Box 1345, Daytona Beach, FL 32114-, Grant Type: Comprehensive, Amount Awarded: \$31,941.
- Middle Georgia Community Action Agency, Inc, 121 Prince Street, PO Box 2286, Warner Robins, GA 31093-1734, Grant Type: Comprehensive, Amount Awarded: \$48,436.
- Mobile Housing Board, 151 S. Claiborne Street, Mobile, AL 36602, Grant Type: Comprehensive, Amount Awarded: \$29,823.
- Momentive Consumer Credit Counseling Service, 615 N Alabama Street Suite 134, Indianapolis, IN 46204-1477, Grant Type: Comprehensive, Amount Awarded: \$48,436.
- Monroe-Union County Community Development Corporation, 349 East Franklin Street, P.O. Box 887, Monroe, NC 28112-, Grant Type: Comprehensive, Amount Awarded: \$40,000.
- Montgomery Community Action Committee and CDC, Inc., 1066 Adams Avenue, Montgomery, AL 36104, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Muncie Home Ownership, 407 S Walnut St., P.O. Box 93, Muncie, IN 47308-, Grant Type: Comprehensive, Amount Awarded: \$31,941.
- Neighborhood Housing Services of Chicago, 1279 N. Milwaukee, Chicago, IL 60622-5854, Grant Type: Comprehensive, Amount Awarded: \$19,215.
- Nobel Neighbors, 1345 N. Karlov, Chicago, IL 60651, Grant Type: Comprehensive, Amount Awarded: \$23,429.
- Northeastern Community Development Corporation, 154 Highway 158 East, PO Box 367, Camden, NC 27921-0367, Grant Type: Comprehensive, Amount Awarded: \$95,578.
- Northwestern Regional Housing Authority, 869 Highway 105 Ext Ste 10, PO Box 2510, Boone, NC 28607-2510, Grant Type: Comprehensive, Amount Awarded: \$29,144.
- Ocala Housing Authority, 1629 Northwest 4th Street, Ocala, FL 34475, Grant Type: Comprehensive, Amount Awarded: \$40,000.
- Opa-Locka Community Development Corporation, 490 Opa-Locka Boulevard, Suite 20, Opa-Locka, FL 33054, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Prosperity Unlimited, Inc, 1660 Garnet Street, Kannapolis, NC 28083, Grant Type: Comprehensive, Amount Awarded: \$50,000.
- Purchase Area Housing Corporation, 1002 Medical Dr., PO Box 588, Mayfield, KY 42066-0588, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Reach, Inc., 733 Red Mile Rd, Lexington, KY 40504-, Grant Type: Comprehensive, Amount Awarded: \$29,823.
- River City Community Development Corporation, 501 East Main St, Elizabeth City, NC 27909-, Grant Type: Comprehensive, Amount Awarded: \$95,112.
- Rogers Park Community Development Corporation, 1530 West Morse Avenue, Chicago, IL 60626-, Grant Type: Comprehensive, Amount Awarded: \$23,429.
- Sacred Heart Southern Missions Housing Corporation, 9260 McLemore Drive, PO Box 365, Walls, MS 38680-0365, Grant Type: Comprehensive, Amount Awarded: \$21,322.
- Sandhills Community Action Program, Inc., 103 Saunders St., PO Box 937, Carthage,

- NC 28327-0937, Grant Type: Comprehensive, Amount Awarded: \$46,048.
- South Suburban Housing Center, 18220 Harwood Avenue, Suite 1, Homewood, IL 60430-, Grant Type: Comprehensive, Amount Awarded: \$40,000.
- Southern Indiana Homeownership Inc., 501 Hart Street, P.O. Box 600, Vincennes, IN 47591-, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Statesville Housing Authority, 110 West Allison Street, Statesville, NC 28677-, Grant Type: Comprehensive, Amount Awarded: \$40,000.
- Tallahassee Lenders Consortium, Inc., 833 East Park Avenue, Tallahassee, FL 32301, Grant Type: Comprehensive, Amount Awarded: \$27,706.
- Tallahassee Urban League, Inc., 923 Old Bainbridge Road, Tallahassee, FL 32303-6042, Grant Type: Comprehensive, Amount Awarded: \$41,271.
- Tampa Bay Community Development Corporation, 2139 NE Coachman Road, Clearwater, FL 33765-, Grant Type: Comprehensive, Amount Awarded: \$25,588.
- The Center for Affordable Housing, Inc., 2524 S. Park Drive, Sanford, FL 32773, Grant Type: Comprehensive, Amount Awarded: \$31,941.
- Trident United Way, 6296 Rivers Avenue, PO Box 63305, North Charleston, SC 29419, Grant Type: Comprehensive, Amount Awarded: \$21,322.
- Twin Rivers Opportunities, Inc., 318 Craven St., PO Box 1482, New Bern, NC 28563-, Grant Type: Comprehensive, Amount Awarded: \$48,436.
- Urban League of Louisville, Inc., 1535 West Broadway, Louisville, KY 40203, Grant Type: Comprehensive, Amount Awarded: \$19,215.
- Vollintine Evergreen Community Association CDC, 1680 Jackson Ave., Memphis, TN 38107-5044, Grant Type: Comprehensive, Amount Awarded: \$25,588.
- Western Piedmont Council of Governments, 736 4th Street South-West, PO Box 9026, Hickory, NC 28602-, Grant Type: Comprehensive, Amount Awarded: \$35,000.
- Will County Center for Community Concerns, 304 N. Scott Street, Joliet, IL 60432-, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Wilmington Housing Finance and Development, Inc., 310 North Front Street, PO Box 547, Wilmington, NC 28402-, Grant Type: Comprehensive, Amount Awarded: \$50,000.
- Wilson Community Improvement Association, Inc., 504 E Green St., Wilson, NC 27893-, Grant Type: Comprehensive, Amount Awarded: \$29,823.
- Woodbine Community Organization, 222 Oriel Ave., Nashville, TN 37210-, Grant Type: Comprehensive, Amount Awarded: \$50,825.
- Denver (LHCA—COMP)
- Adams County Housing Authority, 7190 Colorado Blvd, 6th Fl, Commerce City, CO 80022-1812, Grant Type: Comprehensive, Amount Awarded: \$175,000.
- Anoka County Community Action Program, Inc., 1201 89th Ave, NE Ste 345, Blaine, MN 55434-3373, Grant Type: Comprehensive, Amount Awarded: \$60,000.
- Austin Tenants' Council, 1619 E. Cesar Chavez St., Austin, TX 78702-4455, Grant Type: Comprehensive, Amount Awarded: \$33,156.
- Avenida Guadalupe Association, 1327 Guadalupe St., San Antonio, TX 78207-, Grant Type: Comprehensive, Amount Awarded: \$30,000.
- Avenue Community Development Corporation, 2505 Washington Ave., Suite 400, Houston, TX 77007-, Grant Type: Comprehensive, Amount Awarded: \$30,000.
- Boulder County Housing Authority, 3482 North Broadway, Sundquist Bldg., Boulder, CO 80304-, Grant Type: Comprehensive, Amount Awarded: \$19,922.
- Carver County Housing and Redevelopment Authority, 705 Walnut Street, Chaska, MN 55318-, Grant Type: Comprehensive, Amount Awarded: \$126,975.
- CDC of Brownsville, 901 East Levee Street, Brownsville, TX 78520-5804, Grant Type: Comprehensive, Amount Awarded: \$34,689.
- City of Aurora Community Development Division, 9898 E. Colfax Ave., Aurora, CO 80010-, Grant Type: Comprehensive, Amount Awarded: \$100,000.
- City of Fort Worth Housing Department, 1000 Throckmorton St, Fort Worth, TX 76102, Grant Type: Comprehensive, Amount Awarded: \$147,337.
- City of San Antonio/Community Action Division, 700 So. Zarzamora, Suite 207, PO Box 839966, San Antonio, TX 78205-, Grant Type: Comprehensive, Amount Awarded: \$67,363.
- Colorado Housing Assistance Corporation, 670 Santa Fe Drive, Denver, CO 80204-, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Colorado Rural Housing Development Corporation, 3621 West 73rd Avenue, Suite C, Westminster, CO 80030-, Grant Type: Comprehensive, Amount Awarded: \$61,545.
- Community Action Agency of Oklahoma City and Oklahoma/Canadian Counties, Inc., 319 SW 25th Street, Oklahoma City, OK 73109, Grant Type: Comprehensive, Amount Awarded: \$75,207.
- Community Action for Suburban Hennepin, Incor, 33 10th Ave South, Suite 150, Hopkins, MN 55343-1303, Grant Type: Comprehensive, Amount Awarded: \$155,000.
- Community Action Project of Tulsa, 717 South Houston, Suite 200, Tulsa, OK 74127-, Grant Type: Comprehensive, Amount Awarded: \$49,909.
- Community Action Services, 815 South Freedom Blvd., Suite 100, Provo, UT 84601-, Grant Type: Comprehensive, Amount Awarded: \$52,500.
- Community Action, Incorporated of Rock and Walworth Counties, 2300 Kellogg Ave, Janesville, WI 53546-5921, Grant Type: Comprehensive, Amount Awarded: \$20,000.
- Community Development Support Association, 2615 E Randolph, Enid, OK 73701-, Grant Type: Comprehensive, Amount Awarded: \$30,000.
- Consumer Credit Counseling Service of Central Oklahoma, 3230 N. Rockwell Avenue, Bethany, OK 73008, Grant Type: Comprehensive, Amount Awarded: \$29,767.
- Consumer Credit Counseling Service, Inc., 1201 W Walnut St, PO Box 843, Salina, KS 67402-0843, Grant Type: Comprehensive, Amount Awarded: \$50,000.
- Crawford-Sebastian Community Development Coun., 4831 Armour St., PO Box 4069, Fort Smith, AR 72914-, Grant Type: Comprehensive, Amount Awarded: \$15,173.
- Dakota County Community Development Agency, 1228 Town Centre Drive, Eagan, MN 55123, Grant Type: Comprehensive, Amount Awarded: \$37,350.
- District 7 Human Resources Development Council, 7 N 31 St, PO Box 2016 Billings, MT 59103-, Grant Type: Comprehensive, Amount Awarded: \$50,000.
- Economic Opportunity Agency of Washington County, 614 E. Emma, Suite M401, Springdale, AR 72764, Grant Type: Comprehensive, Amount Awarded: \$19,922.
- Family Housing Advisory Services, Incorporate, 2416 Lake Street, Omaha, NE 68111-, Grant Type: Comprehensive, Amount Awarded: \$126,975.
- Family Management Credit Counselors, Incorporated, 1409 W 4th St, Waterloo, IA 50702-2907, Grant Type: Comprehensive, Amount Awarded: \$40,000.
- High Plains Community Development Corporation, 130 E. 2nd Street, Chadron, NE 69337-, Grant Type: Comprehensive, Amount Awarded: \$52,659.
- Home Opportunities Made Easy, Inc. (Home, Inc.), 1111 Ninth Street, Suite 210, Des Moines, IA 50314, Grant Type: Comprehensive, Amount Awarded: \$38,689.
- Home-New Mexico, Incorporated, 3900 Osuna NE, Albuquerque, NM 87109-, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Housing and Credit Counseling, Incorporated, 1195 SW Buchanan St, Ste 101, Topeka, KS 66604-1183, Grant Type: Comprehensive, Amount Awarded: \$180,000.
- Housing Authority of the City of Norman, 700 North Berry Road, Norman, OK 73069, Grant Type: Comprehensive, Amount Awarded: \$44,091.
- Housing Options Provided for the Elderly, 4265 Shaw Blvd, St. Louis, MO 63110-3526, Grant Type: Comprehensive, Amount Awarded: \$58,000.
- Housing Partners of Tulsa, Incorporated, 415 E. Independence, P.O. Box 6369, Tulsa, OK 74106-, Grant Type: Comprehensive, Amount Awarded: \$24,845.
- Housing Solutions for the Southwest, 295 Girard St, Durango, CO 81303-, Grant Type: Comprehensive, Amount Awarded: \$44,091.
- Interfaith of Natrona County, Incorporated, 1514 East 12th Street, #303, Casper, WY 82601-, Grant Type: Comprehensive, Amount Awarded: \$35,000.
- Iowa Citizens for Community Improvement, 2005 Forest Avenue, Des Moines, IA



- 50311, Grant Type: Comprehensive, Amount Awarded: \$40,000.
- KI Bois Community Action Foundation, Incorporated, 301 E Main, P.O. Box 727, Stigler, OK 74462-, Grant Type: Comprehensive, Amount Awarded: \$46,680.
- Lafayette Consolidated Government Neighborhood Counseling Services, 111 Shirley Picard Dr., Lafayette, LA 70501, Grant Type: Comprehensive, Amount Awarded: \$20,000.
- Legal Aid of Western Missouri, 1125 Grand Avenue, Suite 1900, Kansas City, MO 64106-, Grant Type: Comprehensive, Amount Awarded: \$150,000.
- Legal Services of Eastern Missouri, Incorporated, 4232 Forest Park Ave, St. Louis, MO 63108-2811, Grant Type: Comprehensive, Amount Awarded: \$34,689.
- Lincoln Action Program, Incorporated, 210 O Street, Lincoln, NE 68508-, Grant Type: Comprehensive, Amount Awarded: \$55,727.
- Mission Waco Community Development Corporation, 1525 Colcord, Waco, TX 76707, Grant Type: Comprehensive, Amount Awarded: \$32,671.
- Neighbor to Neighbor, 424 Pine Street, Suite 203, Fort Collins, CO 80524-, Grant Type: Comprehensive, Amount Awarded: \$45,000.
- New Mexico Legal Aid, Inc., 500 Copper NW, Suite 300, PO Box 25486, Albuquerque, NM 87102-, Grant Type: Comprehensive-, Amount Awarded: \$44,091.
- Northeast Denver Housing Center, 1735 Gaylord St, Denver, CO 80206-1208, Grant Type: Comprehensive, Amount Awarded: \$66,000.
- Oglala Sioux Tribe Partnership for Housing, I, Old Ambulance Building, P.O. Box 3001, Pine Ridge, SD 57770-, Grant Type: Comprehensive, Amount Awarded: \$55,727.
- Project Bravo, Incorporated, 4838 Montana Ave, El Paso, TX 79903-Grant Type: Comprehensive, Amount Awarded: \$49,909.
- Saint James Parish Department of Human Resources, 5153 Canatelle Street, PO Box 87, Convent, LA 70723-0087, Grant Type: Comprehensive, Amount Awarded: \$24,845.
- Saint Martin, Iberia, Lafayette Community Act, 501 Saint John St, PO Box 3343, Lafayette, LA 70501-5709, Grant Type: Comprehensive, Amount Awarded: \$32,000.
- Saint Paul Department of Planning and Economic Dev., 25 West 4th Street, Suite 1200, St. Paul, MN 55102-1634, Grant Type: Comprehensive, Amount Awarded: \$100,777.
- Salt Lake Community Action Program, 764 S 200 W, Salt Lake City, UT 84101-2710, Grant Type: Comprehensive, Amount Awarded: \$25,000.
- South Arkansas Community Development, 406 Clay Street, Arkadelphia, AR 71923-Grant Type: Comprehensive, Amount Awarded: \$45,000.
- Southeastern North Dakota Community Action AG, 3233 S University Dr, Fargo, ND 58104-6221, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Southern Minnesota Regional Legal Services, I, 166 E 4th St., Suite 200, St. Paul, MN 55101, Grant Type: Comprehensive, Amount Awarded: \$100,000.
- Tenant Resource Center, 1202 Williamson St., Suite A, Madison, WI 53703-Grant Type: Comprehensive, Amount Awarded: \$55,727.
- Texas Rio Grande Legal Aid, Inc., 300 S. Texas Blvd., Weslaco, TX 78596, Grant Type: Comprehensive, Amount Awarded: \$137,155.
- The Housing Authority of the City of Shawnee, 601 West 7th Street, P.O. Box 3427, Shawnee, OK 74802-3427, Grant Type: Comprehensive, Amount Awarded: \$19,922.
- United Community Center, 1028 S. 9th Street, Milwaukee, WI 53204, Grant Type: Comprehensive, Amount Awarded: \$60,000.
- Universal Housing Development Corporation, 301 E 3rd St, PO Box 846, Russellville, AR 72811-5109, Grant Type: Comprehensive, Amount Awarded: \$61,545.
- Volunteers of America of North Louisiana, 360 Jordan Street, Shreveport, LA 71101, Grant Type: Comprehensive, Amount Awarded: \$19,922.
- West Central Missouri Rural Community Action, 106 W 4th St., P.O. Box 125, Appleton City, MO 64724-, Grant Type: Comprehensive, Amount Awarded: \$24,845.
- West Central Wisconsin Community Action Agency, Inc., 525 Second Street, P.O. Box 308, Glenwood City, WI 54751, Grant Type: Comprehensive, Amount Awarded: \$43,363.
- Women's Opportunity Resource Development, Inc., 127 N Higgins Ave, Room 307, Missoula, MT 59802-4457, Grant Type: Comprehensive, Amount Awarded: \$61,545.
- Your Community Connection, 2261 Adams Ave., Ogden, UT 84401-1510, Grant Type: Comprehensive, Amount Awarded: \$18,000.
- Youth Education and Health in Souard, 1919 South Broadway, St. Louis, MO 63104-, Grant Type: Comprehensive, Amount Awarded: \$18,791.
- Philadelphia (LHCA-COMP)
- Affordable Homes of Millville Ecumenical, 518 North High Street, Millville, NJ 08332, Grant Type: Comprehensive, Amount Awarded: \$27,033.
- Albany County Rural Housing Alliance, Inc., 24 Martin Road, P.O. Box 407, Voorheesville, NY 12186-, Grant Type: Comprehensive, Amount Awarded: \$53,131.
- Allegany County Community Opportunities and Rural Development (ACCORD) Corp., 84 Schuyler Street, P.O. Box 573, Belmont, NY 14813-1051, Grant Type: Comprehensive, Amount Awarded: \$32,190.
- Alliance For Better Housing, Inc., 648 Buena Vista Drive, Kennett Square, PA 19348, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Anne Arundel County Economic Opportunity Comm, 251 West St., Annapolis, MD 21401-3427, Grant Type: Comprehensive, Amount Awarded: \$35,855.
- Arundel Community Development Service Inc., 2666 Riva Road, Suite 210, Annapolis, MD 21401-, Grant Type: Comprehensive, Amount Awarded: \$53,131.
- Asian Americans For Equality, 111 Division St., New York, NY 10002, Grant Type: Comprehensive, Amount Awarded: \$27,033.
- Belmont Shelter Corporation, 1195 Main Street, Buffalo, NY 14209-2196, Grant Type: Comprehensive, Amount Awarded: \$27,033.
- Berks Community Action Program Budget Counsel, 247 N. 5th St., Reading, PA 19601-, Grant Type: Comprehensive, Amount Awarded: \$27,033.
- Berkshire County Regional Housing Authority-H, 150 North Street, Suite 28, Pittsfield, MA 01201-, Grant Type: Comprehensive, Amount Awarded: \$34,000.
- Better Neighborhoods, Incorporated, 986 Albany St., Schenectady, NY 12307-, Grant Type: Comprehensive, Amount Awarded: \$44,403.
- Bishop Sheen Ecumenical Housing Foundation, 935 East Ave., Suite 300, Rochester, NY 14607-2216, Grant Type: Comprehensive, Amount Awarded: \$32,190.
- Blair County Community Action Agency, 2100 Sixth Avenue, Altoona, PA 16602-, Grant Type: Comprehensive, Amount Awarded: \$25,314.
- Bucks County Housing Group, 2324 Second Street Pike, Suite 17, Wrightstown, PA 18940-, Grant Type: Comprehensive, Amount Awarded: \$18,438.
- Burlington County Community Action Program, 718 Rt. 130 S., Burlington, NJ 08016-, Grant Type: Comprehensive, Amount Awarded: \$20,157.
- Center For Family Services, Incorporated, 213 W. Center Street, Meadville, PA 16335-3406, Grant Type: Comprehensive, Amount Awarded: \$16,719.
- Central Vermont Community Action Council, Inc., 195 U.S. Route 302-Berlin Barre, VT 05641-, Grant Type: Comprehensive, Amount Awarded: \$39,331.
- Chautauqua Opportunities, Incorporated, 17 W Courtney St., Dunkirk, NY 14048-2754, Grant Type: Comprehensive, Amount Awarded: \$55,249.
- Chester Community Improvement Project, 412 Avenue of the States, P.O. BOX 541, Chester, PA 19013-0541, Grant Type: Comprehensive, Amount Awarded: \$27,033.
- Children's & Family Service A/K/A Family Service Agency, 535 Marmion Avenue, Youngstown, OH 44502-2323, Grant Type: Comprehensive, Amount Awarded: \$23,036.
- Coastal Enterprises, Incorporated, 41 Water Street, P.O. Box 268, Wiscasset, ME 04578-0268, Grant Type: Comprehensive, Amount Awarded: \$33,260.
- Commission on Economic Opportunity of Luzerne, 165 Amber Lane, P.O. Box 1127, Wilkes Barre, PA 18703-1127, Grant Type:



- Comprehensive, Amount Awarded: \$18,438.
- Community Action Commission of Belmont County, 100 W. Main Street, Suite 209, Saint Clairsville, OH 43950-, Grant Type: Comprehensive, Amount Awarded: \$23,595.
- Community Action Committee of Lehigh Valley, 1337 E. 5th Street, Bethlehem, PA 18015-, Grant Type: Comprehensive, Amount Awarded: \$30,000.
- Community Action Program for Madison County, 3 East Main Street, P.O. Box 249, Morrisville, NY 13408-, Grant Type: Comprehensive, Amount Awarded: \$30,575.
- Community Action Southwest, 150 W. Beau Street, Suite 304, Washington, PA 15301-, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Community Assistance Network, 7701 Dunmanway, Dundalk, MD 21222-5437, Grant Type: Comprehensive, Amount Awarded: \$34,117.
- Community Service Network, Incorporated, 52 Broadway, Stoneham, MA 02180-1003, Grant Type: Comprehensive, Amount Awarded: \$27,033.
- Concord Area Trust for Community (CATCH), 79 South State Street, Concord, NH 03301-, Grant Type: Comprehensive, Amount Awarded: \$53,131.
- Consumer Credit and Budget Counseling, 299 S. Shore Road, Route 9 South Marmora, NJ 08223-0866, Grant Type: Comprehensive, Amount Awarded: \$16,719.
- Cortland Housing Assistance Council, Incorporate, 159 Main St., Cortland, NY 13045-, Grant Type: Comprehensive, Amount Awarded: \$16,000.
- Cypress Hills Local Development Corporation, 625 Jamaica Avenue, Brooklyn, NY 11208-1203, Grant Type: Comprehensive, Amount Awarded: \$37,593.
- Detroit Non-Profit Housing Corporation, 8904 Woodward Ave., Suite 279, Conside Center, Detroit, MI 48202-, Grant Type: Comprehensive, Amount Awarded: \$32,190.
- Fair Housing Contact Service, 333 South Main Street, Ste. 300, Akron, OH 44308, Grant Type: Comprehensive, Amount Awarded: \$27,037.
- Fair Housing Council of Northern New Jersey, 131 Main St., Suite 140, Hackensack, NJ 07601-7140, Grant Type: Comprehensive, Amount Awarded: \$20,157.
- Fair Housing Resource Center, 54 South State Street, Suite 303, Painesville, OH 44077-, Grant Type: Comprehensive, Amount Awarded: \$25,314.
- Family and Children's Association, 336 Fulton Ave., Hempstead, NY 11550-3907, Grant Type: Comprehensive, Amount Awarded: \$37,593.
- Family Service Credit Counseling, 51 11th St., Wheeling, WV 26003-2937, Grant Type: Comprehensive, Amount Awarded: \$23,595.
- Friends of the North Country, 1 Mill Street, P.O. Box 446, Keeseville, NY 12944-, Grant Type: Comprehensive, Amount Awarded: \$32,190.
- Garden State Consumer Credit Counseling, Inc./Novadebt, 225 Willowbrook Road, Freehold, NJ 07728-, Grant Type: Comprehensive, Amount Awarded: \$16,719.
- Garfield Jubilee Association, Incorporated, 5138 Penn Ave., Pittsburgh, PA 15224-1616, Grant Type: Comprehensive, Amount Awarded: \$32,190.
- Garrett County Community Action Committee, Inc., 104 E Center St., Oakland, MD 21550-1328, Grant Type: Comprehensive, Amount Awarded: \$53,131.
- Grand Rapids Urban League, 745 Eastern Ave., SE., Grand Rapids, MI 49503-5544, Grant Type: Comprehensive, Amount Awarded: \$20,157.
- Greater Boston Legal Services, 197 Friend Street, Boston, MA 02114-1802, Grant Type: Comprehensive, Amount Awarded: \$40,000.
- Greater East Side Community Association, 2804 N. Franklin Avenue, Flint, MI 48506-, Grant Type: Comprehensive, Amount Awarded: \$37,593.
- Harford County Housing Agency, 15 South Main Street, Suite 106, Bel Air, MD 21014, Grant Type: Comprehensive, Amount Awarded: \$25,314.
- Hill Development Corporation of New Haven, 649 Howard Avenue, New Haven, CT 06519-1506, Grant Type: Comprehensive, Amount Awarded: \$20,157.
- Honie Partnership, Incorporated, Rumsey Towers Building, Suite 301, 626 Towne Center Drive, Joppatowne, MD 21085, Grant Type: Comprehensive, Amount Awarded: \$27,033.
- Home Repair Services of Kent County, Inc., 1100 S. Division Avenue, Grand Rapids, MI 49507-, Grant Type: Comprehensive, Amount Awarded: \$30,471.
- Housing Authority of the County of Butler, 114 Woody Drive, Butler, PA 16001-, Grant Type: Comprehensive, Amount Awarded: \$21,876.
- Housing Council in Monroe County, Incorporate, 183 Main St., E, Suite 1100, Rochester, NY 14604-, Grant Type: Comprehensive, Amount Awarded: \$53,131.
- Housing Council of York, 35 South Duke Street, York, PA 17401-1106, Grant Type: Comprehensive, Amount Awarded: \$25,314.
- Housing Counseling Services, Incorporated, 2430 Ontario Rd NW, Washington, DC 20009-2705, Grant Type: Comprehensive, Amount Awarded: \$100,711.
- Housing Initiatives Partnership, Incorporated, 6525 Belcrest Road, Suite 555, Hyattsville, MD 20782, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Housing Partnership for Morris County, 2 E. Blackwell Street, Suite 12, Dover, NJ 07801-, Grant Type: Comprehensive, Amount Awarded: \$34,117.
- Inner City Christian Federation, 816 Madison Ave., SE, Grand Rapids, MI 49507-, Grant Type: Comprehensive, Amount Awarded: \$51,013.
- Isles, Incorporated, 10 Wood St., Trenton, NJ 08618-3921, Grant Type: Comprehensive, Amount Awarded: \$18,438.
- Kanawha Institute for Social Research & Action, Inc., 124 Marshall Avenue, Dunbar, WV 25064-, Grant Type: Comprehensive, Amount Awarded: \$28,752.
- Keuka Housing Council, 160 Main Street, Penn Yan, NY 14527-, Grant Type: Comprehensive, Amount Awarded: \$22,777.
- Laconia Area Community Land Trust, P.O. Box 6104, Laconia, NH 03247-, Grant Type: Comprehensive, Amount Awarded: \$27,033.
- Lansing Affordable Homes, Inc., 6546 Mercantile Way, 9-S, Lansing, MI 48911, Grant Type: Comprehensive, Amount Awarded: \$20,157.
- Lighthouse Community Development, 46156 Woodward Avenue, Pontiac, MI 48328-, Grant Type: Comprehensive, Amount Awarded: \$65,000.
- Long Island Housing Services, Incorporated, 3900 Veterans Memorial Highway, Suite 251, Bohemia, NY 11716-1027, Grant Type: Comprehensive, Amount Awarded: \$35,855.
- Lutheran Housing Corporation, 13944 Euclid Ave Ste 208, East Cleveland, OH 44112-3832, Grant Type: Comprehensive, Amount Awarded: \$34,117.
- Lynchburg Community Action Group, Incorporate, 926 Commerce Street, Lynchburg, VA 24504-, Grant Type: Comprehensive, Amount Awarded: \$23,000.
- Margert Community Corporation, 325 Beach 37th Street, Far Rockaway, NY 11691-4103, Grant Type: Comprehensive, Amount Awarded: \$27,033.
- Marshall Heights Community Development Organization, 3939 Benning Road, NE., Washington, DC 20019-2662, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Maryland Rural Development Corporation, 101 Cedar Ave, P.O. Box 739, Greensboro, MD 21639-0739, Grant Type: Comprehensive, Amount Awarded: \$16,719.
- Massachusetts Alliance of Portuguese Speakers, 1046 Cambridge Street, Cambridge, MA 02139-1407, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Media Fellowship House, 302 S. Jackson, Media, PA 19063, Grant Type: Comprehensive, Amount Awarded: \$28,752.
- Metro-Interfaith Services, Incorporated, 21 New St., Binghamton, NY 13903-, Grant Type: Comprehensive, Amount Awarded: \$20,000.
- Michigan State University Extension Services, 240 Agricultural Hall, East Lansing, MI 48224-, Grant Type: Comprehensive, Amount Awarded: \$32,190.
- Mid-Ohio Regional Planning Commission, 285 E Main St, Columbus, OH 43215-5272, Grant Type: Comprehensive, Amount Awarded: \$25,000.
- Monmouth County Board of Chosen Freeholders/Monmouth County Division of Social Services, P.O. Box 3000, Freehold, NJ 07728-, Grant Type: Comprehensive, Amount Awarded: \$30,471.
- Monmouth Housing Alliance, 59 Broad Street, Eatontown, NJ 07724, Grant Type: Comprehensive, Amount Awarded: \$25,314.

- Mt. Airy, U.S.A., 6703 Germantown Ave—Suite 200, Philadelphia, PA 19119—, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- National Council on Agricultural Life and Lab, 363 Saulsbury Road, Dover, DE 19904—2722, Grant Type: Comprehensive, Amount Awarded: \$27,033.
- NCCS Center for Nonprofit Housing, 6308 S. Warner, P.O. Box 149, Fremont, MI 49412, Grant Type: Comprehensive, Amount Awarded: \$27,033.
- Near Northeast Community Improvement Corporation, 1326 Florida Ave NE., Washington, DC 20002—7108, Grant Type: Comprehensive, Amount Awarded: \$34,853.
- Neighborhood Housing Services of New Britain, Inc., 223 Broad St., New Britain, CT 06053—4107, Grant Type: Comprehensive, Amount Awarded: \$20,157.
- Neighborhood Housing Services of New York City (NHS of NYC), 307 West 36th St. 12 floor, New York, NY 10018—6495, Grant Type: Comprehensive, Amount Awarded: \$20,157.
- Neighbors Helping Neighbors, Inc., 443 39th Street, Suite 202, Brooklyn, NY 11232—, Grant Type: Comprehensive, Amount Awarded: \$90,000.
- New Jersey Citizen Action, 400 Main Street, Hackensack, NJ 07601—5903, Grant Type: Comprehensive, Amount Awarded: \$51,013.
- Newport News Office of Human Affairs, 2410 Wickham Avenue, P.O. Box 37, Newport News, VA 23607—, Grant Type: Comprehensive, Amount Awarded: \$22,324.
- Northfield Community Local Development Corporation, 160 Heberton Ave., Staten Island, NY 10302, Grant Type: Comprehensive, Amount Awarded: \$28,752.
- Northwest Michigan Human Services Agency, Inc, 3963 Three Mile Road, Traverse City, MI 49686—9164, Grant Type: Comprehensive, Amount Awarded: \$51,013.
- Oakland County Housing Counseling, 250 Elizabeth Lake Road, Suite 1900, Pontiac, MI 48341—0414, Grant Type: Comprehensive, Amount Awarded: \$46,000.
- Ocean Community Economic Action Now, Inc. (O.C.E.A.N.), 22 Hyers, PO Box 1029, 40 Washington Street, Toms River, NJ 08754, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Opportunities for Chenango, Incorporated, 44 W Main St., PO Box 470, Norwich, NY 13815—1613, Grant Type: Comprehensive, Amount Awarded: \$28,752.
- Oswego Housing Development Council, Incorporated, 2971 County Rte 26, PO Box 147, Parish, NY 13131—, Grant Type: Comprehensive, Amount Awarded: \$30,000.
- Paterson Housing Authority, 60 Van Houten Street, PO Box H, Paterson, NJ 07509, Grant Type: Comprehensive, Amount Awarded: \$18,438.
- People Incorporated of Southwest Virginia, 1173 W Main St., Abingdon, VA 24210—2428, Grant Type: Comprehensive, Amount Awarded: \$37,593.
- Phoenix Housing & Counseling Non-Profit, Incorporated, 1640 Porter St., Detroit, MI 48216—1936, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Piedmont Housing Alliance, 2000 Holiday Drive—Suite 200, Charlottesville, VA 22901—, Grant Type: Comprehensive, Amount Awarded: \$32,190.
- Pine Tree Legal Services, Incorporated, 88 Federal St., PO Box 547, Portland, ME 04112—, Grant Type: Comprehensive, Amount Awarded: \$48,894.
- Plymouth Redevelopment Authority, 11 Lincoln Street, Plymouth, MA 02360—, Grant Type: Comprehensive, Amount Awarded: \$35,855.
- Pro-Home Incorporated, PO Box 2793, Taunton, MA 02780—, Grant Type: Comprehensive, Amount Awarded: \$25,314.
- Putnam County Housing Corporation, 11 Seminary Hill Road, Carmel, NY 10512—, Grant Type: Comprehensive, Amount Awarded: \$28,752.
- Quincy Community Action Programs, Incorporated, 1509 Hancock St., Quincy, MA 02169—5200, Grant Type: Comprehensive, Amount Awarded: \$28,752.
- Rockland Housing Action Coalition, 95 New Clarkstown Road, Nanuet, NY 10954, Grant Type: Comprehensive, Amount Awarded: \$32,190.
- Rural Ulster Preservation Company, 289 Fair St., Kingston, NY 12401—, Grant Type: Comprehensive, Amount Awarded: \$36,582.
- Schulykill Community Action, 206 North Second Street, Pottsville, PA 17901, Grant Type: Comprehensive, Amount Awarded: \$37,000.
- Somerset County Coalition on Affordable Housing, Inc., 600 First Avenue, Suite 3, Raritan, NJ 08869—, Grant Type: Comprehensive, Amount Awarded: \$41,069.
- Southern Hills Preservation Corporation, 12 Clinton Street, P.O. Box 661, Tully, NY 13159, Grant Type: Comprehensive, Amount Awarded: \$22,350.
- Southwest Michigan Community Action Agency, 185 E. Main Street, Suite 200, Benton Harbor, MI 49022—, Grant Type: Comprehensive, Amount Awarded: \$21,876.
- Southwestern Pennsylvania Legal Services Inc., 10 West Cherry Avenue, Central Office, Washington, PA 15301, Grant Type: Comprehensive, Amount Awarded: \$39,331.
- Springfield Partners for Community Action, 619 State Street, Springfield, MA 01109—4114, Grant Type: Comprehensive, Amount Awarded: \$25,314.
- St. James Community Development Corporation, 402 Broad Street, Newark, NJ 07104—, Grant Type: Comprehensive, Amount Awarded: \$16,719.
- Stark Metropolitan Housing Authority, 400 E. Tuscarawas Street, Canton, OH 44702—, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Strycker's Bay Neighborhood Council, Incorporated, 61 West 87th Street, Lower Level, New York, NY 10024—, Grant Type: Comprehensive, Amount Awarded: \$23,595.
- Tabor Community Services, 439 E King St., Lancaster, PA 17608—1676, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Telamon Corporation 111 Henry St, PO Box 500, Gretna, VA 24557—0500, Grant Type: Comprehensive, Amount Awarded: \$21,876.
- The Way Home, 214 Spruce Street, Manchester, NH 03103, Grant Type: Comprehensive, Amount Awarded: \$48,894.
- Total Action Against Poverty in Roanoke Valley, 145 Campbell Ave. Suite 700, PO Box 11683, Roanoke, VA 24011, Grant Type: Comprehensive, Amount Awarded: \$35,000.
- Trehab Center Inc., 10 Public Avenue, P.O. Box 366, Montrose, PA 18801—0366, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Tri-County Housing Council, 143 Hibbard Road P.O. Box 451, Big Flats, NY 14814, Grant Type: Comprehensive, Amount Awarded: \$28,752.
- Troy Rehabilitation and Improvement Program, 415 River Street, Ste. 3, Troy, NY 12180, Main Office, Troy, NY 12180, Grant Type: Comprehensive, Amount Awarded: \$39,331.
- United Neighborhood Centers of Lackawanna COU, 425 Alder Street, Scranton, PA 18505, Grant Type: Comprehensive, Amount Awarded: \$39,331.
- University Legal Services, 220 I St NE Ste 130, Washington, DC 20002—4389, Grant Type: Comprehensive, Amount Awarded: \$18,438.
- Urban League of Rhode Island, 246 Prairie Ave, Providence, RI 02905—2333, Grant Type: Comprehensive, Amount Awarded: \$35,696.
- Virginia Cooperative Extension—Prince Willi, 8033 Ashton Ave Ste 105, Manassas, VA 20109—8202, Grant Type: Comprehensive, Amount Awarded: \$28,752.
- Washington County Community Action Council, 101 Summit Ave., Hagerstown, MD 21740, Grant Type: Comprehensive, Amount Awarded: \$32,190.
- Westchester Residential Opportunities, Incorporated, 470 Mamaroneck Ave, Suite 410, White Plains, NY 10605—1830, Grant Type: Comprehensive, Amount Awarded: \$68,165.
- Western Catskills Community Revitalization Council, Inc., #25 Main Street, Box A, Stamford, NY 12167, Grant Type: Comprehensive, Amount Awarded: \$21,876.
- WSOS Community Action Commission, Inc., 109 S. Front Street, P.O. Box 590, Fremont, OH 43420—, Grant Type: Comprehensive, Amount Awarded: \$37,593.
- YWCA of New Castle County, 233 King St, Wilmington, DE 19801—2521, Grant Type: Comprehensive, Amount Awarded: \$45,000.
- Santa Ana (LHCA—COMP).
- Access Incorporated, 3630 Aviation Way, PO Box 4666, Medford, OR 97501, Grant Type: Comprehensive, Amount Awarded: \$75,000.
- Administration of Resources and Choices, P.O. Box 86802, Tucson, AZ 85754, Grant

- Type: Comprehensive, Amount Awarded: \$50,000.
- Anaheim Housing Authority—Anaheim Home Coun, 201 S. Anaheim Blvd. Ste 203, Anaheim, CA 92805, Grant Type: Comprehensive, Amount Awarded: \$35,040.
- Asian Incorporated, 1670 Pine Street, San Francisco, CA 94109, Grant Type: Comprehensive, Amount Awarded: \$40,000.
- Bydesign Financial Solutions, DBA CCCS of Los Angeles, 5628 E. Slauson Ave., Los Angeles, CA 90040-2922, Grant Type: Comprehensive, Amount Awarded: \$85,416.
- CCCS of San Francisco, 150 Post Street 5th Floor, San Francisco, CA 94108, Grant Type: Comprehensive, Amount Awarded: \$133,830.
- City of Vacaville Office of Housing and Redev, 40 Eldridge Ave. Suite 2, Vacaville, CA 95688-6800, Grant Type: Comprehensive, Amount Awarded: \$28,360.
- Community Action Partnership, 124 New Sixth Street, Lewiston, ID 83501, Grant Type: Comprehensive, Amount Awarded: \$80,000.
- Community Housing and Credit Counseling Cente, 1001 Willow Street, Chico, CA 95928, Grant Type: Comprehensive, Amount Awarded: \$50,000.
- Community Housing Resource Center, 3801-A Main Street, Vancouver, WA 98663-2241, Grant Type: Comprehensive, Amount Awarded: \$57,250.
- Consumer Counseling Northwest (CCNW), 3560 Bridgeport Way West, Suite 1-D, University Place, WA 98466, Grant Type: Comprehensive, Amount Awarded: \$21,680.
- Consumer Credit Counseling Service of Alaska, 208 E 4th Ave, Anchorage, AK 99501-2508, Grant Type: Comprehensive, Amount Awarded: \$21,680.
- Consumer Credit Counseling Service of Kern and Tulare Counties, 5300 Lennox Ave Ste 200, Bakersfield, CA 93309-1662, Grant Type: Comprehensive, Amount Awarded: \$35,040.
- Consumer Credit Counseling Service of Orange County, 1920 Old Tustin Ave, PO Box 11330, Santa Ana, CA 92711-1330, Grant Type: Comprehensive, Amount Awarded: \$174,900.
- Consumer Credit Counseling Service of Southern Nevada, 2650 S. Jones Blvd, Las Vegas, NV 89146, Grant Type: Comprehensive, Amount Awarded: \$175,000.
- East LA Community Corporation (ELACC), 530 South Boyle Avenue, Los Angeles, CA 90033, Grant Type: Comprehensive, Amount Awarded: \$28,360.
- Eden Council for Hope and Opportunity (ECHO), 770 A St, Hayward, CA 94541-3956, Grant Type: Comprehensive, Amount Awarded: \$41,720.
- Family Housing Resources, 1700 East Fort Lowell Road, Suite 101, Tucson, AZ 85719, Grant Type: Comprehensive, Amount Awarded: \$57,250.
- Fremont Public Association, 1501 North 45th Street, Seattle, WA 98103-6708, Grant Type: Comprehensive, Amount Awarded: \$120,000.
- Housing Authority of the City of Fresno, 1331 Fulton Mall, P O. Box 11985, Fresno, CA 93776, Grant Type: Comprehensive, Amount Awarded: \$117,986.
- Housing Authority of the County of Santa Cruz, 2931 Mission St., Santa Cruz, CA 95060, Grant Type: Comprehensive, Amount Awarded: \$41,094.
- Human Rights/Fair Housing Commission, 1112 I Street; Suite 250, Sacramento, CA 95814, Grant Type: Comprehensive, Amount Awarded: \$57,250.
- Inland Fair Housing Mediation Board, 60 E 9th St, Upland, CA 91786, Grant Type: Comprehensive, Amount Awarded: \$50,208.
- Kitsap County Consolidated Housing Authority, 9307 Bayshore Drive NW, Silverdale, WA 98383-9113, Grant Type: Comprehensive, Amount Awarded: \$21,680.
- Labor's Community Service Agency, 5818 N 7th St Ste 100, Phoenix, AZ 85014-5810, Grant Type: Comprehensive, Amount Awarded: \$56,793.
- Lao Family Community Development, INC., 1551-23rd Avenue, Oakland, CA 94606, Grant Type: Comprehensive, Amount Awarded: \$78,375.
- Mission Economic Development Association, 3505 20th St, San Francisco, CA 94110, Grant Type: Comprehensive, Amount Awarded: \$35,040.
- Neighborhood House Association, 841 S. 41st Street, San Diego, CA 92113, Grant Type: Comprehensive, Amount Awarded: \$102,142.
- Open Door Counseling Center, 34420 SW Tualatin Valley Hwy, Hillsboro, or 97123-5470, Grant Type: Comprehensive, Amount Awarded: \$21,680.
- Operation Hope, Inc., 707 Wilshire Blvd., Suite 3030, Los Angeles, CA 90017, Grant Type: Comprehensive, Amount Awarded: \$15,000.
- Pierce County, Department of Community Service, 3602 Pacific Avenue Suite 200, Tacoma, WA 98418-7920, Grant Type: Comprehensive, Amount Awarded: \$40,000.
- Project Sentinel, 430 Sherman Avenue, Suite 308, Palo Alto, CA 95306, Grant Type: Comprehensive, Amount Awarded: \$118,765.
- Sacramento Neighborhood Housing Services, Inc., 3447 Fifth Ave, PO Box 5420, Sacramento, CA 95817, Grant Type: Comprehensive, Amount Awarded: \$65,000.
- San Diego Home Loan Counseling and Education Center, 3180 University Avenue, Suite 430, San Diego, CA 92104, Grant Type: Comprehensive, Amount Awarded: \$21,680.
- Spokane Neighborhood Action Programs, 2116 East First Avenue, Spokane, WA 99202-3937, Grant Type: Comprehensive, Amount Awarded: \$85,416.
- Springboard Non Profit Consumer Credit Management, 4351 Latham Street, Riverside, CA 92501, Grant Type: Comprehensive, Amount Awarded: \$180,000.
- Umpqua Community Action Network, 2448 W Harvard Blvd, Roseburg, or 97470, Grant Type: Comprehensive, Amount Awarded: \$21,680.
- Washoe County Senior Law Project, 1155 E Ninth St, Reno, NV 89512, Grant Type: Comprehensive, Amount Awarded: \$38,000.
- Women's Development Center, 953 E Sahara Ave, Suite 201, Las Vegas, NV 89104-3016, Grant Type: Comprehensive, Amount Awarded: \$57,250.

## State Housing Finance Agencies (16)

## Atlanta (SHFA—COMP)

Georgia Housing and Finance Authority, 60 Executive Park South, NE, Atlanta, GA 30329-2231, Grant Type: Comprehensive, Amount Awarded: \$184,000.

Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, KY 40601—Grant Type: Comprehensive, Amount Awarded: \$265,583.

Mississippi Home Corporation, 735 Riverside Drive, PO Box 23369, Jackson, MS 39225-3369, Grant Type: Comprehensive, Amount Awarded: \$124,217.

## Denver (SHFA—COMP)

Iowa Finance Authority, 100 E. Grand Ave., Suite 250, Des Moines, IA 50309, Grant Type: Comprehensive, Amount Awarded: \$95,000.

Montana Board of Housing, Box 200528, Helena, MT 59620, Grant Type: Comprehensive, Amount Awarded: \$149,138.

New Mexico Mortgage Finance Authority, 344 Fourth Street, SW, P.O. Box 2047, Albuquerque, NM 87102, Grant Type: Comprehensive, Amount Awarded: \$100,135.

North Dakota Housing Finance Agency, 1500 East Capitol Avenue, P.O. Box 1535, Bismarck, ND 58502-1535, Grant Type: Comprehensive, Amount Awarded: \$112,669.

South Dakota Housing Development Authority, 221 South Central, P O. Box 1237, Pierre, SD 57501-1237, Grant Type: Comprehensive, Amount Awarded: \$93,868.

## Philadelphia (SHFA—COMP)

Maine State Housing Authority, 353 Water Street, Augusta, ME 04330, Grant Type: Comprehensive, Amount Awarded: \$73,359.

Michigan State Housing Development Authority, 735 E. Michigan Avenue, P.O. Box 30044, Lansing, MI 48909, Grant Type: Comprehensive, Amount Awarded: \$93,381.

New Hampshire Housing Finance Authority, 32 Constitution Drive, Bedford, NH 03110, Grant Type: Comprehensive, Amount Awarded: \$56,674.

Pennsylvania Housing Finance Agency, 211 North Front Street, Harrisburg, PA 17101-1406, Grant Type: Comprehensive, Amount Awarded: \$110,066.

Rhode Island Housing and Mortgage Finance Corporation, 44 Washington St, Providence, RI 02903-1721, Grant Type: Comprehensive, Amount Awarded: \$96,718.

Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, Grant Type: Comprehensive, Amount Awarded: \$113,402.

## Santa Ana (SHFA—COMP)

Idaho Housing and Finance Association, 565 West Myrtle, P.O. Box 7899, Boise, ID 83702, Grant Type: Comprehensive, Amount Awarded: \$156,475.

Washington State Housing Finance Commission, 1000 2nd Avenue, Suite 2700, Seattle, WA 98104-1046, Grant Type: Comprehensive, Amount Awarded: \$208,325.

## Colonias (7)

## Denver (LHCA—COL)

CDC OF Brownsville, 901 East Levee Street, Brownsville, TX 78520-5804, Grant Type: Colonias, Amount Awarded: \$40,000.

New Mexico Legal Aid, Inc., 500 Copper NW, Suite 300, PO Box 25486, Albuquerque, NM 87102, Grant Type: Colonias, Amount Awarded: \$40,309.

Project Bravo, Incorporated, 4838 Montana Ave, El Paso, TX 79903, Grant Type: Colonias, Amount Awarded: \$30,409.

## Denver (SHFA—COL)

New Mexico Mortgage Finance Authority, 344 Fourth Street, SW, P.O. Box 2047, Albuquerque, NM 87102, Grant Type: Colonias, Amount Awarded: \$40,000.

## Intermediaries (COL)

Acorn Housing Corporation, 846 N Broad St., 2nd Floor, Philadelphia, PA 19130-2234, Grant Type: Colonias, Amount Awarded: \$78,354.

National Council of LA Raza, 1126 16th Street, NW, Washington, DC 20036, Grant Type: Colonias, Amount Awarded: \$83,834.

National Foundation for Credit Counseling, Inc., 801 Roeder Road, Suite 900, Silver Spring, MD 20910-3372, Grant Type: Colonias, Amount Awarded: \$81,094.

## Predatory Lending (52)

## Atlanta (LHCA—PL)

Affordable Housing Corporation, 812 South Washington Street, Marion, IN 46953, Grant Type: Predatory Lending, Amount Awarded: \$8,000.

Consumer Credit Counseling Service of Forsyth County, Inc., 8064 North Point Boulevard, Suite 204, 206 North Spruce St. Suite 2-B, Winston Salem, NC 27106, Grant Type: Predatory Lending, Amount Awarded: \$40,000.

Consumer Credit Counseling Service of WNC, Inc., 50 S French Broad Ave Ste 227, Asheville, NC 28801-3217, Grant Type: Predatory Lending, Amount Awarded: \$15,000.

Consumer Credit Counseling Service of Central Fl and Fl Gulf Coast, 3670 Maguire Boulevard, Suite 103, Orlando, FL 32803, Grant Type: Predatory Lending, Amount Awarded: \$40,000.

Elizabeth City State University, 1704 Weeksville Rd., Elizabeth City, NC 27909, Grant Type: Predatory Lending, Amount Awarded: \$9,562.

Gwinnett Housing Resource Partnership D/B/A the Impact Group, 2825 Breckinridge Blvd., Suite 160, Duluth, GA 30096, Grant Type: Predatory Lending, Amount Awarded: \$50,000.

Jacksonville Area Legal Aid, Inc., 126 W. Adams Street, Jacksonville, FL 32202-3849, Grant Type: Predatory Lending, Amount Awarded: \$39,555.

Legal Assistance Foundation of Metropolitan Chicago, 111 West Jackson Blvd. Suite 300, Chicago, IL 60604, Grant Type: Predatory Lending, Amount Awarded: \$40,000.

Momentive Consumer Credit Counseling Service, 615 N. Alabama Street, Suite 134, Indianapolis, IN 46204-1477, Grant Type: Predatory Lending, Amount Awarded: \$40,000.

River City Community Development Corporation, 501 East Main St, Elizabeth City, NC 27909, Amount Awarded: \$27,000.

## Atlanta (SHFA—PL)

Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, KY 40601, Grant Type: Predatory Lending, Amount Awarded: \$57,400.

## Denver (LHCA—PL)

City of Fort Worth Housing Department, 1000 Throckmorton St, Fort Worth, TX 76102, Grant Type: Predatory Lending, Amount Awarded: \$40,000.

Community Action Project of Tulsa, 717 South-Houston, Suite 200, Tulsa, OK 74127, Grant Type: Predatory Lending, Amount Awarded: \$25,000.

Community Action Services, 815 South Freedom Blv., Suite 100, Provo, UT 84601, Grant Type: Predatory Lending, Amount Awarded: \$12,500.

Family Housing Advisory Services, Incorporated, 2416 Lake Street, Omaha, NE 68111, Grant Type: Predatory Lending, Amount Awarded: \$40,000.

Legal Aid of Western Missouri, 1125 Grand Avenue, Suite 1900, Kansas City, MO 64106, Grant Type: Predatory Lending, Amount Awarded: \$40,000.

New Mexico Legal Aid, Inc., 500 Copper NW, Suite 300, PO Box 25486, Albuquerque, NM 87102, Grant Type: Predatory Lending, Amount Awarded: \$29,032.

Northeast Denver Housing Center, 1735 Gaylord St, Denver, CO 80206-1208, Grant Type: Predatory Lending, Amount Awarded: \$9,835.

Oglala Sioux Tribe Partnership for Housing, I, Old Ambulance Building, P.O. Box 3001, Pine Ridge, SD 57770, Grant Type: Predatory Lending, Amount Awarded: \$39,844.

Project Bravo, Incorporated, 4838 Montana Ave, El Paso, TX 79903, Grant Type: Predatory Lending, Amount Awarded: \$34,438.

Southern Minnesota Regional Legal Services, I, 166 E 4th St., Suite 200, St. Paul, MN 55101, Grant Type: Predatory Lending, Amount Awarded: \$40,000.

## Denver (SHFA—PL)

Iowa Finance Authority, 100 E. Grand Ave., Suite 250, Des Moines, IA 50309, Grant Type: Predatory Lending, Amount Awarded: \$17,629.

New Mexico Mortgage Finance Authority, 344 Fourth Street, SW, P.O. Box 2047, Albuquerque, NM 87102, Grant Type: Predatory Lending, Amount Awarded: \$17,629.

South Dakota Housing Development Authority, 221 South Central, P.O. Box 1237, Pierre, SD 57501-1237, Grant Type: Predatory Lending, Amount Awarded: \$16,540.

## Intermediaries (PL)

Acorn Housing Corporation, 846 N Broad St., 2nd floor, Philadelphia, PA 19130-2234, Grant Type: Predatory Lending, Amount Awarded: \$323,439.

Money Management International Inc., 9009 West Loop South, Suite 700, Houston, TX 77096-1719, Grant Type: Predatory Lending, Amount Awarded: \$62,000.

National Council of LA Raza, 1126 16th Street, NW, Washington, DC 20036, Grant Type: Predatory Lending, Amount Awarded: \$166,667.

National Foundation for Credit Counseling, Inc., 801 Roeder Road, Suite 900, Silver Spring, MD 20910-3372, Grant Type: Predatory Lending, Amount Awarded: \$325,000.

Neighborhood Reinvestment Corporation, 1325 G St NW, Suite 800, Washington, DC 20005-3104, Grant Type: Predatory Lending, Amount Awarded: \$325,000.

The Housing Partnership Network, 160 State Street, 5th Fl, Boston, MA 02109, Grant Type: Predatory Lending, Amount Awarded: \$97,944.

## Philadelphia (LHCA—PL)

Chautauqua Opportunities, Incorporated, 17 W Courtney St, Dunkirk, NY 14048-2754, Grant Type: Predatory Lending, Amount Awarded: \$10,000.

Coastal Enterprises, Incorporated, 41 Water Street, PO Box 268, Wiscasset, ME 04578-0268, Grant Type: Predatory Lending, Amount Awarded: \$14,450. Housing Council in Monroe County, Incorporate, 183 Main St. E Suite 1100, Rochester, NY 14604, Grant Type: Predatory Lending, Amount Awarded: \$8,670.

Housing Counseling Services, Incorporated, 2430 Ontario Rd NW, Washington, DC 20009-2705, Grant Type: Predatory Lending, Amount Awarded: \$40,000.

Inner City Christian Federation, 816 Madison Ave, SE, Grand Rapids, MI 495017, Grant Type: Predatory Lending, Amount Awarded: \$40,000.

Lighthouse Community Development, 46156 Woodward Avenue, Pontiac, MI 48328, Grant Type: Predatory Lending, Amount Awarded: \$12,500.

New Jersey Citizen Action, 400 Main Street, Hackensack, NJ 07601-5903, Grant Type: Predatory Lending, Amount Awarded: \$40,000.

Pine Tree Legal Services, Incorporated, 88 Federal St, PO Box 547, Portland, ME 04112, Grant Type: Predatory Lending, Amount Awarded: \$40,000.

United Neighborhood Centers of Lackawanna COU, 425 Alder Street, Scranton, PA 18505, Grant Type: Predatory Lending, Amount Awarded: \$12,264.

YWCA of New Castle County, 233 King St, Wilmington, DE 19801-2521, Grant Type: Predatory Lending, Amount Awarded: \$5,000.

## Philadelphia (SHFA—PL)

Rhode Island Housing and Mortgage Finance Corporation, 44 Washington St,



- Providence, RI 02903-1721, Grant Type: Predatory Lending, Amount Awarded: \$54,379.
- Administration of Resources and Choices, P.O. Box 86802, Tucson, AZ 85754, Grant Type: Predatory Lending, Amount Awarded: \$10,000.
- Bydesign Financial Solutions, DBA CCCS of Los Angeles, 5628 E. Slauson Ave., Los Angeles, CA 90040-2922, Grant Type: Predatory Lending, Amount Awarded: \$21,040.
- Consumer Credit Counseling Service of Kern and Tulare Counties, 5300 Lennox Ave, Ste 200, Bakersfield, CA 93309-1662, Grant Type: Predatory Lending, Amount Awarded: \$8,347.
- Consumer Credit Counseling Service of Southern Nevada, 2650 S. Jones Blvd, Las Vegas, NV 89146, Grant Type: Predatory Lending, Amount Awarded: \$40,000.
- Fremont Public Association, 1501 North 45th Street, Seattle, WA 98103-6708, Grant Type: Predatory Lending, Amount Awarded: \$35,417.
- Housing Authority of the City of Fresno, 1331 Fulton Mall, P. O. Box 11985, Fresno, CA 93776, Grant Type: Predatory Lending, Amount Awarded: \$30,643.
- Human Rights/Fair Housing Commission, 1112 I Street, Suite 250, Sacramento, CA 95814, Grant Type: Predatory Lending, Amount Awarded: \$14,693.
- Inland Fair Housing Mediation Board, 60 E 9th St, Upland, CA 91786, Grant Type: Predatory Lending, Amount Awarded: \$10,462.
- Lao Family Community Development, INC., 1551-23rd Avenue, Oakland, CA 94606, Grant Type: Predatory Lending, Amount Awarded: \$20,000.
- Neighborhood House Association, 841 S. 41st Street, San Diego, CA 92113, Grant Type: Predatory Lending, Amount Awarded: \$28,256.
- Santa Ana (SHFA-PL)
- Washington State Housing Finance Commission, 1000 2nd Avenue, Suite 2700, Seattle, WA 98104-1046 Grant Type: Predatory Lending, Amount Awarded: \$10,000.
- Homeownership Voucher (41)*
- Atlanta (LHCA-S8)
- Choanoke Area Development Association, 120 Sessoms Drive, Rich Square, NC 27869, Grant Type: Homeownership Voucher, Amount Awarded: \$14,040.
- Cobb Housing, Incorporated, 268 Lawrence St, Suite 100, Marietta, GA 30060, Grant Type: Homeownership Voucher, Amount Awarded: \$15,378.
- Consumer Credit Counseling Service of Forsyth County, Inc., 8064 North Point Boulevard, Suite 204, 206 North Spruce St, Suite 2-B, Winston Salem, NC 27106, Grant Type: Homeownership Voucher, Amount Awarded: \$30,000.
- Housing Authority of the City of Fort Wayne, Indiana, 2013 S. Anthony Blvd., Fort Wayne, IN 46803, Grant Type: Homeownership Voucher, Amount Awarded: \$20,027.
- Housing Authority of the City of High Point, 500E Russell Avenue, PO Box 1779, High Point, NC 27260, Grant Type: Homeownership Voucher, Amount Awarded: \$26,581.
- Latin United Community Housing Association, 3541 West North Avenue, Chicago, IL 60647, Grant Type: Homeownership Voucher, Amount Awarded: \$23,304.
- Northwestern Regional Housing Authority, 869 Highway 105 Ext Ste 10, PO Box 2510, Boone, NC 28607-2510, Grant Type: Homeownership Voucher, Amount Awarded: \$25,708.
- Sandhills Community Action Program, Inc., 103 Saunders St, PO Box 937, Carthage, NC 28327-0937, Grant Type: Homeownership Voucher, Amount Awarded: \$23,304.
- Twin Rivers Opportunities, Inc., 318 Craven St., PO Box 1482, New Bern, NC 28563, Grant Type: Homeownership Voucher, Amount Awarded: \$24,943.
- Western Piedmont Council of Governments, 736 4th Street South-West, PO Box 9026, Hickory, NC 28602, Grant Type: Homeownership Voucher, Amount Awarded: \$4,000.
- Atlanta (SHFA-S8)
- Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, KY 40601, Grant Type: Homeownership Voucher, Amount Awarded: \$18,928.
- Mississippi Home Corporation, 735 Riverside Drive, PO Box 23369, Jackson, MS 39225-3369, Grant Type: Homeownership Voucher, Amount Awarded: \$17,652.
- Denver (LHCA-S8)
- Boulder County Housing Authority, 3482 North Broadway, Sundquist Bldg., Boulder, CO 80304, Grant Type: Homeownership Voucher, Amount Awarded: \$10,000.
- CDC of Brownsville, 901 East Levee Street, Brownsville, TX 78520-5804, Grant Type: Homeownership Voucher, Amount Awarded: \$25,000.
- City of Fort Worth Housing Department, 1000 Throckmorton St, Fort Worth, TX 76102, Grant Type: Homeownership Voucher, Amount Awarded: \$30,000.
- Dakota County Community Development Agency, 1228 Town Centre Drive, Eagan, MN 55123, Grant Type: Homeownership Voucher, Amount Awarded: \$7,470.
- Housing Solutions for the Southwest, 295 Girard St, Durango, CO 81303, Grant Type: Homeownership Voucher, Amount Awarded: \$5,000.
- Intermediaries (8)*
- Acorn Housing Corporation, 846 N Broad St 2nd floor, 2nd Floor, Philadelphia, PA 19130-2234, Grant Type: Homeownership Voucher, Amount Awarded: \$275,000.
- National Council of La Raza, 1126 16th Street, NW, Washington, DC 20036, Grant Type: Homeownership Voucher, Amount Awarded: \$133,333.
- National Foundation for Credit Counseling, Inc., 801 Roeder Road, Suite 900, Silver Spring, MD 20910-3372, Grant Type: Homeownership Voucher, Amount Awarded: \$46,000.
- Neighborhood Reinvestment Corporation, 1325 G St NW, Suite 800, Washington, DC 20005-3104, Grant Type: Homeownership Voucher, Amount Awarded: \$275,000.
- The Housing Partnership Network, 160 State Street, 5th Fl, Boston, MA 02109, Grant Type: Homeownership Voucher, Amount Awarded: \$55,218.
- Philadelphia (LHCA-S8)
- Arundel Community Development Service, Inc, 2666 Riva Road, Suite 210, Annapolis, MD 21401, Grant Type: Homeownership Voucher, Amount Awarded: \$10,000.
- Better Neighborhoods, Incorporated, 986 Albany St, Schenectady, NY 2307, Grant Type: Homeownership Voucher, Amount Awarded: \$18,000.
- Chautauqua Opportunities, Incorporated, 17 W Courtney St, Dunkirk, NY 14048-2754, Grant Type: Homeownership Voucher, Amount Awarded: \$20,000.
- Coastal Enterprises, Incorporated, 41 Water Street, PO Box 268, Wiscasset, ME 04578-0268, Grant Type: Homeownership Voucher, Amount Awarded: \$10,010.
- Inner City Christian Federation, 816 Madison Ave, SE, Grand Rapids, MI 49507, Grant Type: Homeownership Voucher, Amount Awarded: \$30,000.
- Lighthouse Community Development, 46156 Woodward Avenue, Pontiac, MI 48328, Grant Type: Homeownership Voucher, Amount Awarded: \$7,500.
- New Jersey Citizen Action, 400 Main Street, Hackensack, NJ 07601-5903, Grant Type: Homeownership Voucher, Amount Awarded: \$30,000.
- Plymouth Redevelopment Authority, 11 Lincoln Street, Plymouth, MA 02360, Grant Type: Homeownership Voucher, Amount Awarded: \$6,000.
- Rural Ulster Preservation Company, 289 Fair St, Kingston, NY 12401, Grant Type: Homeownership Voucher, Amount Awarded: \$19,528.
- YWCA of New Castle County, 233 King St, Wilmington, DE 19801-2521, Grant Type: Homeownership Voucher, Amount Awarded: \$5,000.
- Philadelphia (SHFA-S8)
- Michigan State Housing Development Authority, 735 E. Michigan Avenue, P.O. Box 30044, Lansing, MI 48909, Grant Type: Homeownership Voucher, Amount Awarded: \$34,655.
- Santa Ana (LHCA-S8)
- Anaheim Housing Authority—Anaheim Home Coun, 201 S. Anaheim Blvd. Ste 203, Anaheim, CA 92805, Grant Type: Homeownership Voucher, Amount Awarded: \$30,000.
- City of Vacaville Office of Housing and Redevelopment, 40 Eldridge Ave. Suite 2, Vacaville, CA 95688-6800, Grant Type: Homeownership Voucher, Amount Awarded: \$5,000.
- Consumer Credit Counseling Service of Kern and Tulare Counties, 5300 Lennox Ave Ste 200, Bakersfield, CA 93309-1662, Grant Type: Homeownership Voucher, Amount Awarded: \$30,000.
- Family Housing Resources, 1700 East Fort Lowell Road, Suite 101, Tucson, AZ 85719, Grant Type: Homeownership Voucher, Amount Awarded: \$12,132.
- Housing Authority of the City of Fresno, 1331 Fulton Mall, P. O. Box 11985, Fresno, CA 93776, Grant Type: Homeownership Voucher, Amount Awarded: \$30,000.



Lao Family Community Development, Inc.,  
1551-23rd Avenue, Oakland, CA 94606,  
Grant Type: Homeownership Voucher,  
Amount Awarded: \$20,000.  
Open Door Counseling Center, 34420 SW  
Tualatin Valley Hwy, Hillsboro, OR 97123-  
5470, Grant Type: Homeownership  
Voucher, Amount Awarded: \$2,000.

Santa Ana (SHFA-S8)

Washington State Housing Finance  
Commission, 1000 2nd Avenue, Suite  
2700, Seattle, WA 98104-1046. Grant  
Type: Homeownership Voucher, Amount  
Awarded: \$10,000.

#### HECM (1)

Intermediary (HECM)

AARP Foundation, 601 E. Street, NW,  
Washington, DC 20049, Grant Type:  
HECM, Amount Awarded: \$3,000,000.

[FR Doc. 06-2658 Filed 3-20-06; 8:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Theodore Roosevelt National Wildlife Refuge Complex

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Notice of availability of the  
Final Comprehensive Conservation Plan  
and Finding of No Significant Impact for  
five of the seven refuges that make up  
the Theodore Roosevelt National  
Wildlife Refuge Complex—Yazoo,  
Panther Swamp, Hillside, Morgan  
Brake, and Mathews Brake—as well as  
a number of smaller fee title properties  
and floodplain and conservation  
easements in the Mississippi Delta.

**SUMMARY:** The Fish and Wildlife Service  
announces that a Final Comprehensive  
Conservation Plan and Finding of No  
Significant Impact for the Theodore  
Roosevelt National Wildlife Refuge are  
available for distribution. The plan was  
prepared pursuant to the National  
Wildlife Refuge System Improvement  
Act of 1997, and in accordance with the  
National Environmental Policy Act of  
1969, and describes how these refuges  
will be managed for the next 15 years.

**ADDRESSES:** A plan may be obtained by  
contacting complex manager Tim  
Wilkins at (662) 839-2638; fax (662)  
839-2619, or by writing the complex  
manager at 728 Yazoo Refuge Road,  
Hollandale, Mississippi 38748. The plan  
may also be accessed and downloaded  
from the Service's Internet Web site  
<http://southeast.fws.gov/planning/>.

**SUPPLEMENTARY INFORMATION:** The Fish  
and Wildlife Service developed the  
comprehensive conservation plan to  
provide a foundation for the

management and use of refuges in the  
Theodore Roosevelt National Wildlife  
Refuge Complex over the next 15 years.  
The Complex is comprised of seven  
refuges: Holt Collier (established in  
2004), Hillside (established in 1975),  
Mathews Brake (established in 1980),  
Morgan Brake (established in 1977),  
Panther Swamp (established in 1978),  
Theodore Roosevelt (established in  
2004), and Yazoo National Wildlife  
Refuge (established in 1936). Separate  
plans will be prepared for Holt Collier  
and Theodore Roosevelt Refuges.

Prior to January 2004, the Complex  
was known as the Central Mississippi  
National Wildlife Refuge Complex.  
When the January 23, 2004, Theodore  
Roosevelt National Wildlife Refuge Act  
(Section 145 of Pub. L. 108-199—the  
Consolidated Appropriations Act of  
2004) was signed into law by President  
Bush, the Complex name was changed  
to the Theodore Roosevelt National  
Wildlife Refuge Complex. The Act also  
designated the geographically separate  
Bogue Phalia Unit of Yazoo Refuge as  
the new Holt Collier Refuge. The Act  
also directed the Secretary of the  
Interior to establish the 6,600-acre  
Theodore Roosevelt National Wildlife  
Refuge. The two new refuges was  
assembled from Farm Service Agency  
(formerly known as Farmers Home  
Administration) lands already in  
Service possession. Management and  
uses of the two new refuges will be  
addressed in future comprehensive  
conservation plans.

The preferred action is to adopt and  
implement a comprehensive  
conservation plan that best achieves the  
purposes for which the Complex was  
established; furthers its vision and  
goals; contributes to the mission of the  
National Wildlife Refuge System;  
addresses significant issues and  
applicable mandates; and is consistent  
with principles of sound fish and  
wildlife management. Implementing the  
plan will enable the Complex to fulfill  
its critical role in the conservation and  
management of fish and wildlife  
resources in the Mississippi Delta and to  
provide quality environmental  
education and wildlife-dependent  
recreation opportunities for visitors. The  
Service analyzed four alternatives for  
management of the Complex and chose  
Alternative B as the preferred  
alternative.

The preferred alternative will promote  
a greater understanding and protection  
of fish, wildlife, and their habitats and  
provide quality, balanced recreational  
opportunities for visitors. Hunting and  
fishing will continue with greater  
emphasis on the quality of the  
experience. Education and

interpretation will be promoted through  
regular programs and partnerships with  
local schools. Wildlife observation and  
photography opportunities will be  
expanded, including a canoe trail and  
observation towers, highlighting refuge  
management programs and unique  
wildlife habitats.

A visitor center and headquarters  
office will be constructed on Yazoo  
Refuge, with space for interpretation,  
environmental education, and staff.

Research studies on the refuge will be  
fostered and partnerships developed  
with universities and other agencies,  
providing needed resources and  
experiment sites while meeting the  
needs of the refuge's wildlife and  
habitat management programs. Research  
will also benefit conservation efforts  
throughout the Mississippi Delta to  
conserve, enhance, restore, and manage  
native habitat. New surveys on birds,  
reptiles, and amphibians will be  
initiated to develop baseline  
information.

Biological technicians, outdoor  
recreation planners, equipment  
operators, maintenance workers, and  
park rangers will be added to  
accomplish objectives for the following:  
establishing baseline data on refuge  
resources; managing habitats; providing  
opportunities and facilities for wildlife  
observation and photography; providing  
educational programs that promote a  
greater understanding of the refuge  
resources; and protecting natural and  
cultural resources and refuge visitors.

Under this alternative, the complex  
will continue to seek acquisition of  
lands within the present acquisition  
boundaries. Lands acquired as part of  
the Complex will be made available for  
compatible wildlife-dependent public  
recreation and environmental education  
opportunities, where appropriate. Lands  
that provide high-quality habitat and  
connectivity to existing refuge lands  
will be priority acquisitions. Equally  
important acquisition tools to be used  
include: transfer lands, partnerships  
with conservation organizations,  
conservation easements with adjacent  
landowners, and leases/cooperative  
agreements with state agencies.

Public comments were requested,  
considered, and incorporated  
throughout the planning process in  
numerous ways. Public outreach has  
included open houses, public meetings,  
technical workgroups, planning update  
mailings, and **Federal Register** notices.  
During the draft comprehensive  
conservation plan/environmental  
assessment comment period in October  
and November 2005, the Service  
received only one comment letter,

which has been addressed through revisions incorporated in the final plan.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105-57.

Dated: January 23, 2006

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06-2673 Filed 3-20-06; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AK-910-06-1739-NSSI]

#### Notice of Public Meeting, North Slope Science Initiative, Science Technical Group

**AGENCY:** Bureau of Land Management, Alaska State Office, North Slope Science Initiative, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, North Slope Science Initiative (NSSI) Science Technical Group (STG) will meet as indicated below.

**DATES:** The meeting will be held April 25-26, 2006 in Fairbanks, Alaska. On April 25 the meeting will begin at 10 a.m. at the University of Alaska Fairbanks International Arctic Research Center, Room 401. On April 26, the meeting will begin at 8:30 a.m. at the same location, and the public comment period starts at 3 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ken Taylor, Executive Director, North Slope Science Initiative (910), Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, Alaska 99513. Telephone (907) 271-3131 or e-mail [kenton\\_taylor@ak.blm.gov](mailto:kenton_taylor@ak.blm.gov).

**SUPPLEMENTARY INFORMATION:** The North Slope Science Initiative, Science Technical Group provides advice and recommendations to the North Slope Science Oversight Group (OG) regarding priority needs for management decisions across the North Slope of Alaska. These priority needs may include recommendations on inventory, monitoring and research activities that lead to informed land management decisions. At this meeting, topics will include:

- Energy Policy Act and NSSI.
- Foreseeable developments over the next 20 yrs by member agencies.

- Expectations of OG and STG members.

- Priority issues and projects for NSSI.

- Other topics the OG or STG may raise.

All meetings are open to the public. The public may present written comments to the Science Technical Group. Each formal meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the North Slope Science Initiative staff.

Dated: March 15, 2006.

Julia Dougan,

Acting Alaska State Director.

[FR Doc. E6-4081 Filed 3-20-06; 8:45 am]

BILLING CODE 4310-JA-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[MT-060-01-1020-PG]

#### Notice of Public Meeting; Central Montana Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The meeting will be held April 5 & 6, 2006, at the Bureau of Land Management's Lewistown Field Office in Lewistown, Montana (920 NE Main, in Lewistown, Montana).

The April 5, meeting will begin at 10 a.m. with a 60-minute public comment period.

This meeting is scheduled to adjourn at 6 p.m.

The April 6, meeting will begin at 8 a.m. with a 60-minute public comment period.

This meeting is scheduled to adjourn at 3 p.m.

**SUPPLEMENTARY INFORMATION:** This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. At this

meeting the council will discuss/act upon: the minutes of their proceeding meeting; election of officers; a discussion of the public meetings regarding the Upper Missouri River Breaks; National Monument draft management plan; a summary of public comments regarding the monument draft management plan; a discussion of reserved water rights; a discussion of well spacing requirements; field managers' updates; a discussion of the antiquities Act; a discussion of the monument boundary and airstrips; a discussion of non-consensus items in the monument draft management plan; and administrative details.

All meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

**FOR FURTHER INFORMATION CONTACT:** June Bailey, Lewistown Field Manager, Lewistown Field Office, P.O. Box 1160, Lewistown, Montana 59457, (406) 538-1900.

Dated: March 14, 2006.

June Bailey,

Lewistown Field Manager.

[FR Doc. E6-4049 Filed 3-20-06; 8:45 am]

BILLING CODE 4310-SS-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-920-1310-01; WYW151232]

#### Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW151232

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of proposed reinstatement of terminated oil and gas lease.

**SUMMARY:** Under the provisions of 371(a) of the Energy Policy Act of 2005, the lessees: Kay Papulak and Trachyte Oil Company timely filed a petition for reinstatement of competitive oil and gas lease WYW151232 in Sweetwater County, Wyoming. The lessees paid the required rental accruing from the date of termination, October 1, 2002.

No leases were issued that affect these lands. The lessees have agreed to the new lease terms for rentals of \$10.00 per acre and royalties of 16 $\frac{2}{3}$  percent or 4 percentages above the existing noncompetitive royalty rates. The

lessees have paid the required \$500 administrative fee for the reinstatement of the lease and \$166 cost for publishing this Notice.

The lessees have met all the requirements for reinstatement of the lease per Sec. 31(e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188(e)). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of \$10.00 per acre; and
- The increased royalty of 16 $\frac{2}{3}$  percent or 4 percentages above the existing competitive royalty rates.

**FOR FURTHER INFORMATION CONTACT:**

Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775-6176.

**Pamela J. Lewis,**  
Chief, Branch of Fluid Minerals Adjudication.  
[FR Doc. E6-4079 Filed 3-20-06; 8:45 am]

BILLING CODE 4310-22-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[NV-010-06-5870-EU]

**Notice of Realty Action: Competitive Sale of Public Lands in Elko and Eureka Counties, NV**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to offer for sale Federally owned parcels of land in Elko and Eureka Counties, Nevada, aggregating approximately 4061.68 acres, more or less. These parcels range in size from 40 acres to 663.34 acres. The sale will be conducted in Elko, Nevada, on July 12, 2006, in accordance with competitive bidding procedures.

**DATES:** Comments regarding the proposed offer of sale must be received by BLM on or before May 5, 2006. Sealed bids must be received by BLM no later than 4:30 p.m., PDT, July 5, 2006. Eleven parcels of land are to be offered for purchase at public auction beginning at 10 a.m., PDT, July 12, 2006. Registration for oral bidding will begin at 8 a.m., PDT, July 12, 2006. The public auction will begin at 10 a.m., PDT, July 12, 2006. Other deadline dates for the receipt of payments are specified in the proposed terms and conditions of sale, as stated herein.

**ADDRESSES:** Comments regarding the proposed offer for purchase, as well as

sealed bids to be submitted to BLM, should be addressed to: Field Manager, Elko Field Office, Bureau of Land Management, 3900 East Idaho Street, Elko, NV 89801.

More detailed information regarding the proposed offer for purchase and the lands involved may be reviewed during normal business hours (7:30 a.m. to 4:30 p.m.) at the Elko Field Office. Information is also available on the BLM web site at <http://www.nv.blm.gov/elko>.

The address for oral bidding registration and for the location of the public auction: Bureau of Land Management, Elko Field Office, 3900 East Idaho Street, Elko, Nevada 89801.

The auction will take place in the Main Conference Room of the BLM Elko Field Office.

**FOR FURTHER INFORMATION CONTACT:** DJ (Darci) Beaupeurt, Realty Specialist, at (775)753-0251 or by e-mail at [DJ\\_Beaupeurt@nv.blm.gov](mailto:DJ_Beaupeurt@nv.blm.gov).

**SUPPLEMENTARY INFORMATION:** The following lands have been authorized and designated for disposal under the Elko Resource Management Plan Record of Decision (March 1987) and the Wells Resource Management Plan Record of Decision (July 1985); these land use plans being in effect on July 25, 2000, for purposes of the Federal Land Transition Facilitation Act of 2000 (FLTFA) (43 U.S.C. 2301, 2304). These lands are proposed to be offered for purchase by competitive auction on July 12, 2006, at an oral auction to be held in accordance with the applicable provisions of Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1713 and 1719), respectively, and its implementing regulations 43 C.F.R. Part 2710, at not less than the fair market value (FMV) of each parcel, as determined by an appraisal, and acceptance by the authorized officer.

**Lands Proposed for Sale**

**Mount Diablo Meridian, Nevada**

- T. 33 N., R. 69 E.  
Section 1, Lots 1-4, N $\frac{1}{2}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$
- T. 37 N., R. 50 E.  
Section 9, NW $\frac{1}{4}$ NE $\frac{1}{4}$
- T. 37 N., R. 50 E.  
Section 20, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$
- T. 47 N., R. 64 E.  
Section 13, SW $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$
- T. 38 N., R. 68 E.  
Section 2, Lots 2-4, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , SE $\frac{1}{4}$
- T. 38 N., R. 69 E.  
Section 6, Lots 8-23
- T. 39 N., R. 68 E.  
Section 36, Lots 7-18, W $\frac{1}{2}$
- T. 39 N., R. 69 E.  
Section 18, Lots 1-4, NW $\frac{1}{4}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$
- T. 39 N., R. 69 E.

- Section 30, Lots 5-16, SE $\frac{1}{4}$
- T. 39 N., R. 69 E.  
Section 32
- T. 33 N., R. 49 E.,  
Section 30, Lots 3 and 4  
Consisting of 11 (eleven) parcels containing approximately 4061.68 acres, more or less.

**Terms and Conditions of Sale**

The terms and conditions applicable to this auction are as follows:

1. All parcels are sold and will be conveyed subject to the following:
  - a. All minerals are reserved to the United States, its permittees, licensees and lessees, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary of the Interior may prescribe, along with all necessary access and exit rights;
  - b. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);
  - c. Valid existing rights including, but not limited to, rights-of-way for roads, public utilities and flood control improvements. Encumbrances of record, appearing in the BLM public files for the parcels proposed for sale, are available for review during business hours, 7:30 a.m. to 4:30 p.m., PDT, Monday through Friday, at the BLM Elko Field Office.
  - d. Any lands being offered for purchase with permitted livestock grazing shall allow for the permittees to be given two years prior notification that their grazing lease or grazing permit shall be cancelled in accordance with 43 CFR 4110.4-2(b). The sale may be made if it is conditioned upon continued grazing by the current permittee/lessee until such time as the current grazing permit or lease would have expired or terminated. A permittee or lessee may unconditionally waive the two year prior notification.
2. No warranty of any kind, express or implied, is given by the United States as to the title, physical condition or potential uses of the parcels of land proposed for sale; and the conveyance of any such parcel will not be on a contingency basis. However, due to the extent required by law, all such parcels are subject to the requirements of section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA) (42 U.S.C. 9620(h)).
3. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature rising from the past, present, and

future acts or omissions of the patentees or their employees, agents, or lessees, or any third party arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now or may in the future become applicable to the real property; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by federal or state environmental laws, off, on, into, or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal or state environmental laws are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages, as defined by federal and state law. This covenant shall be construed as running with the parcels of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

4. Maps delineating the individual proposed sale parcels are available for public review at the BLM Elko Field Office. Current appraisals for each parcel will be available for public review at the Elko Field Office.

5. (a) Bids may be received by sealed bid for all parcels prior to the auction or orally for all parcels at the auction. All sealed bids must be received at the Elko Field Office no later than 4:30 p.m., PDT, July 5, 2006. Sealed bid envelopes must be marked on the *front lower left-hand corner*: **SEALED BID—DO NOT OPEN** and with the BLM serial number (N-#####) for the parcel and the sale date. Bids must not be less than the federally approved fair market value (FMV) and a separate bid must be submitted for each parcel. (b) Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the

order of the DOI Bureau of Land Management, for not less than 10 percent or more than 30 percent of the amount of the bid. The highest qualified sealed bid for each parcel will become the starting bid at the oral auction. If no sealed bids are received, oral bidding will begin at the fair market value, as determined by the authorized officer.

6. All parcels will be put up for competitive sales by oral auction beginning at 10 a.m., PDT, July 12, 2006, in the BLM Elko Field Office Main Conference Room, 3900 East Idaho Street, Elko, Nevada. Interested parties who will not be bidding are not required to register. If you are at the auction to conduct business with the high bidders or are there to observe the process, should seating become limited, you may be asked to relinquish your seat in order to provide seating for all bidders before the auction begins.

7. All oral bidders are required to register. Registration for oral bidding will begin at 8 a.m., PDT, on the day of the sale and will end at 10 a.m., PDT. You may pre-register by mail or FAX by completing the form located in the sale folder and also available at the BLM Elko Field Office.

8. On the day of the sale, pre-registered bidders may present a photo identification card and receive a bidder number. All other bidders will be asked for additional information along with a photo identification card. Upon completion of registration, you will be given a bidder number. If you are a successful bidder, you will be asked for a 20 percent deposit of the bid to be paid. This deposit will be due the day of the sale, before close of business.

9. The highest qualifying bid for any parcel, whether sealed or oral, will be declared the high bid. The apparent high bidder, if an oral bidder, must submit the full deposit amount to a BLM Collection Officer by 4:30 p.m., PDT, on the day of the sale, either in the form of cash or a personal check, bank draft, cashier's check, money order, or any combination thereof, made payable to the order of DOI Bureau of Land Management, for not less than 20 percent of the amount of the successful bid. If not paid by the close of the auction, funds for the full amount of the deposit must be delivered no later than 4:30 p.m., PDT, on the day of the sale to one of the BLM Collection Officers at the Elko Field Office.

10. The remainder of the full bid price on any parcel, whether sealed or oral, must be paid on or prior to the expiration of 180 calendar days after the competitive sale date in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S.

Dollars to the order of the Bureau of Land Management. Personal checks will not be accepted. Failure to pay the full price on any parcel on or prior to expiration of the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM. Any other parcels the bidder has high bid on may be canceled and those deposits may be forfeited to the BLM.

11. Oral bids will be considered only if received at the place of sale and made at least for the fair market value as determined by the authorized officer.

12. The BLM may accept or reject any or all offers or withdraw any parcel of land or interest therein from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the FLPMA or other applicable laws or are determined not to be in the public interest.

13. If not sold, any parcel described above in this Notice may be identified for sale at a later date and/or at another location without further legal notice. Upon publication of this Notice and until completion of the sale, the BLM is no longer accepting land use applications affecting any parcel identified for sale. However, land use applications may be considered after completion of the sale for parcels that are not sold through the sealed or oral bidding procedures, provided the authorization will not adversely affect the marketability or value of the parcel.

14. Federal law requires bidders to be United States citizens 18 years of age or older, a corporation subject to the laws of any state or of the United States; a state, state instrumentality, or political subdivision authorized to hold property, or an entity including, but not limited to, associations or partnerships capable of holding property or interests therein under the laws of the State of Nevada (see 43 CFR 2711.2). Certification of qualification, including United States citizenship status, must accompany the bid deposit.

15. In order to determine the value, through appraisal, of the parcels of land proposed to be sold, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this NORA, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable local government policies, laws and regulations that would affect the subject lands, including any required dedication of lands for public



uses. It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses and any such reviews and approvals will be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such and future access acquisition will be the responsibility of the buyer.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, CERCLA and other environmental documents, is available for review at the BLM Elko Field Office or by calling (775) 753-0200.

#### Public Comments

The general public and interested parties may submit comments regarding the proposed sale to the Field Manager, BLM Elko Field Office. Comments must be received by the BLM no later than May 5, 2006. Any comments will be reviewed by the Nevada BLM State Director, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

BLM will not consider any anonymous comments. However, individual respondents may request anonymity. If you wish to withhold your name and address from public review or from disclosure under the Freedom of Information Act (FOIA), you must state this prominently at the beginning of your comments. A request for anonymity will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

**Authority:** 43 CFR 2711.1-2(a) and (c).

**Helen M. Hankins,**  
*Elko Field Manager.*

[FR Doc. E6-4076 Filed 3-20-06; 8:45 am]

BILLING CODE 4310-HC-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Gettysburg National Military Park Advisory Commission

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of April 7, 2006 and October 5, 2006 meetings.

**SUMMARY:** This notice sets forth the dates of the April 7, 2006 and October

5, 2006 meetings of the Gettysburg National Military Park Advisory Commission.

**DATES:** The public meeting will be held on April 7, 2006 and October 5, 2006 from 7 p.m. to 9 p.m.

**Location:** The meeting will be held at the Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

**Agenda:** The April 7, 2006 meeting in addition to the following consist of the nomination of Chairperson and Vice-Chairperson for the 2006 year, then at both the April 7, 2006 and October 5, 2006 meetings Sub-Committee Reports from the Historical, Executive, and Interpretive Committees; Federal Consistency Reports Within the Gettysburg Battlefield Historic District; Operational Updates on Park Activities which consists of an update on Gettysburg National Battlefield Museum Foundation and National Park Service activities related to the new Visitor Center/Museum Complex, updates on the Wills House and the Train Station; Transportation which consists of the National Park Service and the Gettysburg Borough working on the shuttle system; Update on land acquisition within the park boundary or in the historic district; and the Citizens Open Forum where the public can make comments and ask questions on any park activity.

**FOR FURTHER INFORMATION CONTACT:** John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Gettysburg National Military Park Advisory Commission, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: March 8, 2006.

**Dr. John A. Latschar,**  
*Superintendent, Gettysburg NMP/Eisenhower NHS.*

[FR Doc. E6-4008 Filed 3-20-06; 8:45 am]

BILLING CODE 4310-JT-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Committee for the Preservation of The White House; Notice of Public Meeting

**AGENCY:** Department of the Interior, National Park Service.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Committee for the Preservation of the White House will be held at the White House at 10 a.m. on Wednesday, April 19, 2006.

**DATE:** April 19, 2006.

**FOR FURTHER INFORMATION CONTACT:** Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242. (202) 619-6344.

**SUPPLEMENTARY INFORMATION:** It is expected that the meeting agenda will include policies, goals, and long range plans. The meeting will be open, but subject to appointment and security clearance requirements. Clearance information, which includes full name, date of birth and social security number, must be received by April 12, 2006. Due to the present mail delays being experienced, clearance information should be faxed to (202) 619-6353 in order to assure receipt by deadline.

Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m. weekdays at (202) 619-6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC, 20242.

Dated: March 8, 2006.

**Ann Bowman Smith**  
*Executive Secretary, Committee for the Preservation of the White House.*

[FR Doc. E6-4007 Filed 3-20-06; 8:45 am]

BILLING CODE 4312-54-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 11, 2006. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC



20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by April 5, 2006.

**John W. Roberts,**  
Acting Chief, National Register/National  
Historic Landmarks Program.

#### Alabama

##### Shelby County

Helena Historic District, parts of AL 261 and Helena Rd., parts of 1st-3rd Ave., 200 blk 3rd St., Helena, 06000278

##### Tallapoosa County

Russell Family Historic District, 35,65,85 N. Central, 228, 334 Robin Hill, 101 Russwood, Alexander City, 06000279

#### California

##### Solano County

Pleasants Ranch, 8212 Pleasants Valley Rd., Vacaville, 06000280

#### Colorado

##### Weld County

Eaton, Aaron James, House, 207 Elm St., Eaton, 06000281

#### Delaware

##### New Castle County

Hickman Row, 1-117 Hickman Rd., Claymont, 06000284  
Liedlich, Charles and Edith, House, 180 Welsh Tract Rd., Newark, 06000283  
Wilmington Club, 1103 N. Market St., Wilmington, 06000282

#### Georgia

##### Carroll County

Mandeville Mills and Mill Village Historic District, roughly centered on Aycock, Lovvorn, and Burson Sts., Carrollton, 06000287

##### Clarke County

Gospel Pilgrim Cemetery, 530 Fourth St., Athens, 06000285

##### Cobb County

Acworth Downtown Historic District, roughly bounded by Southside Dr., Federal and Lemon Sts., and Senator Richard B. Russell Ave., Acworth, 06000286

##### Whitfield County

Dalton Commercial Historic District (Boundary Increase), roughly centered on Hamilton St., and Bounded by S. Thornton Ave., Morris and Hawthorne Sts., and RR lines, Dalton, 06000288

#### Indiana

##### Allen County

Illsley Place—West Rudisill Historic District, roughly bounded by Broadway, W. Rudisill Blvd., Beaver Ave., and the alley N of Illsley Dr., Fort Wayne, 06000310

##### Henry County

Richsquare Friends Meetinghouse and Cemetery, 5685 S. Cty Rd. East, Lewisville, 06000305

#### Jennings County

North Vernon Downtown Historic District, bounded by Sixth and Chestnut Sts., Keller St., Fourth and Main, and Jennings, North Vernon, 06000306

#### Madison County

Anderson Downtown Historic District, roughly Meridian St., from 10th to Conrail RR and first blk W of 11th and 12th Sts., Anderson, 06000307

#### Marion County

Askren, Thomas, House, 6550 E. 16th St., Indianapolis, 06000303  
Linwood Colonial Apartments, 4421 E. Washington St. and 55 and 56 S. Linwood Ave., Indianapolis, 06000308

#### Putnam County

Hazelett, Richard M., House, 911 E. Washington St., Greencastle, 06000304

#### Ripley County

Versailles School and Tyson Auditorium, (Indiana's Public Common and High Schools MPS) 100 South High St., Versailles, 06000309

#### North Carolina

##### Ashe County

Perry—Shepherd Farm, 410 Swansie Shepherd Rd., Lansing, 06000289

##### Caldwell County

Lenoir Grammar School, 506 Harper St., Lenoir, 06000290

##### Duplin County

Faison Cemetery, (Duplin County MPS) East Main St. (NC 403), Faison, 06000291

##### Gaston County

Craig Farmstead, 118 Craigland Ln., Gastonia, 06000292

##### Nash County

Red Oak Community House, E. Side, Church St., approx. 0.1 N of jct. with NC 43, Red Oak, 06000293

##### Warren County

Warren County Training School, East side of NC 1300, 0.8 N of NC 1372, Wise, 06000294

#### Rhode Island

##### Providence County

Beamān and Smith Company Mill, 20 Gordon Ave., Providence, 06000299  
Hope Webbing Company Mill, 999-1005 Main St., Pawtucket, 06000297  
Philmont Worsted Company Mill, 685 Social St., Woonsocket, 06000296  
Smithfield Exchange Bank, 599 Putnam Pike, Smithfield; 06000295

##### Washington County

North End Historic District, Canal, Dayton, Friendship, High, Pearl, Pierce, Pleasant, Pond, West, Industrial Lila, Geranium, Marriott and Turano, Westerly, 06000298

#### Wisconsin

##### Price County

Lidice Memorial, Sokol Park, Ash and Fifield Sts., Phillips, 06000301

##### Rock County

Jefferson Avenue Historic District, bounded by Oakland, Garfield and Ruger Aves. and Forest Park Blvd., Janesville, 06000300

##### Trempealeau County

Green Bay and Western Railroad Depot, 36295 Main St., Whitehall, 06000302

A request for a MOVE has been made for the following resources:

#### Kansas

##### Johnson County

Virginia School District #33, 71st St. and Clare Rd., Shawnee, 04000454

##### Washington County

Washington County Kingpost (Metal Truss Bridges in Kansas 1861-1939 MPS) SE of Barnes, Barnes vicinity, 89002184

A request for REMOVAL has been made for the following resources:

#### Oregon

##### Benton County

Corvallis High School, 836 NW 11th St., Corvallis, 03000692

##### Jackson County

Wimer Bridge (Oregon Covered Bridges TR) E. Evans Creek Rd., Wimer, 79002075

##### Multnomah County

Bethel Baptist Church, 101 S. Main St., Gresham, 82003740

[FR Doc. E6-4009 Filed 3-20-06; 8:45 am]

BILLING CODE 4312-51-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR part 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

**DATES:** OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by April 20, 2006, in order to be assured of consideration.

**ADDRESSES:** Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax at (202) 395-6566 or via e-mail to [OIRA\\_Docket@omb.eop.gov](mailto:OIRA_Docket@omb.eop.gov). Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202-SIB, Washington, DC 20240, or electronically to [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208-2783.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information found at 30 CFR part 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR part 783, which is 1029-0038.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on October 31, 2005 (70 FR 62324). No comments were received. This notice provides the public with an additional 30 days in which to comment.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for

the collection of information. Where appropriate, OSM has revised burden estimates to reflect current reporting levels and adjustments based on reestimates of the burden or number of respondents.

**Title:** Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, 30 CFR part 783.

**OMB Control Number:** 1029-0038.

**Summary:** Applicants for underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed underground coal mining activities.

**Bureau Form Number:** None.

**Frequency of Collection:** Once at time of application submission.

**Description of Respondents:** Underground coal mining applicants, and State regulatory authorities.

**Total Annual Responses:** 64.

**Total Annual Burden Hours:** 28,856 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

Dated: January 10, 2006.

**John R. Craynon,**

*Chief, Division of Regulatory Support.*

[FR Doc. 06-2688 Filed 3-20-06; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

#### Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested

**ACTION:** 60-day notice of information collection under review: National Crime Victimization Survey (NCVS).

The U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is

published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 22, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Katrina Baum, (202) 307-5889, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

#### Overview of This Information

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* National Crime Victimization Survey.

3. *Agency form number, if any, and the applicable component of the U.S. Department of Justice sponsoring the collection:* NCVS-110, NCVS-554, NCVS-554(SP), NCVS-572(L), NCVS-573(L), NCVS-592(L), NCVS-593(L), NCVS-592(L) SP/KOR/CHIN(T), CHIN(M), VIET DOJ Component Sponsor is Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Persons 12 years or older living in NCVS sampled households located throughout the United States. The National Crime Victimization Survey (NCVS) collects,

analyzes, publishes, and disseminates statistics on the criminal victimization in the U.S.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimate of the total number of respondents is 77,100. It will take the average interviewed respondent an estimated 23 minutes to respond, the average non-interviewed respondent an estimated 7 minutes to respond, the estimated average follow-up interview is 12 minutes, and the estimated average follow-up for a non-interview is 1 minute.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden is approximately 62,620 hours.

If additional information is required, contact Robert B. Briggs, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 15, 2006.

**Robert B. Briggs,**

Clearance Officer, United States Department of Justice.

[FR Doc. 06-2661 Filed 3-20-06; 8:45 am]

BILLING CODE 4410-19-M

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities; Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104-13. This is the second notice for public comment; the first was published in the *Federal Register* at 70 FR 75228, and twenty-six (26) comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimated of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725-17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to [splimpto@nsf.gov](mailto:splimpto@nsf.gov). Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703-292-7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### SUPPLEMENTARY INFORMATION:

**Comment:** On December 19, 2005, we published in the *Federal Register* (70 FR 75228) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending February 17, 2006. Twenty-six (26) comments were received in response to the public notice. One comment came from B. Sachau of Florham Park, NJ, via e-mail on December 19, 2005. Ms. Sachau objected to the information collection but had no specific suggestions for altering the data collection plans other than to discontinue them entirely.

**Response:** NSF believes that because the comment does not pertain to the collection of information on the required forms for which NSF is seeking OMB approval, NSF is proceeding with the clearance request.

**Comment:** Public comments have been received by NSF from 23 persons in response to the announcement, as of the close-out date of February 17, 2006. These all were the same e-mail (distributed at the National Communication Association meeting) that proposed breaking apart the Commission fields and placing them in 3 separate categories on the SED Field

of Study List. In addition, SRS directly received 2 e-mails from individuals in the Association for Education in Journalism and Mass Communication who opposed the National Communication Association proposal for the Field of Study listing.

**Response:** NSF has taken these suggestions (along with other suggestions received on the same topic) into consideration concerning the placement of the field of Communication on the Field of Study list for respondents to select their bachelor's, master's and doctorate degree field of study.

**Title of Collection:** Survey of Earned Doctorates.

**OMB Approval Number:** 3145-0019.

**Type of Request:** Intent to seek approval to extend an information collection for three years.

1. **Abstract:** The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to "provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The Survey of Earned Doctorates is part of an integrated survey system that meets the human resources part of this mission.

The Survey of Earned Doctorates (SED) has been conducted continuously since 1958 and is jointly sponsored by six Federal agencies in order to avoid duplication. It is an accurate, timely source of information on our Nation's most precious resource—highly educated individuals. Data are obtained via paper questionnaire or Web option from each person earning a research doctorate at the time they receive the degree. Data are collected on their field of specialty, educational background, sources of support in graduate school, debt level, postgraduation plans for employment, and demographic characteristics. For the 2007 SED, minor changes to questions, based on focus group and cognitive testing will be incorporated into the questionnaire. Also for 2007, a field test of potential questions about salary after graduation will be conducted with less than 9 institutions. Based on the field test results, the intention is to add a salary question in 2008.

The Federal Government, universities, researchers, and others use the information extensively. The National Science Foundation, as the lead agency, publishes statistics from the survey in many reports, but primarily in the annual publication series, "Science and Engineering Doctorates". The National

Opinion Research Corporation at the University of Chicago disseminates a free interagency report entitled "Doctorate Recipients from U.S. Universities: Summary Report." These reports are available in print and electronically on the World Wide Web.

The survey will be collected in conformance with the Privacy Act of 1974. Responses from individuals are voluntary. NSF will ensure that all information collected will be kept strictly confidential and will be used for research and statistical purposes, analyzing data, and preparing scientific reports and articles.

2. *Expected Respondents:* A total response rate of 90.8% of the total 42,155 persons who earned a research doctorate was obtained in the 2004 SED. This level of response rate has been consistent for several years. The respondents will be individuals and the estimated number of respondents annually is 47,787 with a response rate of 92%.

3. *Estimate of Burden:* The Foundation estimates that, on average, 19 minutes per respondent will be required to complete the survey, for a total of 12,465 hours for all respondents (based on the 2004 SED numbers). Also, for the approximately 3,000 respondents in the field test on a salary question, there would be approximately another 50 hours of response time. The total response burden is therefore estimated at 12,171 hours for the 2007 SED. This is slightly higher than the last annual estimate approved by OMB due primarily to an increased number of respondents since the last clearance request.

Dated: March 15, 2006.

**Suzanne H. Plimpton,**  
Reports Clearance Officer, National Science Foundation.

[FR Doc. 06-2657 Filed 3-20-06; 8:45 am]  
BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 590, Application/Permit for Use of the Two White Flint North (TWFN) Auditorium.

2. *Current OMB approval number:* 3150-0181.

3. *How often the collection is required:* Each time public use of the auditorium is requested.

4. *Who is required or asked to report:* Members of the public requesting use of the NRC Auditorium.

5. *The number of annual respondents:* 5.

6. *The number of hours needed annually to complete the requirement or request:* 1.25 hours (15 minutes per request).

7. *Abstract:* In accordance with the Public Buildings Act of 1959, an agreement was reached between the Maryland-National Capital Park and Planning Commission (MPPC), the General Services Administration (GSA), and the Nuclear Regulatory Commission that the NRC auditorium will be made available for public use. Public users of the auditorium will be required to complete NRC Form 590, Application/Permit for Use of Two White Flint North (TWFN) Auditorium. The information is needed to allow for administrative and security review and scheduling, and to make a determination that there are no anticipated problems with the requester prior to utilization of the facility.

Submit, by May 22, 2006, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC world wide web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements

may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by telephone at 301-415-7233, or by internet electronic mail to [INFOCOLLECTS@NRC.GOV](mailto:INFOCOLLECTS@NRC.GOV).

Dated at Rockville, Maryland, this 10th day of March 2006.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**  
NRC Clearance Officer, Office of Information Services.

[FR Doc. E6-4086 Filed 3-20-06; 8:45 am]  
BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 5, 2006, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

**Wednesday, April 5, 2006, 10:30 a.m. - 12 Noon**

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301-415-7364) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named

individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: March 14, 2006.

Michael R. Snodderly,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6-4084 Filed 3-20-06; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATES:** Weeks of March 20, 27, April 3, 10, 17, 24, 2006.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and closed.

**MATTERS TO BE CONSIDERED:**

#### Week of March 20, 2006

There are no meetings scheduled for the Week of March 20, 2006.

#### Week of March 27, 2006—Tentative

There are no meetings scheduled for the Week of March 27, 2006.

#### Week of April 3, 2006—Tentative

There are no meetings scheduled for the Week of April 3, 2006.

#### Week of April 10, 2006—Tentative

There are no meetings scheduled for the Week of April 10, 2006.

#### Week of April 17, 2006—Tentative

There are no meetings scheduled for the Week of April 17, 2006.

#### Week of April 24, 2006—Tentative

Monday, April 24, 2006

2 p.m. Meeting with Federal Energy Regulatory Commission (FERC) FERC Headquarters, 888 First St., NE., Washington, DC 20426 Room 2C (Public Meeting)

Thursday, April 27, 2006

1:30 p.m. Meeting with Department of Energy (DOE) on New Reactor Issues (Public Meeting).

This meeting will be Webcast live at the Web address—<http://www.nrc.gov>.

\* \* \* \* \*

\* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information Michelle Schroll, (301) 415-1662.

\* \* \* \* \*

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule/html>.

\* \* \* \* \*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice of the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301-415-7041, TDD: 301-415-2100, or by e-mail at [DLC@nrc.gov](mailto:DLC@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

\* \* \* \* \*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: March 16, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06-2777 Filed 3-17-06; 1:06 am]

BILLING CODE 7590-01-M

## PENSION BENEFIT GUARANTY CORPORATION

### Proposed Submission of Information Collection for OMB Review; Comment Request; Locating and Paying Participants

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of intention to request extension of OMB approval.

**SUMMARY:** Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend its approval (with modifications) of a collection of information under the Paperwork Reduction Act. The purpose of the information collection is to enable PBGC to pay benefits to participants and beneficiaries in plans covered by the PBGC insurance program. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

**DATES:** Comments should be submitted by May 22, 2006.

**ADDRESSES:** Comments may be mailed to the Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026. Comments also may be submitted by e-mail to [paperwork.comments@pbgc.gov](mailto:paperwork.comments@pbgc.gov), or by fax to 202-326-4224. PBGC will make all comments available on its Web site, <http://www.pbgc.gov>.

Copies of comments may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division or calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040.)

**FOR FURTHER INFORMATION CONTACT:** Jo Amato Burns, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024).

**SUPPLEMENTARY INFORMATION:** PBGC intends to request that OMB extend its approval (with modifications) of a collection of information needed to pay participants and beneficiaries who may be entitled to pension benefits under a defined benefit plan that has terminated. The collection consists of information participants and beneficiaries are asked to provide in connection with an application for benefits. In addition, in some instances, as part of a search for participants and beneficiaries who may be entitled to benefits, PBGC requests individuals to provide identifying information that the individual would provide as part of an initial contact with PBGC. All requested information is needed to enable PBGC to determine benefit entitlements and to make appropriate payments. The information collection includes My Pension Benefit Account (My PBA), an application on PBGC's Web site, <http://www.pbgc.gov>, through which plan participants and beneficiaries may conduct electronic transactions with PBGC, including applying for pension benefits, designating a beneficiary, granting a power of attorney, electing monthly payments, electing to withhold income tax from periodic payments, changing contact information, and applying for electronic direct deposit.

PBGC intends to improve its benefit application and information forms and



instructions and My PBA by making simplifying, editorial, and other changes. The existing collection of information under the regulation was approved under control number 1212-0055 (expires August 31, 2008). PBGC intends to request that OMB extend its approval (with modifications) for three years from the date of approval. 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.

PBGC estimates that 184,350 benefit application or information forms will be filed annually by individuals entitled to benefits from PBGC and that the associated burden is 90,600 hours (an average of about one-half hour per response) and \$71,900 (an average of \$.39 per response). PBGC further estimates that 5,500 individuals annually will provide PBGC with identifying information as part of an initial contact so that PBGC may determine if they are entitled to benefits and that the associated burden is 1,500 hours (an average of about one-quarter hour per response) and \$1,200 (an average of \$.22 per response). Thus, the total estimated annual burden associated with this collection of information is 92,100 hours and \$73,100.

(These estimates include paper and electronic filings.)

PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Issued at Washington, DC, this 15th day of March, 2006.

**Richard W. Hartt,**

*Chief Technology Officer, Pension Benefit Guaranty Corporation.*

[FR Doc. E6-4061 Filed 3-20-06; 8:45 am]

BILLING CODE 7709-01-P

## RAILROAD RETIREMENT BOARD

### Proposed Data Collection Available for Public Comment and Recommendations

**Summary:** In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

**Comments are invited on:** (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Title and purpose of information collection:**

Employer's Deemed Service Month Questionnaire; OMB 3220-0156.

Section 3(i) of the Railroad Retirement Act (RRA), as amended by Public Law 98-76, provides that the Railroad Retirement Board (RRB), under certain circumstances, may deem additional months of service in cases where an employee does not actually work in every month of the year, provided the employee satisfies certain eligibility requirements, including the existence of an employment relation between the employee and his or her employer. The procedures pertaining to the deeming of additional months of service are found in the RRB's regulations at 20 CFR part 210, Creditable Railroad Service.

The RRB utilizes Form GL-99, Employers Deemed Service Months Questionnaire, to obtain service and compensation information from railroad employers needed to determine if an employee can be credited with additional deemed months of railroad service. Completion is mandatory. One response is required for each RRB inquiry.

The RRB proposes no changes to Form GL-99. The completion time for Form GL-99 is estimated at 2 minutes per response. The RRB estimates that approximately 4,000 responses are received annually.

**Additional Information or Comments:** To request more information or to obtain a copy of the information collection justification, forms, and/or

supporting material, please call the RRB Clearance Officer at (312) 751-3363 or send an e-mail request to [Charles.Mierzwa@RRB.GOV](mailto:Charles.Mierzwa@RRB.GOV). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or send an e-mail to [Ronald.Hodapp@RRB.GOV](mailto:Ronald.Hodapp@RRB.GOV). Written comments should be received within 60 days of this notice.

**Charles Mierzwa,**  
Clearance Officer.

[FR Doc. E6-4060 Filed 3-20-06; 8:45 am]

BILLING CODE 7905-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

**Extension:**

Rule 17f-2; SEC File No. 270-233; OMB Control No. 3235-0223  
Form N-17f-2; SEC File No. 270-317;  
OMB Control No. 3235-0360

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17f-2 (17 CFR 270.17f-2) under the Investment Company Act of 1940 (the "Act") (15 U.S.C. 80a-1) is entitled: "Custody of Investments by Registered Management Investment Company." Rule 17f-2 establishes safeguards for arrangements in which a registered management investment company ("fund") is deemed to maintain custody of its own assets, such as when the fund maintains its assets in a facility that provides safekeeping but not custodial services. The rule includes several recordkeeping or reporting requirements. The fund's directors must prepare a resolution designating not more than five fund officers or responsible employees who may have access to the fund's assets. The designated access persons (two or more of whom must act jointly when handling fund assets) must prepare a written notation providing certain

information about each deposit or withdrawal of fund assets, and must transmit the notation to another officer or director designated by the directors. Independent public accountants must verify the fund's assets at least three times a year and two of the examinations must be unscheduled.

The requirement that directors designate access persons is intended to ensure that directors evaluate the trustworthiness of insiders who handle fund assets. The requirements that access persons act jointly in handling fund assets, prepare a written notation of each transaction, and transmit the notation to another designated person are intended to reduce the risk of misappropriation of fund assets by access persons, and to ensure that adequate records are prepared, reviewed by a responsible third person, and available for examination by the Commission's examination staff. The requirement that auditors verify fund assets without notice twice each year is intended to provide an additional deterrent to the misappropriation of fund assets and to detect any irregularities.

The Commission staff estimates that each fund makes 270.5 responses and spends an average of 95 hours annually in complying with the rule's requirements.<sup>1</sup> Commission staff estimates that on an annual basis it takes: (i) 0.17 hours of fund accounting personnel at a total cost of \$10 to draft director resolutions;<sup>2</sup> (ii) 0.6 hours of the fund's board of directors at a total cost of \$1200 to adopt the resolution; (iii) 75 hours for the fund's accounting personnel at a total cost of \$5228 to prepare written notations of transactions;<sup>3</sup> and (iv) 18.9 hours for the

fund's accounting personnel at a total cost of \$1087 to assist the independent public accountants when they perform verifications of fund assets.<sup>4</sup> Approximately 140 funds rely upon Rule 17f-2 annually.<sup>5</sup> Thus, the total annual hour burden for Rule 17f-2 is estimated to be 13,300 hours.<sup>6</sup> Based on the total costs per fund listed above, the total cost of the Rule 17f-2's collection of information requirements is estimated to be \$1 million.<sup>7</sup>

Form N-17f-2 (17 CFR 274.220) under the Act is entitled "Certificate of Accounting of Securities and Similar Investments in the Custody of Management Investment Companies." Form N-17f-2 is the cover sheet for the accountant examination certificates filed under Rule 17f-2 under the Act by registered management investment companies ("funds") maintaining custody of securities or other investments. Form N-17f-2 facilitates the filing of the accountant's examination certificates. The use of the form allows the certificates to be filed electronically, and increases the accessibility of the examination certificates to both the Commission's examination staff and interested investors by ensuring that the certificates are filed under the proper Commission file number and the correct name of a fund.

Commission staff estimates that on an annual basis it takes: (i) On average 3.25 hours of fund accounting personnel at a total cost of \$187 to prepare the Form N-17f-2;<sup>8</sup> and (ii) 3.15 hours of clerical time at a total cost of \$87 to file the Form N-17f-2 with the Commission.<sup>9</sup> As noted above, approximately 140 funds currently file Form N-17f-2 with the Commission, and each fund is required to make three filings annually for a total annual hourly burden per fund of approximately 6.4 hours at a

based on the following calculation:  $269 \times 0.28 \times \$69.41 = \$5227.96$ .

<sup>4</sup> This estimate is based on the following calculation:  $18.9 \times \$57.52$  (fund senior accountant hourly rate) = \$1087.

<sup>5</sup> Based on a review of Form N-17f-2 filings in 2004, the Commission staff estimates that 140 funds relied on Rule 17f-2 in 2005.

<sup>6</sup> This estimate is based on the following calculation:  $140$  (funds)  $\times$   $95$  (total annual hourly burden per fund) =  $13,300$  hours for rule. The annual burden for Rule 17f-2 does not include time spent preparing Form N-17f-2. The burden for Form N-17f-2 is included in a separate collection of information.

<sup>7</sup> This estimate is based on the following calculation:  $\$7525$  (total annual cost per fund)  $\times$   $140$  funds =  $\$1,053,500$ .

<sup>8</sup> This estimate is based on the following calculation:  $3.25 \times \$57.52$  (fund senior accountant's hourly rate) =  $\$186.9$ .

<sup>9</sup> This estimate is based on the following calculation:  $3.15 \times \$27.6$  (secretary hourly rate) =  $\$86.94$ .

total cost of \$274. The total annual hour burden for Form N-17f-2 is therefore estimated to be approximately 896 hours. Based on the total annual costs per fund listed above, the total cost of Form N-17f-2's collection of information requirements is estimated to be approximately \$38,360.<sup>10</sup>

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Complying with the collections of information required by Rule 17f-2 and Form N-17f-1 is mandatory for those funds that maintain custody of their own assets. Responses will not be kept confidential. 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.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: March 14, 2006.

Nancy M. Morris,  
Secretary.

[FR Doc. E6-4012 Filed 3-20-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange

<sup>10</sup> This estimate is based on the following calculation:  $140$  funds  $\times$   $\$274$  (total annual cost per fund) =  $\$38,360$ .

Commission will hold the following meeting during the week of March 20, 2006:

A Closed Meeting will be held on Thursday, March 23, 2006 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, March 23, 2006 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Formal orders of investigation.

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: March 16, 2006.

Nancy M. Morris,  
Secretary.

[FR Doc. 06-2765 Filed 3-17-06; 11:06 am]  
BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53478; File No. SR-Amex-2006-21]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Rebate of the Exchange's Options Cancellation Fee

March 14, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February

24, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Amex has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Amex under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, 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 Exchange proposes to rebate the options cancellation fee collected by the Exchange for the months of September and October 2005. The text of the proposed rule change is available on the Amex's Internet Web site at (<http://www.amex.com>), at the principal office of the Amex, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### (1) Purpose

In November 2001, the Amex established a fee for the cancellation of options orders.<sup>5</sup> Pursuant to this fee, a clearing firm is subject to a charge of \$1.00 for every order it cancels in any month in which the total number of orders cancelled by that clearing firm exceeds the total number of orders executed by that firm in that month. The

fee does not apply to clearing firms that cancel fewer than 500 orders in a given month. The options cancellation fee was deemed to be necessary given the often disproportionate number of order cancellations received relative to order executions and the increased costs associated with the practice of immediately following an order routed through Exchange systems with a cancel request for that order.

The Amex's billing system receives only completed transaction data and does not receive data regarding orders that have been cancelled. Therefore, the information necessary to determine whether the cancellation fee should be charged is compiled outside the billing system. It came to the Exchange's attention a few months ago that the options cancellation fee was not currently being charged and may never have been charged, even though some clearing firms may have triggered the charge. The problem was corrected, and, beginning with options orders and cancellations entered in September 2005, the Exchange began billing the cancellation fee to the clearing firms when appropriate. Unfortunately, notice of the application of this fee, almost 4 years after the fee was adopted, was not widely disseminated to the clearing firms. Many clearing firms first learned of the application of the fee when they received their September 2005 invoices. As a result, the clearing firms were unable to notify their customers of the fee or convert their billing systems to charge back this fee to their customers.

The Exchange now proposes to rebate the amounts billed and collected pursuant to the options cancellation fee for the months of September and October 2005. The clearing firms were fully notified by November 1, 2005; therefore, the Exchange believes that it is only necessary to rebate the fees billed and collected for the months of September and October. The Exchange believes that the rebate of options cancellation fees for a limited period of time is appropriate given its failure to fully inform the clearing firms of the application of the fee.

###### (2) Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it is intended to assure the equitable allocation of reasonable dues, fees and other charges

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> See Securities Exchange Act Release No. 45110 (November 27, 2001) 66 FR 63080 (December 4, 2001) (notice of filing and immediate effectiveness of SR-Amex-2001-90).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

among its members and issuers and other persons using its facilities.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Amex does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder<sup>9</sup>. 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 the 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](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2006-21 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-21. 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-2006-21 and should be submitted on or before April 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-4011 Filed 3-20-06; 8:45 am]

BILLING CODE 8010-C1-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53486; File No. SR-CBOT-2006-03]

### Self-Regulatory Organization; Board of Trade of the City of Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to Listing Standards for Security Futures Products

March 14, 2006.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on February 21, 2006, the Board of Trade of the City of Chicago, Inc. ("CBOT" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rules described in Items I, II, and III below, which Items have been prepared by the

CBOT. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons. The CBOT also has filed the proposed rules with the Commodity Futures Trading Commission ("CFTC"), together with a written certification under Section 5c(c) of the Commodity Exchange Act ("CEA")<sup>3</sup> on February 16, 2006.

#### I. Self-Regulatory Organization's Description of the Proposed Rules

The CBOT is proposing to adopt listing standards and related regulations to permit the trading on the Exchange of physically-settled single security futures products, and the trading of security futures products based on narrow-based securities indices, in compliance with the requirements under Section 6(h)(3) of the Act<sup>4</sup> and the criteria under Section 2(a)(1)(D)(i) of the CEA,<sup>5</sup> as modified by joint orders of the Commission and the CFTC.<sup>6</sup> The text of the proposed rule change is available on the CBOT's website (<http://www.cbot.com>), at the CBOT's principal office, and at the Commission's Public Reference Room.

The CBOT's Listing Standards<sup>7</sup> are, for the most part, identical to the sample listing standards ("Sample Listing Standards") included in the Commission's Staff Legal Bulletin No. 15 ("SLB 15"),<sup>8</sup> except that the CBOT's Listing Standards:

- Reflect the modifications to the statutory listing standards requirements jointly adopted by the Commission and the CFTC with respect to shares of exchange-traded funds ("ETFs"), trust-issued receipts ("TIRs"), shares of registered closed-end management investment companies ("Closed-End Fund Shares"), and American Depository Receipts ("ADRs");<sup>9</sup>
- Permit share-weighted, approximately equal dollar-weighted, and modified equal dollar-weighted methodologies for futures based on

<sup>3</sup> 7 U.S.C. 7a-2(c).

<sup>4</sup> 15 U.S.C. 78f(h)(3).

<sup>5</sup> 7 U.S.C. 2(a)(1)(D)(i).

<sup>6</sup> See Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001) and Joint Order Granting the Modification of Listing Standards Requirements (Exchange Traded Funds, Trust Issued Receipts, and Shares of Closed-End Funds), Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002).

<sup>7</sup> The CBOT's Listing Standards are set forth in proposed CBOT Regulations 5719.01 and 5818.01.

<sup>8</sup> Commission, Division of Market Regulation, Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001) (available at <http://www.sec.gov/interp/legals/mls15.htm>).

<sup>9</sup> See *supra* note 6.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(7).

<sup>12</sup> 17 CFR 240.19b-7.



narrow-based security indices, subject to applicable rebalancing requirements;<sup>10</sup> and

- Contain certain provisions that reflect rule changes that have been filed by other security futures exchanges since the adoption of SLB 15, which vary from the Sample Listing Standards set forth in SLB 15.

The Exchange is also proposing to adopt regulations addressing regulatory trading halts, position limits, and procedures for determining final settlement prices for security futures products, as required by Rule 6h-1 under the Act<sup>11</sup> and CFTC Regulation 41.25.<sup>12</sup>

Proposed CBOT Regulations 431.07 and 431.08, while also referenced in Item II below, are not filed in this proposed rule change because they were the subjects of separate filings by the CBOT pursuant to Rule 19b-4 under the Act.<sup>13</sup>

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

The CBOT has prepared statements concerning the purpose of, and basis for, the proposed rules, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

The CBOT proposes to adopt contract specifications governing physically-settled single security futures products ("single stock futures") and contract specifications governing security futures products based on narrow-based securities indices ("narrow-based stock index futures"), including proposed listing standards that comply with the requirements under Section 6(h)(3) of the Act<sup>14</sup> and the criteria under Section 2(a)(1)(D)(i) of the CEA,<sup>15</sup> as modified

<sup>10</sup> Proposed CBOT Regulations 5818.01(a)(2) and 5818.01(b)(1)(B) contain listing requirements that relate to the initial listing standards and maintenance standards, respectively, for share-weighted, approximately equal dollar-weighted, and modified equal dollar-weighted narrow-based security indices, in addition to those based on other weighting methodologies. All of these weighting methodologies have been previously approved for use by other security futures exchanges.

<sup>11</sup> 17 CFR 240.6h-1.

<sup>12</sup> 17 CFR 41.25.

<sup>13</sup> See SR-CBOT-2006-01, filed with the Commission on March 3, 2006.

<sup>14</sup> 15 U.S.C. 78f(h)(3).

<sup>15</sup> 7 U.S.C. 2(a)(1)(D)(i).

by joint orders of the Commission and the CFTC.<sup>16</sup>

Section 6(h)(3) of the Act<sup>17</sup> sets forth a number of requirements for listing standards applicable to security futures products. Among other things, that Section provides that such listing standards must (i) be no less restrictive than comparable listing standards for options traded on a national securities exchange<sup>18</sup> and (ii) require that trading in security futures products not be readily susceptible to manipulation of the price of such products or of the underlying securities or options on such securities.<sup>19</sup>

### 1. CBOT Listing Standards

Commission staff published SLB 15,<sup>20</sup> including the Sample Listing Standards (which were derived from typical listing standards used by exchanges trading options based on securities or securities indices), to provide guidance as to how an exchange would be able to comply with the foregoing requirements. SLB 15 also noted that different listing standards could also be consistent with the Act.

The CBOT's Listing Standards follow the Sample Listing Standards, subject to additional modifications relating to ETFs, TIRs, and Closed-End Fund Shares; the establishment of additional weighting methodologies, identified under Item I above; and certain other rule changes that were filed with the Commission and the CFTC by OneChicago, LLC ("OneChicago")<sup>21</sup> and the CBOE Futures Exchange, LLC ("CFE"),<sup>22</sup> which pertain to OneChicago's and CFE's respective

<sup>16</sup> See *supra* note 6.

<sup>17</sup> 15 U.S.C. 78f(h)(3).

<sup>18</sup> 15 U.S.C. 78f(h)(3)(C).

<sup>19</sup> 15 U.S.C. 78f(h)(3)(H).

<sup>20</sup> See *supra* note 8.

<sup>21</sup> See SR-OC-2002-04 (Securities Exchange Act Release No. 47114 (December 31, 2002), 68 FR 837 (January 7, 2003)) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC Relating to Listing Standards for Security Futures Products). See also SR-OC-2003-01 (Securities Exchange Act Release No. 47356 (February 12, 2003), 68 FR 8064 (February 19, 2003)); SR-OC-2003-04 (Securities Exchange Act Release No. 47445 (March 5, 2003), 68 FR 11595 (March 11, 2003)); SR-OC-2003-06 (Securities Exchange Act Release No. 48191 (July 17, 2003), 68 FR 43555 (July 23, 2003)); SR-OC-2003-08 (Securities Exchange Act Release No. 48660 (October 20, 2003), 68 FR 61027 (October 24, 2003)); SR-OC-2004-02 (Securities Exchange Act Release No. 50373 (September 14, 2004), 69 FR 56470 (September 21, 2004)); and SR-OC-2005-02 (Securities Exchange Act Release No. 52180 (July 29, 2005), 70 FR 45464 (August 5, 2005)).

<sup>22</sup> See SR-CFE-2005-01 (Securities Exchange Act Release No. 52295 (August 18, 2005), 70 FR 49691 (August 24, 2005)) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by CBOE Futures Exchange, LLC Relating to Its Listing Standards for Security Futures Products).

listing standards for security futures. Therefore, the CBOT's Listing Standards as set forth herein do not contain any listing standards that have not already been reviewed by the Commission.

The CBOT's Listing Standards permit the CBOT to trade physically-settled single stock futures. The CBOT's Listing Standards also permit the CBOT to trade either cash-settled or physically-settled narrow-based stock index futures on the following types of stock indices: capitalization-weighted, modified capitalization-weighted, price-weighted, share-weighted, equal dollar-weighted, approximately equal dollar-weighted, and modified equal dollar-weighted. The modifications to SLB 15, including the modifications that permit the CBOT to list approximately equal dollar-weighted, modified equal dollar-weighted, and share-weighted narrow-based stock index futures, are explained in further detail below.

### 2. Modifications of SLB 15

#### a. Modification relating to Shares of ETFs, TIRs, and Closed-End Fund Shares

The modifications included in the CBOT's Listing Standards that relate to shares of ETFs, TIRs, and Closed-End Fund Shares reflect the modifications to the statutory listing standards requirements adopted by the Commission and the CFTC subsequent to the publication of SLB 15.<sup>23</sup> These standards are incorporated in proposed CBOT Regulation 5719.01.

#### b. Modification relating to Additional Weighting Methodologies

The modifications that relate to narrow-based stock index futures: (i) Are intended to allow the CBOT to provide for additional weighting methodologies for the underlying indices, including approximately equal dollar-weighted, modified equal dollar-weighted, and share-weighted methodologies; and (ii) are designed to enhance the usefulness and effectiveness of narrow-based stock index futures in connection with hedging, arbitrage, and other investment strategies.

The proposed approximately equal dollar-weighted methodology contemplates a narrow-based stock index consisting of component securities in increments that are no less than 100 shares or receipts, which corresponds to customary increments for transactions in the markets for those securities. For this reason, rounding will be a necessary step in the determination of the initial index composition and any

<sup>23</sup> See *supra* note 6.



subsequent rebalancing. An approximately equal dollar-weighted index will be rebalanced annually on December 31 of each year if the notional value of the largest component is at least twice the notional value of the smallest component for 50% or more of the trading days in the three months prior to December 31 of each year. The CBOT will also have the ability to rebalance an approximately equal dollar-weighted narrow-based security index on a quarterly basis at its discretion.

A modified equal dollar-weighted index is designed to be a fair measurement of a particular industry or sector without assigning an excessive weight to one or more index components that have a large market capitalization relative to other index components. In a modified equal dollar-weighted index, each component security represents a pre-determined weighting percentage of the entire index. Each security will be assigned a weight that takes into account the relative market capitalization of the securities comprising the index. A modified equal dollar-weighted index underlying a narrow-based stock index future must be rebalanced on a quarterly basis.

A share-weighting methodology involves calculating the index by multiplying the price of each component security by an adjustment factor. The adjustment factor will be chosen to reflect the investment objective deemed appropriate by the index designer and will be published by the Exchange as part of the contract specifications for the narrow-based stock index future. The value of the index will be calculated by adding the weight of each component security and dividing the total by an index divisor, calculated to yield a benchmark index level as of a particular date. Share-weighted indices will not be rebalanced to reflect changes in the numbers of outstanding shares of their component securities.

The CBOT's proposed Listing Standards also provide that an index underlying a narrow-based stock index future, regardless of the weighting methodology, may be rebalanced on an interim basis if warranted as a result of extraordinary changes in the relative values of the component securities. To the extent investors with open positions must rely on the continuity of a narrow-based stock index future, outstanding contracts will not be affected by rebalancings.

The proposed Listing Standards for narrow-based stock index futures based on indices that are approximately equal dollar-weighted, modified equal dollar-

weighted, and share-weighted, which are reflected in proposed CBOT Regulations 5818.01(a)(2) and (b)(1)(B), are identical to the listing standards applicable in the case of indices based on these same weighting methodologies that are set forth in OneChicago Rules 1006(a)(2) and (b)(1)(B).<sup>24</sup>

#### c. Modification of SLB 15 I(A)(vi)

The CBOT is adopting the same initial listing standard contained in OneChicago Rule 906(a)(6)<sup>25</sup> and Section A(1)(vi) of CFE Policy and Procedure VIII,<sup>26</sup> which would permit the CBOT to list a single stock future on an underlying security that had trading volume of at least 2,400,000 shares in the preceding 12 months. This standard is incorporated in proposed CBOT Regulation 5719.01(a)(6).

#### d. Modification of SLB 15 I(A)(vii)

The CBOT is proposing to adopt initial listing standards which would permit a single stock future to be listed on a "covered security," as defined under Section 18(b)(1) of the Securities Act of 1933,<sup>27</sup> that has had a market price of at least \$3.00 for the five consecutive business days prior to the date on which the single stock futures contract is listed by the Exchange. The market price of the underlying security would be measured by the closing price reported in the primary market in which the underlying security is traded. Proposed CBOT regulations would also require that an underlying security that is not a "covered security" must meet the requirement that it have a market price of \$7.50 for the majority of the business days for the three calendar months preceding selection. These standards are reflected in proposed CBOT Regulations 5719.01(a)(8) and (a)(9) and are the same as those standards contained in OneChicago Rule 906(a)(8) and (a)(9)<sup>28</sup> and Section A(1)(viii) and A(1)(ix) of CFE Policy and Procedure VIII.<sup>29</sup>

#### e. Modification of SLB 15 II(A)(iv)

The CBOT is adopting the same maintenance standards implemented in OneChicago Rule 906(b)(1)(E)<sup>30</sup> and in Section B(1)(v) of CFE Policy and Procedure VIII,<sup>31</sup> pursuant to which the CBOT would not open for trading a new delivery month for a single stock futures

contract if the market price per share of the underlying security closed below \$3.00 on the previous day to the expiration of the nearest expiring contract on the underlying security. The market price per share of the underlying security would be determined by the closing price reported in the primary market in which the underlying security is traded. This standard is incorporated in proposed CBOT Regulation 5719.01(b)(1)(E).

#### 3. Section 6(h)(3) Requirements

Section 6(h)(3) of the Act<sup>32</sup> contains detailed requirements for listing standards and conditions for trading applicable to security futures products. Set forth below is a summary of each such requirement or condition, followed by a brief explanation of how the CBOT will comply with it, whether by particular provisions in the CBOT's listing standards or otherwise.

Section 6(h)(3)(A) of the Act<sup>33</sup> requires that, except as otherwise provided in a rule, regulation, or order issued jointly by the Commission and CFTC pursuant to Section 6(h)(4) of the Act,<sup>34</sup> any security underlying a security futures product, including each component security of a narrow-based security index, must be registered pursuant to Section 12 of the Act.<sup>35</sup> These requirements are incorporated in proposed CBOT Regulations 5704.01, 5719.01(a)(2), 5719.01(b)(1)(A), 5804.01, 5818.01(a)(2)(B) and 5818.01(b)(1)(B)(i).

Section 6(h)(3)(B) of the Act<sup>36</sup> requires that, if a security futures product is not cash-settled, the market on which the security futures product is traded must have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product. Pursuant to CBOT Regulations 5719.01(a) and 5818.01(a)(2), the CBOT will not list any physically-settled security futures product until it has finalized such arrangements and provided the Commission with appropriate notice regarding the nature of such arrangements through the filing of a Form 19b-7, pursuant to Section 19(b)(7) of the Act<sup>37</sup> and Rule 19b-7 under the Act.<sup>38</sup>

Section 6(h)(3)(C) of the Act<sup>39</sup> requires that the listing standards for security futures products must be no less restrictive than comparable listing

<sup>24</sup> See SR-OC-2005-02, *supra* note 21.

<sup>25</sup> See SR-OC-2004-02, *supra* note 21.

<sup>26</sup> See SR-CFE-2005-01, *supra* note 22.

<sup>27</sup> 15 U.S.C. 77r(b)(1).

<sup>28</sup> See SR-OC-2003-01, *supra* note 21.

<sup>29</sup> See SR-CFE-2005-01, *supra* note 22.

<sup>30</sup> See SR-OC-2003-04 (as amended by SR-OC-2003-08), *supra* note 21.

<sup>31</sup> See SR-CFE-2005-01, *supra* note 22.

<sup>32</sup> 15 U.S.C. 78f(h)(3).

<sup>33</sup> 15 U.S.C. 78f(h)(3)(A).

<sup>34</sup> 15 U.S.C. 78f(h)(4).

<sup>35</sup> 15 U.S.C. 78l.

<sup>36</sup> 15 U.S.C. 78f(h)(3)(B).

<sup>37</sup> 15 U.S.C. 78s(b)(7).

<sup>38</sup> 17 CFR 240.19b-7.

<sup>39</sup> 15 U.S.C. 78f(h)(3)(C).

standards for options traded on a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act.<sup>40</sup> For the reasons discussed under Item II.A.1 above, notwithstanding specified differences between the Sample Listing Standards and the CBOT's Listing Standards, the CBOT believes that the Listing Standards set forth in its proposed CBOT Regulations 5719.01 and 5818.01 are no less restrictive than comparable listing standards for exchange-traded options.

Section 6(h)(3)(D) of the Act<sup>41</sup> provides that, except as otherwise provided in a rule, regulation, or order issued jointly by the Commission and CFTC pursuant to Section 6(h)(4) of the Act,<sup>42</sup> a security futures product must be based upon common stock or other equity securities that the Commission and CFTC jointly determine appropriate. The Commission and CFTC have jointly modified the listing standards, under Section 6(h)(4) of the Act,<sup>43</sup> to permit security futures products to be based upon ADRs, ETFs, TIRs, and Closed-End Fund Shares.<sup>44</sup> Proposed CBOT Regulations 5704.01, 5719.01(a)(1), 5719.01(b)(1), 5804.01, 5818.01(a)(2)(C), and 5818.01(b)(1)(B)(ii) limit CBOT security futures products to those that are based on these permissible underlying securities.

Section 6(h)(3)(E) of the Act<sup>45</sup> requires that security futures products must be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits a security futures product to be purchased on one market and offset on another market that trades the same product. Section 6(h)(7) of the Act<sup>46</sup> defers this requirement until the "compliance date," as defined in that Section. The CBOT expects that its Clearing Services Provider, Chicago Mercantile Exchange, Inc. ("CME"), will have provisions in place to comply with Section 6(h)(3)(E)<sup>47</sup> as of the compliance date.

Section 6(h)(3)(F) of the Act<sup>48</sup> requires that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act<sup>49</sup> may effect transactions in

security futures products. CBOT members that are notice-registered broker-dealers, for the purpose of effecting transactions in security futures, are bound by the applicable sales practice rules of the National Futures Association ("NFA"). The NFA is registered with the Commission as a limited purpose national securities association, and, as such, its sales practice rules relating to security futures products are comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act.<sup>50</sup>

Section 6(h)(3)(G) of the Act<sup>51</sup> requires that security futures products be subject to the dual trading prohibition contained in Section 4j of the CEA<sup>52</sup> and rules and regulations thereunder (or Section 11(a) of the Act<sup>53</sup> and rules and regulations thereunder), unless otherwise permitted. Pursuant to CFTC Regulation 41.27(a)(5),<sup>54</sup> Section 4j of the CEA<sup>55</sup> and CFTC Regulation 41.27<sup>56</sup> promulgated thereunder do not apply to the CBOT because the CBOT does not intend to list any security futures products in the open auction environment and the CBOT's electronic trading system does not provide market participants with a time or place advantage or the ability to override a predetermined algorithm.

Section 6(h)(3)(H) of the Act<sup>57</sup> requires that trading in security futures products must not be readily susceptible to manipulation of the price of such security futures products, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities. The CBOT's Listing Standards contained in proposed CBOT Regulations 5719.01 and 5818.01, as well as the other proposed CBOT Regulations in Chapters 57 and 58, are designed to ensure that security futures products traded on the Exchange will not be readily subject to price manipulation, nor to being used in the manipulation of the price of any underlying securities. CBOT Rule 502.00 generally prohibits market manipulation with respect to commodities, securities, and futures and options contracts.<sup>58</sup>

<sup>50</sup> *Id.*

<sup>51</sup> 15 U.S.C. 78f(h)(3)(G).

<sup>52</sup> 7 U.S.C. 6j.

<sup>53</sup> 15 U.S.C. 78k(a).

<sup>54</sup> 17 CFR 41.27(a)(5).

<sup>55</sup> 7 U.S.C. 6j.

<sup>56</sup> 17 CFR 41.27.

<sup>57</sup> 15 U.S.C. 78f(h)(3)(H).

<sup>58</sup> CBOT Rule 502.00 (Market Manipulation) states that:

Any manipulation of prices of, or any attempt to manipulate or corner the market in, any commodity, security, or futures or options contract

The position limit standards set forth in proposed CBOT Regulations 5711.01 and 5810.01 ("Position Limits") are also designed to prevent market manipulation with respect to physically-settled single stock futures and physically-settled narrow-based stock index futures, respectively, through the adoption of position limits in accordance with CFTC Regulation 41.25.<sup>59</sup> With respect to cash-settled narrow-based stock index futures, proposed CBOT Regulation 5810.01 adopts the position limit standards set forth in OneChicago Rule 1002(e)(2)<sup>60</sup> and CFE Rule 1902(e)<sup>61</sup> and applies those standards to all CBOT cash-settled narrow-based stock index futures.<sup>62</sup> Under proposed CBOT Regulation 5810.01, the CBOT will calculate two numbers: The Market Cap Position Limit and the SSF Position Limit. The Market Cap Position Limit is based on the market capitalization of each narrow-based stock index future and the notional value compared to the market capitalization of the CME's position limit for its futures contract on the Standard & Poor's ("S&P") 500 Index. The SSF Position Limit is based on the current position limit permitted for single stock futures under CFTC Regulation 41.25.<sup>63</sup> The CBOT will impose a position limit on each cash-settled narrow-based stock index future equal to the lower of the Market Cap Position Limit and the SSF Position Limit, rounded to the nearest multiple of 1,000 contracts; provided, however, that if the lower of the two limits is less than 500 but not less than 400, the position limit for such future will be rounded up to 1,000 contracts.

To calculate the Market Cap Position Limit, the CBOT will determine the market capitalization of the S&P 500 Index (as of the selection date for the

is prohibited. Purchases or sales of commodities, securities, or futures or options contracts, or offers to purchase or sell commodities, securities, or futures or options contracts, for the purpose of upsetting the equilibrium of the market or creating a condition in which prices do not or will not reflect fair market values, are prohibited, and any person who makes or assists in making such purchase or sale or offers to purchase or sell with knowledge of the purpose thereof, or who, with such knowledge assists in carrying out any plan or scheme for the making of such purchases or sales or offers to purchase or sell, shall be deemed to have engaged in an act inconsistent with just and equitable principles of trade and an act detrimental to the interest or welfare of the Exchange.

<sup>59</sup> 17 CFR 41.25.

<sup>60</sup> See SR-OC-2003-06, *supra* note 21.

<sup>61</sup> See SR-CFE-2005-01, *supra* note 22.

<sup>62</sup> Consistent with CFTC Regulation 41.25, position limits apply to positions in any cash-settled narrow-based stock index futures held during the last five trading days of an expiring contract.

<sup>63</sup> 17 CFR 41.25.

<sup>40</sup> 15 U.S.C. 78o-3(a).

<sup>41</sup> 15 U.S.C. 78f(h)(3)(D).

<sup>42</sup> 15 U.S.C. 78f(h)(4).

<sup>43</sup> *Id.*

<sup>44</sup> See *supra* note 6.

<sup>45</sup> 15 U.S.C. 78f(h)(3)(E).

<sup>46</sup> 15 U.S.C. 78f(h)(7).

<sup>47</sup> 15 U.S.C. 78f(h)(3)(E).

<sup>48</sup> 15 U.S.C. 78f(h)(3)(F).

<sup>49</sup> 15 U.S.C. 78o-3(a).

component securities in the index underlying the narrow-based stock index future), then will calculate the notional value of a position at the limit of CME's S&P 500 Index futures contract ("S&P 500 Notional Value Limit")<sup>64</sup> and then will divide the first amount by the second to determine the market capitalization ratio ("Market Cap Ratio").<sup>65</sup> The CBOT then will determine the market capitalization of the index underlying the narrow-based stock index future ("Stock Index Market Cap")<sup>66</sup> and the notional value of the index underlying the narrow-based stock index future ("Notional Value").<sup>67</sup> To calculate the Market Cap Position Limit, the CBOT will divide the Stock Index Market Cap by the Notional Value multiplied by the Market Cap Ratio.<sup>68</sup>

To calculate the SSF Position Limit for a narrow-based stock index future, the CBOT will first calculate its Notional Value in the same manner described above.<sup>69</sup> Then, for each component security in the index underlying the narrow-based stock index future, the CBOT will multiply the index weight of the component security<sup>70</sup> by the Notional Value to determine the security's proportion of the narrow-based stock index future ("Share Weighting"). The CBOT will then divide each security's Share Weighting by its price to calculate the number of shares of that security represented in the narrow-based stock index futures contract ("Implied Shares"). The CBOT then, for each component security in the index underlying the narrow-based stock index future, will divide its Implied Shares by 100 to obtain the implied number of 100-share contracts of each component security in each narrow-based stock index futures contract. The CBOT then will divide the applicable single stock futures contract position limit permitted under CFTC Regulation

41.25(a)(3)<sup>71</sup> (either 13,500 or 22,500 contracts) for each component security by the number of implied 100-share contracts. This equals the number of narrow-based stock index futures contracts that could be held without exceeding the speculative position limit on a futures contract on that component security ("Implied SSF Speculative Limit"). If a component security qualifies for position accountability under CFTC Regulation 41.25(a)(3),<sup>72</sup> that security would be ignored for purposes of this calculation. After calculating the Implied SSF Speculative Limit for each security in the index underlying the narrow-based stock index future, the CBOT will identify the lowest Implied SSF Speculative Limit as the SSF Position Limit for that narrow-based stock index future.

The CBOT's proposed CBOT Regulations 5712.01 and 5811.01 regarding regulatory trading halts, and proposed CBOT Regulations 5713.01, 5714.01, 5812.01, and 5813.01 regarding settlement prices, implement the requirements contained in Rule 6h-1 under the Act<sup>73</sup> relating to regulatory halts and settlement with respect to security futures products.

Proposed CBOT Regulation 5818.01(a)(2)(P) provides that if a narrow-based stock index future is cash-settled, it must be designated as AM-settled, which mirrors OneChicago Rule 1006(a)(2)(P).<sup>74</sup>

Proposed CBOT Regulation 5813.01 incorporates the special procedures for determining the final settlement price of cash-settled narrow-based stock index futures, which are required by Rule 6h-1(b) under the Act<sup>75</sup> and CFTC Regulation 41.25(b)<sup>76</sup> and mirrors OneChicago Rule 1002(i)(2)<sup>77</sup> and CFE Rule 1902(i).<sup>78</sup> Under proposed CBOT Regulation 5813.01, a special opening quotation of the relevant index underlying the cash-settled narrow-based stock index future will be derived from the sum of the opening prices<sup>79</sup> of

each component stock. When all of the component stocks have opened, the final special opening quotation will be calculated and disseminated.

If the price of one or more of the component securities is not readily available<sup>80</sup> on the day scheduled for determination of the final settlement price, the price of the component security or securities shall be based on the next available opening price of that security, unless the Exchange determines that one or more component securities are not likely to open within a reasonable time. If the Exchange makes such a determination, the price of the relevant component security or securities for purposes of calculating the final settlement price will be the last trading price of the security or securities during the most recent regular trading session for such security or securities. Proposed CBOT Regulation 5813.01(d) also provides that the CBOT Regulation shall not be used to calculate the final settlement price of a cash-settled narrow-based stock index future if the Exchange's Clearing Services Provider fixes the final settlement price in accordance with its rules and as permitted under Rule 6h-1(b)(3) under the Act<sup>81</sup> and CFTC Regulation 41.25(b)(3).<sup>82</sup>

Section 6(h)(3)(I) of the Act<sup>83</sup> requires that procedures be in place for coordinated surveillance among the market on which a security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which related securities are traded to detect manipulation and insider trading. Coordinated surveillance with respect to security futures products is addressed in the Listing Standards in proposed CBOT Regulations 5719.01(a)(10), 5719.01(b)(1)(F), 5818.01(a)(2)(G), and 5818.01(b)(1)(B)(vi). CBOT Regulation 190.01 sets forth the Exchange's general authority to enter into agreements for

price at which a security opened for trading on the primary market for the security. If a component security is an ADR traded on a national securities exchange or national securities association, the opening price for the ADR would be derived from the national securities exchange or national securities association that lists it.

<sup>80</sup> Under proposed CBOT Regulation 5813.01(c)(iv), the price of a security is "not readily available" if the national securities exchange or national securities association that lists it does not open on the day scheduled for determination of the final settlement price, or if the security does not trade on the listing national securities exchange or national securities association during the regular trading session.

<sup>81</sup> 17 CFR 240.6h-1(b)(3).

<sup>82</sup> 17 CFR 41.25(b)(3).

<sup>83</sup> 15 U.S.C. 78f(h)(3)(I).

<sup>64</sup> The speculative position limit for CME's S&P 500 Index futures contract is 20,000 contracts (in all months combined) and the contract multiplier is \$250. The S&P 500 Notional Value Limit = Index \* 20,000 \* 250.

<sup>65</sup> Market Cap Ratio = Market Capitalization of S&P 500 Index/S&P 500 Notional Value Limit.

<sup>66</sup> The Stock Index Market Cap is calculated by adding the market capitalization of each stock comprising the underlying narrow-based security index.

<sup>67</sup> Notional Value = Level of the Index underlying the narrow-based stock index future \* contract multiplier.

<sup>68</sup> Market Cap Position Limit = Stock Index Market Cap/(Notional Value \* Market Cap Ratio).

<sup>69</sup> See *supra* note 64.

<sup>70</sup> Index weight of the component security = (assigned shares \* price) of the component security / the sum of (assigned shares \* price) for each component security.

<sup>71</sup> 17 CFR 41.25(a)(3).

<sup>72</sup> *Id.*

<sup>73</sup> 17 CFR 240.6h-1.

<sup>74</sup> See SR-OC-2005-02, *supra* note 21.

<sup>75</sup> 17 CFR 240.6h-1(b).

<sup>76</sup> 17 CFR 41.25(b).

<sup>77</sup> See SR-OC-2003-06, *supra* note 21.

<sup>78</sup> See SR-CFE-2005-01, *supra* note 22.

<sup>79</sup> Consistent with Rule 6h-1(a)(1) under the Act, 17 CFR 240.6h-1(a)(1), and CFTC Regulation 41.1(j), 17 CFR 41.1(j), proposed CBOT Regulation 5813.01(c)(i) defines "opening price" as follows:

"Opening price" means the official price at which a security opened for trading during the regular trading session of the national securities exchange or national securities association that lists the security. If the security is not listed on a national securities exchange or a national securities association, then "opening price" shall mean the

regulatory cooperation.<sup>84</sup> The CBOT is an affiliate member of the Intermarket Surveillance Group ("ISG") and has signed the following agreements: (1) An Agreement to Share Market Surveillance and Regulatory Information between the CBOT and the full members of ISG; (2) the Agreement to Share Market Surveillance and Regulatory Information between the CBOT and the affiliate members of ISG; and (3) the Addendum for Security Futures Products to agreements between the full members of ISG and the affiliate members of ISG trading security futures products.

Section 6(h)(3)(f) of the Act<sup>85</sup> requires that a market on which security futures products are traded must have audit trails that are necessary or appropriate to facilitate the coordinated surveillance addressed in the preceding paragraph. The CBOT utilizes the LIFFE CONNECT® software, pursuant to a license agreement, to power e-cbot®, the Exchange's electronic trading system. The e-cbot system creates an electronic transaction history database that contains information with respect to all orders, whether executed or not, and resulting transactions on the Exchange. The information recorded with respect to each order includes: time received, terms of the order, order type, instrument and contract month, price, quantity, account type, account designation, e-cbot User ID, and clearing firm. This information enables the CBOT to trace each order back to the clearing firm by or through which it was submitted. If any question arises as to the source of an order prior to submission by or through a clearing firm, the CBOT will request that the clearing firm provide an electronic or other record of the order.

For orders that cannot be immediately entered into the e-cbot system, and therefore will not be recorded electronically at the time they are placed, CBOT Regulation 9B.11 (Order

Entry) requires that the member or Registered User receiving the order must make a record of the order including the order instructions, account designation, date, time of receipt, and any other information that is required by the Exchange.<sup>86</sup> CBOT Regulation 9B.18 (Records of Transactions Effected Through the e-cbot System) requires that all written orders and any other original records pertaining to orders entered through the e-cbot system must be retained for five years.<sup>87</sup>

The Exchange's sophisticated electronic surveillance system facilitates the analysis of trading data to identify possible violations with respect to both customer and market abuse. The Exchange retains all audit trail data for a period of five years in compliance with CFTC Regulation 1.31(a)(1).<sup>88</sup>

Section 6(h)(3)(K) of the Act<sup>89</sup> requires that an exchange on which security futures products are traded must have in place procedures to coordinate trading halts with any market on which any security underlying such security futures products are traded and other markets on which any related securities are traded. The CBOT's proposed CBOT Regulation 5712.01 requires the CBOT to halt trading of a security futures

product based on a single security during any regulatory halt (as defined in CFTC Regulation 41.1(1)<sup>90</sup> and Rule 6h-1(a)(3) under the Act<sup>91</sup>) imposed on the underlying security. Proposed CBOT Regulation 5811.01 also requires the CBOT to halt trading of a security futures product based on a narrow-based stock index during any regulatory halt of one or more underlying securities that constitute 50% or more of the market capitalization of the narrow-based stock index. The CBOT believes that these proposed regulations comply with Section 6(h)(3)(K) of the Act<sup>92</sup> and Rule 6h-1(c)<sup>93</sup> thereunder.

Section 6(h)(3)(L) of the Act<sup>94</sup> requires that security futures margin requirements comply with the regulations prescribed under Section 7(c)(2)(B) of the Act.<sup>95</sup> The CBOT believes that its proposed CBOT Regulations 431.07 (Customer Margins for Security Futures Positions Held in Futures Accounts) and 431.08 (Acceptable Margin for Security Futures and Treatment of Undermargined Accounts), which have been filed with the Commission<sup>96</sup> pursuant to Section 19(b)(2) of the Act,<sup>97</sup> together with a written certification under Section 5c(c) of the CEA,<sup>98</sup> are consistent with the requirements of the Act regarding customer margin.

Proposed Chapters 57 and 58 of the CBOT Rulebook contain general specifications for single stock futures and narrow-based stock index futures, respectively. Specific terms applicable to particular single stock futures or narrow-based stock index futures will be provided in Specifications Supplements, described in proposed CBOT Regulations 5703.01, 5718.01, 5803.01, and 5817.01. This is the same approach set forth in CFE Rules 1802(a), 1806, 1902(a), and 1906.<sup>99</sup>

For the reasons discussed above, the CBOT submits that the CBOT's Listing Standards satisfy the requirements set forth in Section 6(h)(3) of the Act.<sup>100</sup>

#### 4. Statutory Basis

The Exchange has filed these proposed regulations pursuant to Section 19(b)(7) of the Act.<sup>101</sup> The CBOT believes the CBOT's Listing

<sup>84</sup> CBOT Regulation 190.01 (Regulatory Cooperation) states that:

The Exchange may from time to time enter into such agreements with domestic or foreign self-regulatory organizations, associations, boards of trade, clearing organizations, and their respective regulators providing for the exchange of information and other forms of mutual assistance for financial surveillance, routine audits, market surveillance, investigative, enforcement and other regulatory purposes as the Exchange may consider necessary or appropriate or as the Commodity Futures Trading Commission may require. The Exchange is authorized to provide information to any such organization, association, board of trade, clearing organization or regulator that is a party to an information sharing agreement with the Exchange, in accordance with the terms and subject to the conditions set forth in such agreement.

<sup>85</sup> 15 U.S.C. 78f(h)(3)(f).

<sup>86</sup> CBOT Regulation 9B.11 (Order Entry) states that:

(c) It shall be the duty of each member or Registered User to: (1) submit orders through the e-cbot system under his registered e-cbot User ID and (2) input for each order the price, quantity, product, expiration month, correct CTI code and appropriate account designation and, for options, put or call and strike price. A suspense account may be used, at the time of order entry provided that a contemporaneous written record of the order, with the correct account designation, is made, time-stamped and maintained in accordance with CBOT Regulation 9B.18, and provided that the correct account designation is entered into the clearing system prior to the end of the trading day. A suspense account may also be used at the time of order entry for bunched orders that are eligible for post-trade allocation, and are executed pursuant to and in accordance with CFTC Regulation 1.35(a-1)(5).

(d) With respect to orders received by a member or Registered User which are immediately entered into the e-cbot system, no separate record need be made. However, if a member or Registered User receives an order that is not immediately entered into the e-cbot system, a record of the order including the order instructions, account designation, date, time of receipt and any other information that is required by the Exchange must be made. The order must be entered into the e-cbot system when it becomes executable.

<sup>87</sup> CBOT Regulation 9B.18 (Records of Transactions Effected Through the e-cbot System) provides that "[a]ll written orders and any other original records pertaining to orders entered through the e-cbot system must be retained for five years. For orders entered into the e-cbot system immediately upon receipt, the data contained in the e-cbot system shall be deemed the original records of the transaction."

<sup>88</sup> 17 CFR 1.31(a)(1).

<sup>89</sup> 15 U.S.C. 78f(h)(3)(K).

<sup>90</sup> 17 CFR 41.1(l).

<sup>91</sup> 17 CFR 240.6h-1(a)(3).

<sup>92</sup> 15 U.S.C. 78f(h)(3)(K).

<sup>93</sup> 17 CFR 240.6h-1(c).

<sup>94</sup> 15 U.S.C. 78f(h)(3)(L).

<sup>95</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>96</sup> See SR-CBOT-2006-01, *supra* note 13.

<sup>97</sup> 15 U.S.C. 78s(b)(2).

<sup>98</sup> 7 U.S.C. 7a-2(c)(1).

<sup>99</sup> See SR-CFE-2005-01, *supra* at note 22.

<sup>100</sup> 15 U.S.C. 78f(h)(3).

<sup>101</sup> 15 U.S.C. 78s(b)(7).



Standards are authorized by, and consistent with, Section 6(b)(5) of the Act,<sup>102</sup> because they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOT does not believe that the proposed regulations will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Since the proposed regulations, in conjunction with other related regulatory filings being made by the CBOT, will permit the CBOT to become authorized to provide a trading venue for security futures, these regulations will serve to enhance and promote competition by allowing an additional exchange to list and trade security futures.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rules Received From Members, Participants, or Others

The CBOT neither solicited nor received any written comments on the proposed regulations.

### III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Pursuant to Section 19(b)(7)(B) of the Act,<sup>103</sup> the proposed regulations became effective on February 21, 2006.<sup>104</sup> Within 60 days of the date of effectiveness of the proposed regulations, the Commission, after consultation with the CFTC, may summarily abrogate the proposed regulations and require that the proposed regulations be re-filed in accordance with the provisions of Section 19(b)(1) of the Act.<sup>105</sup>

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOT-2006-03 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-CBOT-2006-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOT. All comments received will be posted without change; the Commission does not edit identifying personal information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CBOT-2006-03 and should be submitted on or before April 11, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>106</sup>

**Nancy M. Morris,**  
Secretary.

[FR Doc. E6-4055 Filed 3-20-06; 8:45 am]

BILLING CODE 8010-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53493; File No. SR-CHX-2005-27]

#### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 Relating to Amending Exchange Delisting Rules to Conform to Recent Amendments To Commission Rules Regarding Removal From Listing and Withdrawal From Registration

March 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 17, 2005, the Chicago Stock Exchange, Inc. ("CHX" 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 substantially prepared by the Exchange. CHX filed Amendment No. 1 to the proposal on December 14, 2005.<sup>3</sup> On February 17, 2006, CHX filed Amendment No. 2 to the proposal.<sup>4</sup> On March 15, CHX filed Amendment No. 3 to the proposal.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the text of its rule relating to the delisting

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, CHX made several changes to the proposed rule text of CHX Article XXVIII, Rule 4 to clarify the organization of the Rule; incorporate the requirement that issuers provide notice to the Exchange upon filing a Form 25; and clarify the effective dates for the old and the new CHX Rule 4.

<sup>4</sup> In Amendment No. 2, CHX included new language to the proposed rule text of CHX Article XXVIII, Rule 4 relating to the timing of certain issuer obligations under SEC Rule 12d2-2 and made other grammatical corrections to the proposed rule text.

<sup>5</sup> In Amendment No. 3, CHX included new language to the proposed rule text of CHX Article XXVIII, Rule 4 stating that if an issuer seeks to voluntarily withdraw its securities from listing and has either received notice from the Exchange that it is below the Exchange's continued listing policies and standards, or is aware that it is below such continued listing policies and standards even if it has not received such notice from the Exchange, the issuer must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) its written notice to the Exchange of its determination to withdraw from listing required by Rule 12d2-2(c)(2)(ii) under the Act; and (ii) its public press release and website notice required by Rule 12d2-2(c)(2)(iii) under the Act.

<sup>102</sup> 15 U.S.C. 78f(b)(5).

<sup>103</sup> 15 U.S.C. 78s(b)(7)(B).

<sup>104</sup> The CBOT filed the proposed regulations with the CFTC, together with a written certification under Section 5(c) of the CEA, 7 U.S.C. 7a-2(c), on February 16, 2006.

<sup>105</sup> 15 U.S.C. 78s(b)(1).

<sup>106</sup> 17 CFR 200.30-3(a)(75).



of securities (CHX Article XXVIII, Rule 4) to comply with the requirements of recently amended Rule 12d2-2 under the Act ("Commission Rule 12d2-2") and to make a few non-substantive changes to clarify the organization of the Exchange's Rule.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in [brackets].

\* \* \* \* \*

#### ARTICLE XXVIII

\* \* \* \* \*

#### Listed Securities

\* \* \* \* \*

#### Removal of Securities

*This version of the rule is effective through April 23, 2006*

RULE 4. No change to text.

#### Removal of Securities

*This version of the rule is effective on and after April 24, 2006*

RULE 4. (a) *Removal of Securities.* The Board of Governors may remove securities from the list upon the recommendation of the Chief Executive Officer or upon application of the issuer. [In the absence of special circumstances a security considered by the Exchange to be eligible for continued listing will not be removed from the list upon application of the issuer, unless the issuer files with the Exchange a certified copy of a resolution adopted by the board of directors of the issuer authorizing withdrawal from listing and registration.]

#### [Interpretations and Policies:]

(b) *Notice provided by the issuer.* In the absence of special circumstances, a security will not be removed from the list upon application of the issuer, unless the issuer files with the Exchange a certified copy of a resolution adopted by the board of directors of the issuer authorizing withdrawal from listing and registration.

Once an issuer has satisfied the requirement set out above, the issuer may voluntarily withdraw its securities from listing and registration on the Exchange if it complies with Exchange Act Rule 12d2-2(c), which requires that the issuer must (i) comply with all applicable state laws in effect in the state in which the issuer is incorporated; (ii) provide written notice to the Exchange (no fewer than 10 days before the issuer files an application on Form 25 with the Commission) of its determination to withdraw one or more of its securities from listing and

registration on the Exchange; (iii) publish notice (contemporaneous with providing the written notice to the Exchange described in section (ii) above) of its intention to withdraw from listing and registration; and (iv) file Form 25 with the Commission, all as further described in Rule 12d2-2(c) itself. When the issuer notifies the Exchange of its intent to withdraw one or more of its securities from listing and registration on the Exchange, the Exchange shall provide public notice of that intent on the Exchange's website as required by Exchange Act Rule 12d2-2(c)(3). The issuer must file a copy of Form 25 with the Exchange immediately after submitting the form to the Commission. The issuer's securities shall be withdrawn from listing or registration on the Exchange on the effective date set out in Exchange Act Rule 12d2-2(d).

If an issuer seeks to voluntarily withdraw its securities from listing on the Exchange pursuant to this provision and has either received notice from the Exchange that it is below the Exchange's continued listing policies and standards, or is aware that it is below such continued listing policies and standards even if it has not received such notice from the Exchange, the issuer must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) Its written notice to the Exchange of its determination to withdraw from listing required by Rule 12d2-2(c)(2)(ii) under the Exchange Act and; (ii) its public press release and website notice required by Rule 12d2-2(c)(2)(iii) under the Exchange Act.

(c).01 *Right to Hearing.* An issuer whose securities the Exchange proposes to delist shall have the right to avail itself of a hearing.

\* \* \* \* \*

(d) *Hearing.* If the corporation's response to the notice includes a demand for hearing, the Chief Executive Officer shall appoint a Hearing examiner who will set a date for hearing. Failure of the issuer to appear at that hearing will be deemed consent to delisting.

\* \* \* \* \*

(e) *Review.* The corporation shall have fifteen days from the date of receipt of such ruling to file objection and demand a review thereof by the Executive Committee. Such review, unless the Executive Committee determines to permit the introduction of additional evidence, will consist solely of a review of the transcripts of the hearing.

\* \* \* \* \*

(f) *Public Notice.* When a final determination is made with respect to the delisting of one or more securities of an issuer, the Exchange's Secretary promptly shall provide public notice of that determination by issuing a press release and posting notice on the Exchange's website. This notice shall be disseminated no fewer than 10 days before the delisting becomes effective and must remain posted on the Exchange's website until the delisting is effective.

(g) *Submission of Forms.* Immediately after providing the notice described in paragraph (f) above, the Exchange shall file Form 25 with the Commission and provide a copy of that form to the issuer.

\* \* \* \* \*

## 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 CHX included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 and Exchange Commission recently approved changes to Commission Rule 12d2-2, which were designed to streamline the process for delisting securities.<sup>6</sup> As part of these changes, national securities exchanges are required to ensure that their delisting rules conform to the new requirements of Commission Rule 12d2-2.<sup>7</sup>

<sup>6</sup> See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

<sup>7</sup> See Commission Rule 12d2-2(b)(1), 17 CFR 240.12d2-2(b)(1). Under these new requirements, exchanges must have rules that, at a minimum, provide for: (a) Notice to the issuer of the exchange's decision to delist its securities; (b) an opportunity for appeal to the exchange's board of directors, or to a committee designated by the board; and (c) specifically-defined public notice of the exchange's final delisting determination. CHX represents that its rules already comply with the requirements described in (a) and (b) and that its current proposal primarily is designed to incorporate the new public notice requirements associated with any final decision to delist an issuer's securities. See CHX Article XXVIII, Rule 4, Interpretation and Policy .01 (providing that notice of the Exchange's intent to delist a security (and of the decision following any hearing on the matter) must be served on the issuer; and that the issuer

The proposed rule changes included in this submission are designed to ensure that the Exchange's rules conform to Commission Rule 12d2-2's new requirements. As an initial matter, the changes confirm that the Exchange will provide public notice, on its website and through a press release, of any final Exchange determination to delist an issuer's securities.<sup>8</sup> As noted in the proposed rule, this notice would be provided at least ten days before the delisting decision becomes effective and would remain on the Exchange's website until the decision is effective. The proposed rule change also confirms that the Exchange will file Form 25 with the Commission and provide a copy to the issuer.<sup>9</sup> In other changes, the proposal describes, in general terms, the process that should be followed when an issuer seeks to voluntarily withdraw the listing or registration of a security on the Exchange, including the issuer's obligation to file Form 25 with the Commission (and to submit it to the Exchange) and the Exchange's obligation to provide public notice of an issuer's voluntary request to delist securities. The proposal also makes other non-substantive changes (such as inserting headings and making the text part of the rule itself, rather than an interpretation to the rule) that are designed to make the rule easier to read.<sup>10</sup>

Finally, the Exchange proposes that if an issuer seeks to voluntarily withdraw its securities from listing on the Exchange and has either received notice from the Exchange that it is below the Exchange's continued listing policies and standards, or is aware that it is below such continued listing policies and standards even if it has not received such notice from the Exchange, the issuer must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) Its written notice to the Exchange of its determination to withdraw from listing required by Commission Rule 12d2-2(c)(2)(ii); and (ii) its public press release and website notice required by Commission Rule 12d2-2(c)(2)(iii).<sup>11</sup>

may appeal any delisting decision to the Exchange's Executive Committee, a committee appointed by the Board of Directors).

<sup>8</sup> See CHX Article XXVIII, Rule 4(f).

<sup>9</sup> Although the recent amendments to Commission Rule 12d2-2 do not require the Exchange to include this information in its rules, the Exchange believes that it is appropriate to do so to more fully set out the process for delisting securities.

<sup>10</sup> These changes also are not required by the recent amendments to Commission Rule 12d2-2.

<sup>11</sup> See also note 5, *supra*, discussing Amendment No. 3, submitted on March 15, 2006.

The Exchange believes that all of these changes are consistent with the requirements of Commission Rule 12d2-2 and provide guidance to issuers of the procedures that will be followed in the event of a voluntary or involuntary delisting of securities on the Exchange.

## 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is found in Section 6(b)(5),<sup>12</sup> in that the proposed rule change is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CHX-2005-27 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2005-27. 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 CHX. 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-CHX-2005-27 and should be submitted on or before April 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. 06-2752 Filed 3-16-06; 4:09 pm]

BILLING CODE 8010-01-P

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53484; File No. SR-ISE-2005-25]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto Relating to Trading Options on Full and Reduced Values of the FTSE 100 Index and the FTSE 250 Index, Including Long-Term Options

March 14, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 16, 2005, the International Securities Exchange, Inc. (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. On February 22, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change, as amended.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its rules to trade options on full and reduced values of the FTSE 100 Index and the FTSE 250 Index. The Exchange also proposes to list and trade long-term options on full and reduced values of the FTSE 100 Index and the FTSE 250 Index. Options on these indexes will be a.m. cash-settled and will have European-style exercise provisions. The text of this proposed rule change is available on the Exchange's Web site at [http://www.iseoptions.com/legal/proposed\\_rule\\_changes.asp](http://www.iseoptions.com/legal/proposed_rule_changes.asp), the Exchange's principal office, and in the Commission's Public Reference Room.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Form 19b-4 dated February 22, 2006. ("Amendment No. 1"). In Amendment No. 1, which replaced the original filing in its entirety, the Exchange: (1) Expanded the "purpose" section to include additional information about the components, and calculation and maintenance of the FTSE Indexes; and (2) obtained a representation by the FTSE regarding FTSE's insider trading and non-disclosure policies as they pertain to broker-dealer members of the FTSE committees that determine the composition of the indexes.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its Rules 2001, 2004 and 2009 to provide for the listing and trading on the Exchange of a.m. cash-settled, European-style, index options on the FTSE 100 Index and the FTSE 250 Index (collectively, the "FTSE Indexes"). Specifically, the Exchange proposes to list options based upon (i) full value of the FTSE Indexes, (ii) one-tenth of the value of the FTSE Indexes ("Mini FTSE Indexes"), and (iii) one one-hundredth of the value of the FTSE Indexes ("Micro FTSE Indexes"). In addition to regular options on the FTSE Indexes, the Exchange may list long-term options on the FTSE Indexes, the Mini FTSE Indexes, and the Micro FTSE Indexes ("FTSE LEAPS").<sup>4</sup>

The Exchange states that the FTSE 100 Index and the FTSE 250 Index are internationally recognized, capitalization-weighted indexes based on the prices of the most highly capitalized British stocks traded on the London Stock Exchange ("LSE"), a Recognized Investment Exchange under the Financial Services and Markets Act 2000 of the U.K and regulated by the Financial Services Authority ("FSA") of the U.K. The LSE's Stock Exchange Electronic Trading Service ("SETS") is a fully electronic order book trading service. SETS is the central price formation and trading service for the securities comprising the FTSE 100 Index, the most liquid FTSE 250 securities, and equities that underlie Euronext.LIFFE ("LIFFE") traded equity options. SETS market maker ("SETSm") is the LSE's trading service for, among others, the FTSE 250 securities that are not traded on SETS.

<sup>4</sup> Under ISE Rule 2009(b), "Long-Term Index Options Series," the Exchange may list long-term options that expire from 12 to 60 months from the date of issuance.

Currently, LIFFE lists equity options on the FTSE 100 Index and futures and futures options on the FTSE 250 Index. The Exchange notes that the Commission previously approved for the Chicago Board Options Exchange ("CBOE") to list reduced-value options on the FTSE 100 Index, and for the American Stock Exchange ("Amex"), the CBOE, the Midwest Stock Exchange ("MSE") n/k/a the Chicago Stock Exchange, the New York Stock Exchange ("NYSE"), and the Pacific Stock Exchange ("PSE") to trade warrants on the FTSE 100 Index.<sup>5</sup>

##### Index Design and Composition

The FTSE 100 and 250 Indexes were created in the 1980's by the International Stock Exchange of the United Kingdom and the Republic of Ireland (the predecessor to the LSE) in conjunction with the Financial Times and a committee of U.K. financial institutions, including LIFFE. The Indexes are administered and maintained by FTSE International Limited ("FTSE").<sup>6</sup> To qualify for inclusion in a FTSE Index, a company must satisfy, among others, the following conditions: (1) It must have a full listing on the London Stock Exchange; (2) it must not be a subsidiary of another FTSE Index constituent; and (3) it must be sufficiently liquid to be traded.<sup>7</sup> The FTSE 100 Index consists of the largest 100 UK companies ranked by unadjusted market value, and the FTSE 250 consists of the next 250 UK companies ranked by unadjusted market value.<sup>8</sup> The FTSE EMEA Committee

<sup>5</sup> See Securities Exchange Act Release Nos. 29722 (September 23, 1991), 56 FR 49807 (October 1, 1991) (order approving File No. SR-CBOE-91-07); 27769 (March 6, 1990), 55 FR 9380 (March 13, 1990) (order approving File No. SR-Amex-90-03); 28634 (November 20, 1990), 55 FR 49729 (November 30, 1990) (order approving File No. SR-MSE-90-12); 28399 (August 30, 1990), 55 FR 37390 (September 11, 1990) (order approving File No. SR-NYSE-90-37); and 28106 (June 12, 1990), 55 FR 24955 (June 19, 1990) (order approving File No. SR-PSE-90-15).

<sup>6</sup> The FTSE Europe, Middle East and Africa ("EMEA") Committee is responsible for, among other things, establishing rules to determine, review, and modify the composition of the FTSE Indexes, as well as how the FTSE Indexes are calculated. The FTSE EMEA Committee is comprised of representatives from various financial institutions including, among others, FTSE, Barclays Global Investors, Goldman Sachs, and LIFFE.

<sup>7</sup> See "Ground Rules for the Management of the UK Series of the FTSE Actuaries Share Indices," at <http://www.ftse.com> for complete eligibility criteria.

<sup>8</sup> Unadjusted market capitalization (as opposed to a "free-float" index methodology) refers to the total number of shares outstanding multiplied by the share price. A "free-float" index methodology usually excludes shares held by strategic investors by way of cross ownership, government ownership, private ownership, and restricted share ownership. Telephone conversation between Samir Patel,

conducts a quarterly review of the FTSE Indexes to ensure that its component stocks are representative of the state of the equity market for the largest U.K. companies.

As of February 14, 2005, following are the characteristics of the FTSE 100 Index: (i) The total capitalization of all of the components in the Index is £1.23 trillion; (ii) regarding component capitalization, (a) the highest capitalization of a component is £119.14 billion (BP Plc), (b) the lowest capitalization of a component is £516.80 million (Schroders NV), (c) the mean capitalization of the components is £12.07 billion, and (d) the median capitalization of the components is £5.20 billion; (iii) regarding component price per share, (a) the highest price per share of a component is £31.56 (Carnival), (b) the lowest price per share of a component is 60 pence (Corus Group), (c) the mean price per share of a component is £6.91, and (d) the median price per share of a component is £6.06; (iv) regarding component weightings, (a) the highest weighting of a component is 9.82% (BP Plc), (b) the lowest weighting of a component is 0.04% (Schroders NV), (c) the mean weighting of the components is 0.98%, (d) the median weighting of the components is 0.43%, and (e) the total weighting of the top five highest weighted components is 36.52% (BP Plc, HSBC Holdings, Vodafone Group, GlaxoSmithKline, Royal Bank of Scotland); (v) regarding component available shares, (a) the most available shares of a component is 65.28 billion (Vodafone Group), (b) the least available shares of a component is 70.94 million (Schroders NV), (c) the mean available shares of the components is 2.72 billion, and (d) the median available shares of the components is 1.11 billion; (vi) regarding the six month average daily volumes of the components, (a) the highest six month average daily volume of a component is 224.20 million (Vodafone Group), (b) the lowest six month average daily volume of a component is 117,669 (Schroders NV), (c) the mean six month average daily volume of the components is 13.69 million, (d) the median six month average daily volume of the components is 7.56 million, (e) the average of six month average daily volumes of the five most heavily traded components is 441.02 million (Vodafone Group, BP Plc, Corus Group, BT Group, Shell Transport and Trading Co.), and (f) 100% of the components had a six

month average daily volume of at least 50,000.

As of February 14, 2005, following are the characteristics of the FTSE 250 Index: (i) The total capitalization of all of the components in the Index is £220.24 billion; (ii) regarding component capitalization, (a) the highest capitalization of a component is £2.69 billion (BPB), (b) the lowest capitalization of a component is £212.30 million (PZ Cussons PLC), (c) the mean capitalization of the components is £877.46 million, and (d) the median capitalization of the components is £693.41 million; (iii) regarding component price per share, (a) the highest price per share of a component is £43.72 (Greggs PLC), (b) the lowest price per share of a component is 20 pence (Invensys), (c) the mean price per share of a component is £4.91, and (d) the median price per share of a component is £3.47; (iv) regarding component weightings, (a) the highest weighting of a component is 1.30% (BPB), (b) the lowest weighting of a component is 0.06% (Euromoney Institutional Investor PLC), (c) the mean weighting of the components is 0.40%, (d) the median weighting of the components is 0.31%, and (e) the total weighting of the top five highest weighted components is 6.04% (BPB, International Power, Hammerson PLC, Kelda Group, Peninsular & Oriental Steam PLC); (v) regarding component available shares, (a) the most available shares of a component is 5.69 billion (Invensys), (b) the least available shares of a component is 12.14 million (Greggs PLC), (c) the mean available shares of the components is 345.10 million, and (d) the median available shares of the components is 201.60 million; (vi) regarding the six month average daily volumes of the components, (a) the highest six month average daily volume of a component is 40.89 million (Invensys), (b) the lowest six month average daily volume of a component is 4,139 (PZ Cussons PLC), (c) the mean six month average daily volume of the components is 1.95 million, (d) the median six month average daily volume of the components is 702,801, (e) the average of six month average daily volumes of the five most heavily traded components is 104.75 million (Invensys, ARM Holdings PLC, Cookson Group, Woolworths Group, EMI Group), and (f) 97% of the components had a six month average daily volume of at least 50,000.

#### *Index Calculation and Index Maintenance*

The base index value of the FTSE 100 Index and the FTSE 250 Index, was 1000, as of December 31, 1983, and

1412.60, as of December 31, 1985, respectively. On February 14, 2005, the index value of the FTSE 100 Index and the FTSE 250 Index was 5041.80 and 7370.10, respectively. The Exchange believes that these levels are too high for successful options trading. As a result, the premiums for options on the full values of the FTSE Indexes are high, which may deter retail investors. Accordingly, the Exchange proposes to base trading in options on both full size FTSE Indexes and on fractions of full size FTSE Indexes. In particular, the Exchange proposes to list (i) Mini FTSE Index options that are based on one-tenth of the value of each of the FTSE Indexes, and (ii) Micro FTSE Index options that are based on one one-hundredth of each of the FTSE Indexes.<sup>9</sup> The Exchange believes that listing options on reduced values will attract a greater source of customer business than if options were based only on the full value of the FTSE Indexes. The Exchange further believes that listing options on reduced values will provide an opportunity for investors to hedge, or speculate on, the market risk associated with the stocks comprising the FTSE Indexes. Additionally, by reducing the values of the FTSE Indexes, investors will be able to use this trading vehicle while extending a smaller outlay of capital. The Exchange believes that this should attract additional investors, and, in turn, create a more active and liquid trading environment.<sup>10</sup>

Index levels for options on the full size FTSE Indexes, the Mini FTSE Indexes and the Micro FTSE Indexes shall each be calculated by FTSE, and shall be disseminated by ISE every 15 seconds during the Exchange's regular trading hours to market information vendors via the Options Price Reporting Authority ("OPRA").<sup>11</sup> The methodology used to calculate the value of the FTSE Indexes is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes. The level of each FTSE Index reflects the total market value of the component

<sup>9</sup> As noted above, the Exchange also proposes to list LEAPS on all FTSE Indexes.

<sup>10</sup> The concept of listing reduced value options on an index is not a novel one. For example, the Commission has previously approved the listing of reduced value options on the S&P 500 Index, the Nasdaq 100 Index, and the NYSE Composite Index. See Securities Exchange Act Release Nos. 32893 (September 14, 1993), 58 FR 49070 (September 21, 1993) (S&P 500 Index); 43000 (June 30, 2000), 65 FR 42409 (July 10, 2000) (Nasdaq 100 Index); 46681 (October 22, 2003), 68 FR 62337 (November 3, 2003) (NYSE Composite Index).

<sup>11</sup> The Exchange shall also disseminate these values to its members. The FTSE Indexes will be published daily through major quotation vendors, such as Reuters.



stocks relative to a particular base period and is computed by dividing the total market value of the companies in each index by its respective index divisor.<sup>12</sup>

The FTSE Indexes are updated on a real-time basis from 8 a.m. to 4:30 p.m. (London time), which corresponds to 3 a.m. to 11:30 a.m. (New York time). After 11:30 a.m. (New York time), the Exchange will disseminate a static value of the FTSE Indexes via OPRA until the close of trading each day. The FTSE Indexes are calculated using the last traded price of the component securities. If a component security does not open for trading, the price of that security at the close of the index on the previous day is used in the calculation.<sup>13</sup>

The FTSE Indexes will be monitored and maintained by FTSE. FTSE will be responsible for making all necessary adjustments to the indexes to reflect component deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. Some corporate actions, such as stock splits and stock dividends, require simple changes to the available shares outstanding and the stock prices of the underlying components. Other corporate actions, such as share issuances, that change the market value would require changing the index divisor to effect adjustments.

The FTSE Indexes are reviewed each quarter in March, June, September, and December based on market capitalization. Based on information submitted by FTSE, the FTSE EMEA Committee approves the new index components and a reserve list of six companies for the FTSE 100 Index. If a company is deleted from the FTSE 100 Index between reviews as a result of a merger, takeover, or other corporate action, the highest ranking company from the reserve list will replace it in the index.

Although the Exchange is not involved in the maintenance of any of the FTSE Indexes, the Exchange

represents that it will monitor each FTSE Index on a quarterly basis, at which point the Exchange will notify the staff of the Market Regulation Division of the Commission by filing a proposed rule change pursuant to Rule 19b-4, if, with respect to any FTSE Index: (i) The number of securities in a FTSE Index drops by 1/3rd or more; (ii) 10% or more of the weight of a FTSE Index is represented by component securities having a market value of less than 50 million; (iii) 10% or more of the weight of a FTSE Index is represented by component securities trading less than 20,000 shares per day; or (iv) the largest component security accounts for more than 15% of the weight of a FTSE Index or the largest five components in the aggregate account for more than 50% of the weight of a FTSE Index.

The Exchange will also notify the staff of the Market Regulation Division of the Commission immediately in the event FTSE ceases to maintain and calculate the FTSE Indexes, or in the event values of the FTSE Indexes are not disseminated every 15 seconds by a widely available source. In the event the FTSE Indexes cease to be maintained or calculated, or its values are not disseminated every 15 seconds by a widely available source, the Exchange will not list any additional series for trading and will limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

#### *Exercise and Settlement Value*

Options on the FTSE Indexes will expire on the Saturday following the third Friday of the expiration month. Trading in the FTSE Indexes will normally cease at 4:15 p.m. (New York time) on the Thursday preceding an expiration Saturday. The index value for exercise of the FTSE Index options will be calculated based on the LSE's Exchange Delivery Settlement Price ("EDSP") intra-day auction, which was introduced by LSE in November of 2004. The EDSP is a settlement value calculated by Euronext-LIFFE for FTSE index futures and options contracts traded on its exchange. The EDSP value is calculated using an intra-day auction process administered by the LSE for all the component stocks of the FTSE 100 Index and the FTSE 250 Index. The intra-day auction occurs between 10:10 a.m. and 10:29 a.m. (London time) for the FTSE 100 Index, and between 10:10 a.m. and 10:31 a.m. (London time) for the FTSE 250 Index on the third Friday of the expiration month. Therefore, because trading in the expiring contract months will normally cease on a

Thursday at 4:15 p.m. (New York time), the EDSP for exercise will be determined the day after trading has ceased, *i.e.*, during the Friday morning LSE trading session, by 5:31 a.m. (New York time). The last automated traded price prior to the EDSP auction or the previous day's closing price will be used to calculate the final EDSP if a security did not participate in the auction. During the auction process, indications of the settlement price for each index are widely disseminated every 15 seconds via special indexes called Expiry Indexes. The purpose of the Expiry Indexes is to disseminate expected settlement values as the auction progresses. When the auction is finished, the final values of the Expiry Indexes are disseminated as the EDSP values. The Expiry Indexes and subsequent EDSP values are widely disseminated through major market data vendors including Reuters, Bloomberg, and Thomson.

If the LSE is closed on the Friday before expiration, but the LSE remains open, then the last trading day for expiring FTSE Index options will be moved earlier to Wednesday as if the LSE had had a Friday holiday. The settlement index value used for exercise will be calculated during LSE's EDSP intra-day auction on Thursday morning.

#### *Contract Specifications*

The contract specifications for options on the FTSE 100 Index and the FTSE 250 Index are set forth in Exhibits 3-2 and 3-4, respectively, to the proposed rule change filed by the Exchange. The FTSE Indexes are broad-based indexes, as defined in Exchange Rule 2001(j). Options on the FTSE Indexes are European-style and a.m. cash-settled. The Exchange's standard trading hours for broad-based index options (9:30 a.m. to 4:15 p.m., New York time), as set forth in Rule 2008(a), will apply to the FTSE Indexes. Exchange rules that are applicable to the trading of options on broad-based indexes will apply to both full and reduced values of the FTSE Indexes.<sup>14</sup> Specifically, the trading of full and reduced values of the FTSE Indexes will be subject to, among others, Exchange rules governing margin requirements and trading halt procedures for index options. Options shall be quoted and traded in U.S. dollars.

For options on the full value FTSE Indexes, the Exchange proposes to establish aggregate position limits at 25,000 contracts on the same side of the market, provided no more than 15,000 of such contracts are in the nearest

<sup>12</sup> A divisor is an arbitrary number chosen at the starting date of an index to fix the index starting value. The divisor is adjusted periodically when capitalization amendments are made to the constituents of the index in order to allow the index value to remain comparable over time. Without a divisor the index value would change when corporate actions took place and would not reflect the true value of an underlying portfolio based upon the index.

<sup>13</sup> The FTSE Indexes are published daily in the Financial Times and are available real-time on Reuters, Bloomberg, and other market information systems which disseminate information on a real-time basis.

<sup>14</sup> See ISE Rules 2000 through 2012.



expiration month series. Mini FTSE Index option contracts and Micro FTSE Index option contracts shall be aggregated with full value FTSE Index option contracts, where ten (10) Mini FTSE Index option contracts and one-hundred (100) Micro FTSE Index option contracts equal one (1) full value FTSE Index option contracts. These limits are identical to the limits that were approved for options on the FTSE Indexes previously listed for trading at the CBOE.<sup>15</sup> Additionally, under ISE Rule 2006, an index option hedge exemption for public customers may be available which may expand the position limit up to an additional 75,000 contracts.<sup>16</sup> Furthermore, proprietary accounts of members may receive an exemption of up to 50,000 contracts for the purpose of facilitating public customer orders.<sup>17</sup>

The Exchange proposes to apply broad-based index margin requirements for the purchase and sale of options on the FTSE Indexes. Accordingly, purchases of put or call options with 9 months or less until expiration must be paid for in full. Writers of uncovered put or call options must deposit/maintain 100% of the option proceeds, plus 15% of the aggregate contract value (current index level x \$100), less any out-of-the-money amount, subject to a minimum of the option proceeds plus 10% of the aggregate contract value for call options and a minimum of the option proceeds plus 10% of the aggregate exercise price amount for put options.

The Exchange proposes to set strike price intervals at least 2½ points for certain near-the-money series in near-term expiration months when the index level of the FTSE Indexes is below 200, and 5 point strike price intervals for other options series with expirations up to one year, and at least 10 point strike price intervals for longer-term options. The minimum tick size for series trading below \$3 shall be \$0.05, and for series trading at or above \$3 shall be \$0.10.

The Exchange proposes to list options on full and reduced values of the FTSE Indexes in the three consecutive near-term expiration months plus up to three successive expiration months in the March cycle. For example, consecutive expirations of January, February, March, plus June, September, and December expirations would be listed.<sup>18</sup> In addition, long-term option series having up to sixty months to expiration may be

traded.<sup>19</sup> The trading of long-term FTSE Indexes shall be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

Except for the further reduced value given to the FTSE Indexes, all of the specifications and calculations for the reduced value FTSE Indexes shall be the same as those used for the full value FTSE Indexes. The reduced value FTSE Indexes will trade independently of and in addition to the full value FTSE Indexes, and all the FTSE Indexes shall be subject to the same rules that presently govern the trading of Exchange index options, including sales practice rules, margin requirements, trading rules, and position and exercise limits.

#### *Surveillance and Capacity*

The Exchange represents that it has an adequate surveillance program in place for options traded on the FTSE Indexes and intends to apply those same program procedures that it applies to the Exchange's other index options. Additionally, the Exchange has provided the Commission, on a confidential basis, a representation made by FTSE to the Exchange regarding FTSE's insider trading policies, as they pertain to the broker-dealer members of FTSE's EMEA Committee who are charged with the selection of component securities that comprise the FTSE Indexes. The FTSE EMEA Committee members are also required to maintain in confidence, including non-disclosure to another party, any information that they may be given by virtue of their membership of the FTSE EMEA Committee, unless such information is already in the public domain or where disclosure is required by law. The Exchange is also a member of the Intermarket Surveillance Group (ISG) under the Intermarket Surveillance Group Agreement, dated June 20, 1994. The members of the ISG include all of the U.S. registered stock and options markets: the American Stock Exchange, the Boston Stock Exchange, the Chicago Board Options Exchange, the Chicago Stock Exchange, the National Stock Exchange, the National Association of Securities Dealers, the New York Stock Exchange, the Pacific Stock Exchange and the Philadelphia Stock Exchange. In addition, the LSE and LIFFE are affiliate members of ISG.<sup>20</sup> The ISG members

work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses. \

The Exchange has the necessary systems capacity to support new options series that will result from the introduction of both full and reduced values of the FTSE Indexes, including LEAPS. The Exchange has provided the Commission system capacity information that supports its system capacity representations.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>22</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

#### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2005-25 on the subject line.

Lombardo, Special Counsel, Division, Commission, on February 28, 2006.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See *supra* note 5.

<sup>16</sup> The same limits that apply to position limits shall apply to exercise limits for these products.

<sup>17</sup> See ISE Rule 413(c).

<sup>18</sup> See Rule 2009(a)(3).

<sup>19</sup> See Rule 2009(b)(1). The Exchange is not listing reduced value LEAPS on the FTSE Indexes pursuant to Rule 2009(b)(2).

<sup>20</sup> Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Raymond

### 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-ISE-2005-25. 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 Commissions Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2005-25 and should be submitted by April 11, 2006.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>23</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act,<sup>24</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>25</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

<sup>23</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest.

Because the FTSE 100 and FTSE 250 Indexes are broad-based indexes of actively traded, well-capitalized stocks, the trading of the proposed Index options on the Exchange does not raise unique regulatory concerns. The options on the FTSE Indexes will be traded under ISE's existing regulatory regime for index options, which include, among other things, position and exercise limits and margin requirements. Additionally, the Exchange has represented that it has adequate systems capacity and surveillance for these Index options and that the index value will be disseminated at least every 15 seconds.

Under Section 19(b)(2) of the Act,<sup>26</sup> the Commission may not approve any proposed rule change prior to the thirtieth day after publication of the notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission believes that the proposed rule filing does not raise any new, unique or substantive issues from those raised in a filing previously approved by the Commission<sup>27</sup> allowing the CBOE to list and trade reduced value index options on the FTSE 100 Index. Accordingly, The Commission hereby finds good cause for approving the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-ISE-2005-25), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>29</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-4056 Filed 3-20-06; 8:45 am]

BILLING CODE 8010-01-P

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> See Securities Exchange Act Release No. 29722 (September 23, 1991), 56 FR 49807 (October 1, 1991) (order approving SR-CBOE-91-07).

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53488; File No. SR-NASD-2006-015]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Establish the Nasdaq Halt Cross

March 15, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 31, 2006, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. On February 16, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change. On March 6, 2006, Nasdaq filed Amendment No. 2 to the proposed rule change. 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

Nasdaq proposes to improve the opening process for Nasdaq securities that are the subject of a trading halt initiated pursuant to NASD Rule 4120(a). The text of the proposed rule change is available on Nasdaq's Web site, <http://www.nasdaq.com>, at Nasdaq's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

**3. Purpose**

Nasdaq is proposing to establish an opening cross for the trading of Nasdaq-listed securities that have been the subject of a trading halt initiated pursuant to NASD Rule 4120(a)(1), (4), (5), (6), or (7) ("Halt Cross").<sup>3</sup> The Halt Cross will integrate quotes and orders that are entered prior to the resumption of trading in a halted stock, create an unlocked inside bid and offer in the Nasdaq Market Center, and facilitate an orderly process for opening trading at the time specified by Nasdaq pursuant to NASD Rule 4120.

*The Current Process*

Currently, Nasdaq opens the trading of Nasdaq stocks that have been the subject of a trading halt using the process described in NASD Rule 4704(c), which also governs stocks that are not designated to participate in the Opening Cross. For halted securities, that process has three components: (1) The Halt Period; (2) the Quotation Only Period; and (3) Trade Resumption. During the Halt Period, the entry of quotations and orders into Nasdaq systems is prohibited. When Nasdaq MarketWatch determines pursuant to NASD Rule 4120 that trading should resume, a message is sent to market participants establishing a 15-minute Quotation Only Period where quotes and orders can be entered into Nasdaq systems but no executions occur. When the Quotation Only Period ends, another message is sent to market participants signaling the resumption of trading, and the opening process described in NASD Rule 4704(c) occurs. The current process executes quotes and orders that would lock or cross the market in a fair and orderly manner and creates an unlocked and uncrossed bid and offer for the opening of trading. Nasdaq has determined, however, that the process can be improved.

*The New Process*

Of the three components described above, only the Halt Period will remain as it is today. The Quotation Only Period will remain at 15 minutes for Initial Public Offerings ("IPOs") but will be shortened from 15 minutes to 5 minutes for all other halts. The Quotation Only Period will also be

modified to provide for: (1) The dissemination of the net Order Imbalance Indicator ("NOII") containing the same data elements currently disseminated prior to the Opening and Closing Crosses; (2) an "Imbalance Detection Process;" and (3) an Imbalance Delay. Nasdaq will modify Trade Resumption to provide for a processing of the Halt Cross and for the addition of a delay of between zero and 15 seconds (randomly selected) to minimize potential gaming behavior by market participants during Trade Resumption. The new process will be codified in proposed NASD Rule 4703, and language in NASD Rule 4704(c) describing the current process will be removed. Each of these modifications will be described in more detail below.

*The Net Order Imbalance Indicator.* Nasdaq proposes to disseminate the NOII prior to the Halt Cross, just as it does prior to the Opening and Closing Crosses. The NOII for the Halt Cross will contain the same data elements, reflecting the current state of the market leading into the Cross: (1) The Inside Match Price, which is the price at which the maximum number of shares of eligible quotes and orders would be paired; (2) the number of shares represented by eligible quotes and orders that are paired at the Inside Match Price; (3) the number of shares in any imbalance at the Inside Match Price; and (4) the buy/sell direction of that imbalance at the Inside Match Price.

In order to increase efficiency, Nasdaq will maintain the same programming format for the NOII distributed during the Halt Cross as distributed during the Opening and Closing Cross. To maintain that uniformity, Nasdaq will disseminate an indicative clearing price range at which the Halt Cross would occur if the Halt Cross were to occur at that time. The two indicative prices in that range and the inside match price will, however, each be identical values because, in the absence of order types unique to the IPO and Halt Cross, the inside match price and indicative price range will each be calculated based upon the same order set, resulting in the same price output. The NOII for the Halt Cross will be disseminated every five seconds throughout the Quotation Only Period.

The NOII disseminated prior to the Halt Cross will differ in several ways from those disseminated prior to the Opening and Closing Crosses. First, the Halt Cross NOII will be based on different order types. The NOII for the Opening and Closing Crosses includes information about On Open and On Close order types, in addition to quotations and regular and extended

hours orders for each time in force (Total Day, Day, Good-till-Canceled, and Immediate or Cancel). The NOII for the Halt Cross will include quotations, regular hours orders, and extended hours orders but not On Open or On Close orders. This difference is necessary because Nasdaq has determined not to support On Open and On Close order types in the middle of the trading day when the Halt Cross will occur. In Nasdaq's view, On Open and On Close Orders are impractical for an IPO or other halt where quoting and trading can resume at variable times and, thereby, could increase the potential of confusion or gaming behavior.

Second, the NOII for the Halt Cross will disseminate the same value for the Inside Match Price, Near Indicative Clearing Price and Far Indicative Clearing Price. This is based, in part, on the fact that, unlike during the opening and closing, during a halt, there is no firm inside quotation and the inside can be locked or crossed. For both the open and close, the Nasdaq inside is subject to automatic execution which provides a reliable price upon which to base an inside match calculation. In addition, the Halt Cross does not include On Open and On Close orders. On Open and On Close orders are available to absorb liquidity during the Opening and Closing Crosses and do affect the Near and Far Indicative Clearing Price data elements prior to the Opening and Closing Crosses. Due to these differences, Nasdaq concluded that calculating the Near and Far Indicative Clearing Prices could create ambiguous data. Nasdaq proposes to disseminate the Near and Far Indicative Clearing Price fields with identical values to the inside match price in order to avoid requiring market participants to re-program their systems to accept a different NOII.

Third, the Inside Match Price (and thus the Near and Far Indicative Clearing Prices) will be calculated using the following algorithm. First, the system will determine the price(s) that maximizes the number of shares paired. If more than one such price exists, the system will select the price that minimizes the imbalance of shares unpaired, and does not leave unexecuted shares at a superior price. If more than one price satisfies both conditions, the next tie breaker will depend on whether the Halt Cross is for an IPO or another halt. For an IPO halt, if more than one such price satisfies the above conditions, the system will select the price that minimizes the distance from the Issuer's IPO price, which is found in the previous day's close field.

<sup>3</sup> The Halt Cross will not be used to open the market following a trading halt initiated under NASD Rule 4120(a)(2) or (3), which apply only to securities governed by the Consolidated Quotation System national market system plan.

For any other halt, if the stock has already been opened for that day and more than one price satisfies the above conditions, the system will select the price that minimizes the distance from the last Nasdaq Market Center execution prior to the halt. If the security has not been opened for that day yet and more than one such price exists, the system will select the price that minimizes the distance from the previous Nasdaq Official Closing Price.

**Imbalance Detection and Delay Periods.** In order to facilitate the orderly opening of a security in which trading is halted, Nasdaq proposes to establish an Imbalance Detection Process that would measure an imbalance against a specified threshold, and to establish an Imbalance Delay if a liquidity imbalance exceeds that threshold. The Imbalance Detection Process and Imbalance Delay Period will be based upon the data contained in the NOII, which, as stated earlier, will be disseminated every five seconds throughout the Quotation Only Period of 15 minutes for IPOs and 5 minutes for all other halts. Specifically, Nasdaq will compare the Inside Match Price from the third to last NOII (T - 15 seconds to the Halt Cross) with that of the NOII immediately prior to the cross (T - 1 second) and determine whether the change in price exceeds a predetermined price or percentage variance threshold. The threshold will be set initially at 10 percent or fifty cents, whichever is higher. Nasdaq will monitor the threshold and adjust it from time to time upon reasonable notice to market participants.

If the price or percent variance yielded by the Imbalance Detection Process is within the threshold, trading will resume on schedule. If, however, the price or percent variance exceeds the threshold, Nasdaq will delay the Trade Resumption by 5 minutes in the case of IPOs and by 1 minute in the case of all other halts. For IPOs, the Imbalance Detection Process will be repeated at the end of the Imbalance Delay Period and a second delay ordered if the price change still exceeds the threshold. A third delay will be called if the price change exceeds the threshold at the end of the second Imbalance Delay Period. At the end of the third Imbalance Delay Period the Imbalance Detection Process will not be repeated and trading will resume. For all halts other than IPOs, there can be only a single one-minute Imbalance Delay. At the end of the one-minute Imbalance Delay, Trade Resumption will occur. Each time Nasdaq systems impose an Imbalance Delay, Nasdaq will issue a Delay Notification to Nasdaq market participants.

#### **Trade Resumption and Halt Cross.**

When the Quotation Only Period ends, whether or not followed by one or more Imbalance Delays, Nasdaq will send market participants the Trade Resumption message. In order to discourage gaming by market participants, Nasdaq will program the system to add a random delay of between zero and 15 seconds prior to issuing the Trade Resumption notification. When the Trade Resumption notification has been set, the system will conduct the Halt Cross.

The algorithm for the Halt Cross is similar to the Opening and Closing Crosses. First, the system will determine the price that maximizes the number of shares executed. If more than one such price satisfies that condition, the system will select the price that minimizes the imbalance of shares unexecuted and does not leave unexecuted shares at a superior price. If more than one price satisfies that condition also, the second tie breaker will depend on whether the cross is for an IPO or another halt. For an IPO, if more than one price satisfies the above conditions, the system will select the price that minimizes the distance from the Issuer's IPO price, which is found in the previous day's close field. For any other halt, if the security has already been opened for that day and more than one price satisfies the above conditions, the system will select the price that minimizes the distance from the last Nasdaq Market Center execution prior to the halt. If the security has not been opened for that day and more than one such price satisfies the above conditions, the system will select the price that minimizes the distance from the previous Nasdaq Official Closing Price.

The system will execute all orders in strict price/time priority starting with the displayed quotation size and then the reserve quotation size at the most aggressive price level, and then moving to successive price levels. All orders that are executable will be executed at the Halt Cross price. As with the Opening and Closing Crosses, only orders and quotations that are subject to automatic execution will participate in the Halt Cross.

For IPOs and for other halts where a security has not previously opened during the trading day, the Halt Cross execution will be reported to Nasdaq's trade reporting system with SIZE as the contra party on both sides of the trade, and then transmitted to the consolidated tape. The Halt Cross price and the associated paired volume will then be disseminated via the UTP Trade Data Feed ("UTDF") as a bulk print and on

the Nasdaq Index Dissemination Service ("NIDS") and the Nasdaq Application Program Interface as the Nasdaq Official Opening Price ("NOOP"). For halts where a security has already opened during the trading day, the Halt Cross will be reported to Nasdaq's trade reporting system as a single trade, but it will not be identified as a bulk print and will not be disseminated as the NOOP. When the Halt Cross is complete, the execution functionality of the Nasdaq Market Center will open for regular trading.

If there is insufficient trading interest to perform the Halt Cross as described above, trading will resume via the modified opening process ("MOP") that is currently used to open Nasdaq stocks where no Opening Cross occurs as set forth in NASD Rule 4704(c). The MOP has several steps, each of which occurs in strict time priority. First, limit orders in the system that have a time-in-force of Day or GTC will wake-up. Of those, orders whose limit price does not lock or cross the book will be added to the book. Orders whose limit price does lock or cross the book will be placed in an "In Queue" state in strict time priority. Second, reverse Pegged orders will wake up. If the price created by the reverse Pegged order does not lock or cross the book, the order will be placed on the book. If the price created by the reverse Pegged order would lock or cross the book, the order will be placed in "In Queue" status. Third, regular Pegged orders will wake up in strict time priority. Since these orders can only join the current highest bid or lowest offer price level, they will simply add depth to the book at that price. The In Queue orders also include market and IOC and IOX orders in strict time priority.

At this point, all eligible orders that would not lock or cross the market will be on the Nasdaq Market Center book, and all other eligible orders will be In Queue. The system will then process the "In Queue" orders, including market orders, in strict time priority order regardless of order type. IOC and IOX orders that are not executable will be canceled as are currently done. Orders with a time in force of DAY and GTC that are not executable will be added to the book in strict time priority. Once this process is complete, the system will begin processing the input queue as normal.

Where no Halt Cross occurs, the NOOP value will be the first Nasdaq Market Center execution following trade resumption unless the security has already traded during normal market hours on that trading day. That price will be disseminated via the NIDS and



UTDF, and Nasdaq feeds. When resuming trading after a halt where the issue has already traded during normal market hours on that trading day, NOOP computation will be suppressed.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>4</sup> in general, and with section 15A(b)(6) of the Act,<sup>5</sup> in particular, in that section 15A(b)(6) requires the NASD's rules to be designed, among other things, to protect investors and the public interest. Nasdaq's current proposal is consistent with the NASD's obligations under these provisions of the Act because it will result in a more orderly opening for stocks that are the subject of a trading halt initiated under NASD Rule 4120. The proposed rule change will prevent the occurrence of locked and crossed markets in halted securities and will preserve price discovery and transparency that is vital to an effective opening of trading.

### B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change would impose no 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

Nasdaq did not solicit or receive any written comments with respect to the proposal.

## 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 Nasdaq consents, the Commission will:

- By order approve such proposed rule change, or
- Institute proceedings to determine whether the proposed rule change should be disapproved.<sup>6</sup>

<sup>4</sup> 15 U.S.C. 78o-3.

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

<sup>6</sup> Nasdaq requested that the Commission grant accelerated approval of the proposed rule change. The Commission will consider granting accelerated approval after the end of the comment period.

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-015 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-015. 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2006-015 and should be submitted on or before April 11, 2006.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-4058 Filed 3-20-06; 8:45 am]  
BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53494; File No. SR-NYSE-2005-72]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating To Amending Exchange Delisting Rules To Conform to Recent Amendments to Commission Rules Regarding Removal From Listing and Withdrawal From Registration

March 16, 2006.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 20, 2005, the New York Stock Exchange, Inc. ("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. On December 22, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the Listed Company Manual requirements relating to delisting procedures. The proposed rule change, as amended, reflects modifications of the Exchange's delisting rules to conform to the requirements of recently adopted Commission Rule 12d2-2.<sup>5</sup> The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

### Listed Company Manual

\* \* \* \* \*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> In Amendment No. 1, the Exchange made clarifying changes to Item 3 of the Exchange's Form 19b-4 and to Exhibit 1.

<sup>5</sup> 17 CFR 240.12d2-2.



**804.00 Procedure for Delisting**

\* \* \* \* \*

*The following will be the operative text of Section 804.00 effective as of April 24, 2006:*

- If the Exchange staff should determine that a security be removed from the list, it will so notify the issuer in writing, describing the basis for such decision and the specific policy or criterion under which such action is to be taken. The Exchange will simultaneously (1) issue a press release disclosing the company's status and the basis for the Exchange's determination and (2) begin daily dissemination of ticker and information notices identifying the security's status, and include similar information on the Exchange's Web site.

- The notice to the issuer [shall] will also inform the issuer of its right to a review of the determination by a Committee of the Board of Directors of the Exchange [a majority of the members of such Committee voting on each determination must be public Directors]], provided a written request for such a review is filed with the Secretary of the Exchange within ten business days after receiving the aforementioned notice. Such written request must state with specificity the grounds on which the issuer intends to challenge the determination of the Exchange staff, must indicate whether the issuer desires to make an oral presentation to the Committee, and must be accompanied or preceded by payment of a non-refundable appeal fee in the amount of \$20,000.

- If the issuer does not request a review within the specified period, the Exchange [shall] will suspend trading in the security and [an application by the Exchange staff to] will file a Form 25 with the Securities and Exchange Commission to strike the security from listing and furnish a copy of such [application shall be furnished] Form 25 to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder. *Prior to filing a Form 25 with the Securities and Exchange Commission, the Exchange will give public notice of its final determination to remove the security from listing by issuing a press release and posting a notice on its Web site. Such notice will remain posted on the Exchange's Web site until the delisting is effective pursuant to Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder.*

- If a review is requested, the review will be scheduled for the first Review Day which is at least 25 business days

from the date the request for review is filed with the Secretary of the Exchange, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule. [The chairman of the Committee will disclose to the company and the staff at the commencement of the review which of the industry Directors present will be voting on the matter, although all directors will be entitled to participate in the discussion.] The Committee's review and final decision [shall] will be based on oral argument (if any) and the written briefs and accompanying materials submitted by the parties. The company [shall] will not be permitted to argue grounds for reversing the staff's decision that are not identified in its request for review, however, the company may ask the Committee for leave to adduce additional evidence or raise arguments not identified in its request for review, if it can demonstrate that the proposed additional evidence or new arguments are material to its request for review and that there was reasonable ground for not adducing such evidence or identifying such issues earlier. This section [shall] will not, however, (i) authorize a company to seek to file a reply brief in support of its request for review or (ii) be deemed to limit the staff's response to a request for review to the issues raised in the request for review. Upon review of a properly supported request, the Committee may in its sole discretion permit new arguments or additional evidence to be raised before the Committee. Following such event, the Committee may, as it deems appropriate, (i) itself decide the matter, or (ii) remand the matter to the staff for further review. Should the Committee remand the matter to the staff, the Committee will instruct the staff to (i) give prompt consideration to the matter, and, (ii) complete its review and inform the Committee of its conclusions no later than seven (7) days before the first Review Day which is at least 25 business days from the date the matter is remanded to the staff.

- A request for review will ordinarily stay the suspension of the subject security pending the review, but the Exchange staff may immediately suspend from trading any security pending review should it determine that such immediate suspension is necessary or appropriate in the public interest, for the protection of investors, or to promote just and equitable principles of trade.

- Promptly following receipt of a request for review and the appeal fee, the Exchange's Office of the General Counsel will notify the issuer and the

Exchange staff of the scheduled Review Day and the briefing schedule. The schedule will be set by the Office of the General Counsel so as to provide the Committee adequate time to review materials submitted to it, with the remaining time split so as to afford the issuer and the Exchange staff substantially equal periods for the submission of a brief by the issuer and a responsive brief by the Exchange staff. Each party must submit its brief and any accompanying materials to both its counterparty and to the Office of the General Counsel of the Exchange, and must do so by means calculated to ensure the party's submission reaches both the Office of the General Counsel and the counterparty at or prior to the deadline specified in the briefing schedule.

- The Committee, in its sole discretion upon written motion of either party or upon its own motion, may extend any of the time periods specified above. The Committee in its sole discretion may permit the parties to make oral presentations on their Review Day in accordance with such procedures as the Committee may specify at the time. If the Committee denies a request by either party to make an oral presentation, its reason for doing so must be included in its written decision on the review, which decision is provided to all parties. Document discovery and depositions will not be permitted.

- If the Committee decides that the security of the issuer should be removed from listing, the Exchange [shall] will (i) suspend trading in the security as soon as practicable [and an application shall be submitted by the Exchange to], (ii) file a Form 25 with the Securities and Exchange Commission to strike the security from listing and registration and (iii) furnish a copy of such [application shall be furnished] Form 25 to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder. *Prior to filing the Form 25 with the Securities and Exchange Commission, the Exchange will give public notice of its final determination to remove the security from listing by issuing a press release and posting a notice on its web site. Such notice will remain posted on the Exchange's web site until the delisting is effective pursuant to Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder.* If the Committee decides that the security should not be removed from listing, the

issuer will receive from the Exchange a notice to that effect.

\* \* \* \* \*

#### 806.02 Removal from List Upon Request of Company

\* \* \* \* \*

*The following will be the operative text of Section 806.02 effective as of April 24, 2006:*

An issuer may delist a security from the Exchange after its board approves the action and the issuer (i) furnishes the Exchange with a copy of the Board resolution authorizing such delisting certified by the secretary of the issuer and (ii) complies with all of the requirements of Rule 12d2-2(c) under the Securities Exchange Act of 1934. The issuer [may] must thereafter file [an application] a Form 25 with the Securities and Exchange Commission to withdraw the security from listing on the Exchange and from registration under the Securities Exchange Act of 1934. The company must provide a copy of such Form 25 to the Exchange simultaneously with its filing with the Securities and Exchange Commission. If an issuer delists a class of stock from the Exchange pursuant to this [Rule] Section 806.02, but does not delist other classes of listed securities, the Exchange will give consideration to delisting one or more of such other classes.

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Section 804.00 ("Procedure for Delisting") and Section 806.02 ("Removal from List Upon Request of Company") of the Exchange's Listed Company Manual. The proposed amendments are intended to comply with the Commission's instruction in the adopting release for Commission

Rule 12d2-2<sup>6</sup> requiring each national securities exchange to have rules designed to meet the requirements of Commission Rule 12d2-2 and to make initial filings of such proposed rule changes with the Commission no later than October 20, 2005. The text of the proposed amendments provides that the revised procedures required by such amendments would be operative as of April 24, 2006.

Commission Rule 12d2-2(b)<sup>7</sup> allows a national securities exchange to file a Form 25 to strike a class of securities from listing in accordance with its rules, if the rules of such exchange, at a minimum, provide for:

- Notice to the issuer of the exchange's decision to delist its securities;
- An opportunity for appeal to the exchange's board of directors, or to a committee designated by the board; and
- Public notice of the exchange's final determination to remove the security from listing by issuing a press release and posting notice on its web site. Such notice must be disseminated no fewer than 10 days before the delisting becomes effective pursuant to Commission Rule 12d2-2(d)(1)<sup>8</sup> and must remain posted until the delisting is effective.

The proposed amendment to Section 804.00 provides that, before filing a Form 25 with the Commission in connection with the delisting of a security, the Exchange would give public notice of its final determination to delist the security by issuing a press release and posting a notice on its Web site. The notice would remain posted on the Exchange's Web site until the delisting is effective pursuant to Commission Rule 12d2-2(d)(1), i.e., 10 days after filing of the Form 25 unless the Commission acts to delay its effectiveness. Because Section 804.00 currently requires the Exchange to notify the issuer of the delisting decision and provides the issuer with a right to appeal that determination to a committee of the Exchange's board of directors, the Exchange believes that it does not need to make any other amendments to Section 804.00 to comply with Commission Rule 12d2-2(b).

The proposed amendment to Section 806.02 provides that any issuer wishing to voluntarily delist a security from the Exchange must comply with all of the requirements of Commission Rule

12d2-2(c)<sup>9</sup> and must furnish the Exchange with a copy of the Form 25 filed in connection with the delisting simultaneously with its filing with the Commission.

In addition to the proposed changes to comply with Commission Rule 12d2-2, the Exchange proposes to amend Section 804.00 to delete references therein to "public Directors" and "industry Directors," as these terms relate to a historical governance structure of the Exchange that no longer exists.

###### 2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change, as amended, is the requirement under Section 6(b)(5)<sup>10</sup> 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 a national market system and, in general, to protect investors and the public interest.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, 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.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) By order approve such rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

<sup>6</sup> See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

<sup>7</sup> 17 CFR 240.12d2-2(b).

<sup>8</sup> 17 CFR 240.12d2-2(d)(1).

<sup>9</sup> 17 CFR 240.12d2-2(c).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2005-72 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-2005-72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2005-72 and should be submitted on or before April 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. 06-2753 Filed 3-16-06; 4:15 pm]

BILLING CODE 8015-01-P

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53487; File No. SR-NYSE-2006-21]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Pilot Until March 24, 2006 To Put Into Operation Phase 1 of the NYSE HYBRID MARKET<sup>SM</sup>

March 15, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 13, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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

NYSE proposes to extend the pilot which put into operation Phase 1 of the NYSE HYBRID MARKET<sup>SM</sup> ("Hybrid Market") initiative ("Pilot")<sup>5</sup> proposed in SR-NYSE-2004-05<sup>6</sup> and amendments thereto ("Hybrid Market filings").

#### 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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

On December 14, 2005, the Commission approved the Pilot to put into operation Phase 1 of the Hybrid Market initiative with respect to a group of securities, known as Phase 1 Pilot securities ("Pilot securities").<sup>7</sup> The approval provided that the Pilot would terminate the earlier of: (1) March 14, 2006 or (2) Commission action on the Hybrid Market proposal.<sup>8</sup>

The Exchange proposes to extend the Pilot through March 24, 2006, while the Commission continues to review the Hybrid Market filings.

The Exchange believes that an extension of the Pilot through March 24, 2006 will allow the Exchange to continue to conduct real-time system and user testing of certain features of the Hybrid Market filings in order to be in a position to comply with the implementation of Regulation NMS.<sup>9</sup>

The Exchange believes the Pilot has proven beneficial from both a technology and a training perspective. It has given the Exchange the opportunity to identify and address any system problems and to identify and incorporate beneficial system changes that become apparent as a result of usage in real time and under real market conditions. The ability to have such real time user interface is invaluable, as it is impossible to accurately anticipate behavioral changes in a development or mock-trading environment. In addition, the Pilot has allowed users to gain essential practical experience with the new systems and processes in a well-modulated way.

The Pilot has operated with minimal problems given the amount and degree

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 52954 (December 14, 2005), 70 FR 75519 (December 20, 2005) (SR-NYSE-2005-87). See also Securities Exchange Act Release No. 53359 (February 24, 2006), 71 FR 10736 (March 2, 2006) (SR-NYSE-2006-09) (amending the Pilot to provide for the automatic conversion of CAP-DI orders in certain situations).

<sup>6</sup> See Securities Exchange Act Release Nos. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004); 50667 (November 15, 2004), 69 FR 67980 (November 22, 2004); and 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005). See also Amendment No. 6, filed on September 16, 2005 and Amendment No. 7, filed on October 11, 2005.

<sup>7</sup> See Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005) (Amendment No. 5 to SR-NYSE-2004-05); see also Securities Exchange Act Release No. 52954 (December 14, 2005), 70 FR 75519 (December 20, 2005) (SR-NYSE-2005-87).

<sup>8</sup> See Telephone conversation between Jeffrey Rosenstock, Principal Rule Counsel, NYSE, and Steve L. Kuan, Special Counsel, Division of Market Regulation, Commission, on March 14, 2006.

<sup>9</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

of testing and training that has occurred to date.<sup>10</sup>

Therefore, the Exchange believes it is appropriate to extend the Pilot through March 24, 2006.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is also designed to support the principles of Section 11A(a)(1) of the Act<sup>13</sup> in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the

Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>16</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay and designate the proposed rule change immediately operative upon filing. The Commission believes that waiver of the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Pilot to continue without interruption. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-21 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-2006-21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2006-21 and should be submitted on or before April 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-4057 Filed 3-20-06; 8:45 am]

BILLING CODE 8010-01-P

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection package included in this notice is for approval of a new information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information;

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>10</sup> See Telephone conversation between Jeffrey Rosenstock, Principal Rule Counsel, NYSE, and Steve L. Kuan, Special Counsel, Division of Market Regulation, Commission, on March 14, 2006.

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78k-1(a)(1).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below: (OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974. (SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400, E-mail: [OPLM.RCO@ssa.gov](mailto:OPLM.RCO@ssa.gov).

The information collection listed below has been submitted to OMB for

clearance. Your comments on the information collection would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410-965-0454, or by writing to the address listed above.

Redetermination of Eligibility for Help with Medicare Prescription Drug Plan Costs—0960-NEW. Under the aegis of the Medicare Modernization Act of 2003 (Public Law 108-173), SSA will conduct low-income subsidy eligibility redeterminations for Medicare beneficiaries who filed for the subsidy and were determined by SSA to be eligible. Subsidy eligibility redeterminations will be conducted when: (1) Medicare Part D subsidy beneficiaries use form SSA-1026-REDE to report a change in income, resources,

or household information in response to SSA's inquiry via form SSA-L1026 and (2) Medicare Part D subsidy beneficiaries use form SSA-1026-SCE to report a subsidy-changing event which could potentially impact the amount of their subsidy, including marriage, separation, divorce/annulment, or spousal death. The respondents are current recipients of the Medicare Part D low-income subsidy who will undergo an eligibility redetermination for one of the reasons mentioned above.

Following is a description of the forms in this collection, the number of respondents who will complete them, and their burden data.

*Type of Request:* New information collection.

Form	Explanation	Number of respondents	Frequency of response (per year)	Average burden per response (completion time; expressed in minutes)	Estimated annual burden (expressed in hours)
SSA-L1026 .....	Passive redetermination letter informing Medicare Part D subsidy recipients what income, resource, and household information SSA has on file for them, and asking if this information has changed.	1.5 million .....	1	5	125,000
SSA-1026-REDE	Redetermination form completed by Medicare Part D subsidy recipients who said their income, resource, or household information had changed in their response to form SSA-L1026. Beginning in 2007, this form will also be used as a cyclical redetermination form to be completed by Medicare Part D subsidy recipients who are automatically sent the form based on certain profile/selection criteria.	300,000 .....	1	20	100,000
SSA-1026-SCE ...	Redetermination form completed by Medicare Part D subsidy recipients who called SSA to inform them of an event which is potentially subsidy-changing (marriage, divorce, annulment, legal separation, spousal death). This form, which is identical to form SSA-1026-RE but has a different cover sheet, will replace form OMB No. 0960-0703 (SSA-1020-SC).	76,000 .....	1	20	25,333
Total .....	.....	1,876,000 .....	.....	.....	250,333

Dated: March 16, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E6-4085 Filed 3-20-06; 8:45 am]

BILLING CODE 4191-02-P

#### DEPARTMENT OF STATE

[Public Notice 5258]

#### Bureau of Political-Military Affairs: Directorate of Defense Trade Controls: Renewal of Defense Trade Advisory Group Charter

AGENCY: Department of State.

ACTION: Notice.

**SUMMARY:** Notice is hereby given that the Charter of the Defense Trade Advisory Group (DTAG) has been renewed for a two-year period. The membership of this advisory committee consists of private sector defense trade specialists appointed by the Assistant Secretary of State for Political-Military Affairs who advise the Department on policies, regulations, and technical issues affecting defense trade.



**FOR FURTHER INFORMATION CONTACT:**

Mary F. Sweeney, DTAG Secretariat, U.S. Department of State, Office of Defense Trade Controls Management, Room 1200, SA-1, Washington, DC 20522-0112, Telephone (202) 663-2865, Fax (202) 261-8199, and E-mail: [sweeneymf@state.gov](mailto:sweeneymf@state.gov).

Dated: March 15, 2006.

**Michael T. Dixon,**

*Executive Secretary, Defense Trade Advisory Group, Department of State.*

[FR Doc. E6-4080 Filed 3-20-06; 8:45 am]

BILLING CODE 4710-25-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Proposed Advisory Circular 25.981-2A, Fuel Tank Flammability**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Availability of Proposed Advisory Circular (AC) 25.981-2A, Fuel Tank Flammability and request for comments; extension of comment period.

**SUMMARY:** This action extends the comment period for a notice of availability of proposed AC 25.981-2A, Fuel Tank Flammability, and request for comments published on November 28, 2005. In this Notice, the FAA announced the availability of and requested comments on a proposed AC which sets forth an acceptable means, but not the only means, of demonstrating compliance with the provisions of the airworthiness standards in a Notice of Proposed Rulemaking published on November 23, 2005. The comment period for this Notice closes on the same day as the comment period for the NPRM (March 23, 2006). The extension of the Notice's comment period is a result of an extension of the NPRM's comment period.

**DATES:** Send your comments on or before May 8, 2006.

**ADDRESSES:** Send your comments on the proposed AC to the individual named under the **FOR FURTHER INFORMATION CONTACT** section of this extension. Comments may be inspected at that address between 7:30 a.m. and 4 p.m., except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Dostert, FAA Propulsion/Mechanical Systems Branch, ANM-112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2132,

facsimile (425-227-1320); e-mail: [mike.dostert@faa.gov](mailto:mike.dostert@faa.gov).

**SUPPLEMENTARY INFORMATION:****Comments Invited**

The FAA continues to invite interested persons to comment on the proposed AC by sending written comments, data, or views about it. Commenters should identify AC 25.981-2A and submit comments, in duplicate, to the address specified above. The Transport Standards Staff will consider all communications received on or before the closing date for comments before issuing the final AC. The proposed AC can be found and downloaded from the Internet at <http://www.airweb.faa.gov/rgl> under "Draft Advisory Circulars." A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

**Background**

On November 18, 2005, we issued a Notice of availability of proposed AC 25.981-2A, Fuel Tank Flammability, and request for comments (70 FR 71365; November 28, 2005). This Notice announced the availability of and requested comments on a proposed AC which sets forth an acceptable means, but not the only means, of demonstrating compliance with the provisions of the airworthiness standards in that Notice of Proposed Rulemaking (NPRM) entitled "Reduction of Fuel Tank Flammability in Transport Category Airplanes" (70 FR 70922, November 23, 2005). The comment periods for the NPRM and the proposed AC both end on March 23, 2006. The FAA received requests from a number of entities to extend the comment period on the NPRM to allow public comment on new information that has recently been placed in the public docket. Based on these requests and our belief that additional requests for extensions will be filed shortly, we determined it would be appropriate to extend the comment period on the NPRM by 45 days. Since the proposed AC is associated with the NPRM, we want their comment period closing dates to be the same. Therefore, we need to extend the comment period for the proposed AC by 45 days to be consistent. Absent unusual circumstances, we do not anticipate any further extension of the comment period for the proposed AC.

The extension of the comment period for the NPRM is being published concurrently with this extension.

**Extension of Comment Period**

The FAA finds that an extension of the comment period for the Notice of availability of proposed AC 25.981-2A, Fuel Tank Flammability, and request for comments is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for the Notice of availability of proposed AC 25.981-2A, Fuel Tank Flammability, and request for comments is extended until May 8, 2006.

Issued in Washington, DC on March 14, 2006.

**John J. Hickey,**

*Director, Aircraft Certification Service.*

[FR Doc. E6-4023 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Public Notice for Waiver of Aeronautical Land-Use Assurance; Faribault Municipal Airport; Faribault Minnesota**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of intent of waiver with respect to land.

**SUMMARY:** The Federal Aviation Administration (FAA) is considering a proposal to authorize the release of a portion of the airport property. The City of Faribault, MN is proposing to release for sale 29.72 acres of existing airport land for the development of an Army Reserve and Minnesota National Guard Readiness Center. The acreage being released is not needed for aeronautical use as currently identified on the Airport Layout Plan.

The acreage comprising this parcel was originally acquired with local funds in 1944 and 1945. The City of Faribault (Minnesota), as airport owner, has concluded that the subject airport is not needed for expansion of airport facilities. There are no impacts to the airport by allowing the airport to dispose of the property. The appraised value is \$830,000 and the Airport will receive that amount. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

**DATES:** Comments must be received on or before April 20, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra E. DePottay, Program Manager, Federal Aviation Administration, Airports, District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450-2706. Telephone Number (612) 713-4350/FAX Number (612) 713-4364. Documents reflecting this FAA action may be reviewed at this same location or at the Faribault City Hall Airport, 208 First Avenue, NW., Faribault, MN 55021.

**SUPPLEMENTARY INFORMATION:** Following is a legal description of the subject airport property to be released at Faribault Municipal Airport in Faribault, MN and described as follows:

All that part of the N $\frac{1}{2}$  NE $\frac{1}{4}$  Section 23-T110N-R21W, Rice County Minnesota; described as follows: Commencing at the southwest corner of the N $\frac{1}{2}$  NE $\frac{1}{4}$  of said Section 23; thence North 89°35'43" East a distance of 1843.30 feet, on the south line of said N $\frac{1}{2}$  NE $\frac{1}{4}$ ; thence North 52°47'17" West a distance of 2181.22 feet, to a point on the north line of the NE $\frac{1}{4}$  of said Section 23; thence south 89°16'25" West a distance of 101.83 feet, on north line of said NE $\frac{1}{4}$ , to the northwest corner of said NE $\frac{1}{4}$ ; thence south 00°11'07" west a distance of 1330.86 feet, on the west line of said NE $\frac{1}{4}$  to the point of beginning.

Said parcel subject to all easements, restrictions, and reservations of record.

Issued in Minneapolis, MN on February 23, 2006.

**Robert A. Huber,**

*Acting Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.*

[FR Doc. 06-2665 Filed 3-20-06; 8:45 am]

**BILLING CODE** 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Request To Release Airport Land at Sedona Airport, Sedona, AZ

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of request to release airport land.

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the release of approximately 16 acres of

airport property at Sedona Airport, Sedona, Arizona from the airport-use restrictions of conveyance deed dated October 31, 1996. The purpose of the release is to authorize leasing of the property at fair market value in order to permit the airport to earn revenue from non-aviation uses of the airport land.

**DATES:** Comments must be received on or before April 20, 2006.

**ADDRESSES:** Comments about this Notice may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Airports Division, Federal Register Comment, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of the comments submitted to the FAA must be mailed or delivered to Edward "Mac" McCall, General Manager, Sedona Airport Administration, 235 Air Terminal Drive, Unit 1, Sedona, Arizona 86336, telephone (928) 282-4487.

**FOR FURTHER INFORMATION CONTACT:** Tony Garcia, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, telephone (310) 725-3634 and fax (310) 725-6849. The request to release airport property may be reviewed in person by appointment at the FAA Airports Division office or at Sedona Airport Administration office.

**SUPPLEMENTARY INFORMATION:** In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10-181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the Federal Register 10 days before the Secretary of Transportation may waive any condition imposed on a Federally obligated airport.

*The following is a brief overview of the request:* Yavapai County (County) requested a release from the obligations contained in the conveyance deed for approximately 16 acres of airport land at Sedona Airport, Sedona, Arizona, originally acquired from the United States for airport purposes under the provisions of the Federal Airport Act of 1946. The land occupies two parcels that are located on the north side of the airport adjacent to Airport Road and Shrine Road. The property is currently occupied by the Sky Ranch Lodge and the Red Rock Memorial Lodge under the terms of a lease with the County and airport. The County wishes to be released from the obligation requiring that the land be used exclusively for airport purposes. The property is not being used for airport purposes and Section 749 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106-181,

has authorized the Secretary of Transportation to release the land from its airport use obligation so it can continue to be leased for non-aviation purposes. The release will permit the airport to continue earning revenue from non-aviation uses based on the fair market value of the property. The lease proceeds will be used for airport purposes and assist in making the airport as self-sustaining as possible.

Issued in Hawthorne, California, on February 24, 2006.

**George Allen,**

*Manager, Safety and Standards Branch, Federal Aviation Administration, Western-Pacific Region.*

[FR Doc. 06-2669 Filed 3-20-06; 8:45 am]

**BILLING CODE** 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Noise Exposure Map Notice

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Wayne County Airport Authority under the provisions of the Aviation Safety and Noise Abatement Act (Act), 49 U.S.C. 47501, *et seq.* and the Federal Aviation Regulations (FAR), 14 CFR part 150 (part 150) are in compliance with applicable requirements.

**DATES:** The effective date of the FAA's determination on the noise exposure maps is March 7, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernest Gubry, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, 734-229-2905.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Detroit Metropolitan Wayne County Airport are in compliance with applicable requirements of part 150, effective March 7, 2006.

Under 49 U.S.C. 47503 of the Act, an airport operator may submit noise exposure maps to the FAA which meet applicable regulations and which depict non-compatible land use as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and

affected parties in the local community agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the Wayne County Airport Authority. The documentation that constitutes the "noise exposure maps" as defined in 14 CFR 150.7 includes: *Existing 2004 Noise Exposure Map (FAR Part 150 Noise Exposure Map Submittal, Figure D25)* and *Future Baseline 2011 Noise Exposure Map (FAR Part 150 Noise Exposure Map Submittal, Figure D28)*. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on March 7, 2006. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties would be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those

maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration Detroit Airports District Office 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174.

Detroit Metropolitan Wayne County Airport Noise House 32629 Pennsylvania Avenue, Romulus, Michigan 48174.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Romulus, Michigan, March 7, 2006.

**Irene R. Porter,**

*Manager, Detroit Airport District Office, Great Lakes Region.*

[FR Doc. 06-2668 Filed 3-20-06; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### **FAA Approval of Noise Compatibility Program 14 CFR Part 150, Santa Barbara Airport, Santa Barbara, CA**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Santa Barbara Airport under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On June 28, 2004, the FAA determined that the noise exposure maps submitted by Santa Barbara Airport under Part 150 were in compliance with applicable requirements. On January 27, 2006, the FAA approved the Santa Barbara Airport noise compatibility program. Some of the recommendations of the program were approved.

**DATES:** *Effective Date:* The effective date of the FAA's approval of the Santa Barbara Airport noise compatibility

program for Santa Barbara Airport is January 27, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Mendelsohn, Environmental Protection Specialist, AWP-621.6, Southern California Standards Section, Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Hawthorne, California 90261, Telephone: 310/725-3637.

Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for Santa Barbara Airport, effective January 27, 2006. Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered

by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA regional office in Hawthorne, California.

The Santa Barbara Airport submitted to the FAA on April 8, 2004, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from March 2004 through January 2005. The Santa Barbara Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 28, 2004. Notice of this determination was published in the **Federal Register** on July 2, 2004 (69 FR 40452).

The Santa Barbara Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from January 2005 to (or beyond) the year 2008. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 47504 of the Act. The FAA began its review of the program on August 3, 2005 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twenty (20) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and

substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective January 27, 2006.

Outright approval was granted for one Noise Abatement element, ten Land Use Management elements and all four Program Management elements. Three Noise Abatement elements were disapproved and one element required no federal action. One Land Use Management element was disapproved in part pending submission of additional information. The approved measures included such items as: Promote use of Aircraft Owners and Pilots Association Noise Awareness Steps by light single and twin-engine aircraft; Encourage Santa Barbara County to enact the noise overlay zoning recommendations contained within County's general plan; Encourage the City of Goleta to incorporate land use regulations or restrictions within the Airport Influence Area; Encourage the Santa Barbara County Association of Governments to revise the Airport Land Use Plan; City of Santa Barbara should adopt project review guidelines to specify noise compatibility criteria for development within the Airport Influence Area; Maintain the current compatible land use zoning within the 2008 65 Community Noise Equivalent Level (CNEL) noise contour; City of Santa Barbara should enact overlay zoning to provide noise compatibility use standards within the Airport Influence Area; Encourage the City of Goleta and Santa Barbara County to require noise and aviation easements as a condition of subdivision approval for those areas contained within Zones One, Two and Three of the proposed zoning ordinance; City of Santa Barbara should amend its current building codes to incorporate prescriptive noise standards and encourage the City of Goleta and Santa Barbara County to incorporate similar building code amendments; Consideration should be given to establishing a voluntary acquisition program for dwellings located within the 65 to 75 CNEL; Consideration should be given to voluntary acquisition of the residential development rights for portions of two large parcels located east of the airport; Continue noise abatement information program; Update and expand noise and flight track monitoring system; Monitor implementation of the updated Part 150 Noise Compatibility Program and Update Noise Exposure Maps and Noise Compatibility Program, as necessary, at minimum every seven to ten years to

respond to the changing conditions in the local area and the aviation industry.

These determinations are set forth in detail in the Record of Approval signed by the Associate Administrator for Airports on January 27, 2006. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Santa Barbara Airport. The Record of Approval also will be available on-line at: [http://www.faa.gov/airports\\_airtraffic/airports/environmental/airport\\_noise/](http://www.faa.gov/airports_airtraffic/airports/environmental/airport_noise/).

Issued in Hawthorne, California on March 8, 2006.

**Mark A. McClardy,**  
Manager, Airports Division, Western—Pacific Region, AWP-600.

[FR Doc. 06-2666 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issue Area—New Task

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

**SUMMARY:** The FAA assigned a new task to the Aviation Rulemaking Advisory Committee to develop a recommendation that will help the FAA establish standardized criteria and guidance for conducting airplane-level safety assessments of critical systems. This notice is to inform the public of this ARAC activity.

**FOR FURTHER INFORMATION CONTACT:** Linh Le, Federal Aviation Administration, Transport Airplane Directorate (ANM-117), Northwest Mountain Region Headquarters, 1601 Lind Ave., SW., Renton, WA 98055-4056; telephone: (425) 227-1105; fax: 425-227-1320; e-mail: [linh.le@faa.gov](mailto:linh.le@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The FAA established the Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities for aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitments to harmonize Title 14 of the Code of Federal Regulations (14 CFR) with its partners in Europe and



Canada. Previous ARAC harmonization working groups (Flight Controls, Powerplant Installations, and Systems Design and Analysis) produced varying recommendations regarding the safety of critical airplane systems. Although the subject of specific risk analysis was addressed in those working groups, the recommendations were not consistent. Regulations developed from within the FAA also provide approaches different from those recommended by ARAC. The term "specific risk" refers to the risk to which an airplane is exposed under certain conditions (for example, after a latent failure), as distinguished from average risk.

If these different approaches are applied on a typical certification project, they could result in nonstandardized system safety assessments across various critical systems. This could cause conflicting interpretations for conducting system safety assessments in future airplane certification programs. After reviewing the existing regulations and the recommendations from the various harmonization-working groups, the FAA Transport Airplane Directorate, along with the European, Canadian, and Brazilian civil aviation authorities, identified a need to clarify and standardize safety assessment criteria. The FAA decided to use a new ARAC tasking to integrate the safety assessment criteria from various system disciplines. In July 2005, an industry group comprised of the Aerospace Industries Association (AIA), General Aviation Manufacturers Association (GAMA), and several airplane and engine manufacturers, proposed a new tasking. The FAA agrees with the industry group proposal, and has based this tasking on that proposal. ARAC will address the task under the Transport Airplane and Engine (TAE) Issues Group.

#### The Task

This tasking will direct ARAC to provide information about specific risk assessment and make recommendations for revising requirements or guidance material as appropriate. The TAE Issues Group will establish a new "Airplane-level Safety Analysis Working Group" (ASAWG) to perform the following tasks:

#### Task 1

The ASAWG will establish a definition for specific risk. It will provide relevant examples of its application in today's airplane certification, FAA Flight Operations Evaluation Board (FOEB), and Maintenance Review Board (MRB)

activities. These examples will aid in the correct and concise understanding of specific risk.

#### Task 2

The ASAWG will review the background and intent of relevant existing requirements, existing guidance material, and ARAC recommendations and explain how specific risk is addressed. In Task 2, the ASAWG will document all current and proposed approaches to specific risk but will not establish how specific risk should be assessed. The outcome of this task will be a report describing how specific risk is currently assessed and managed, by currently available regulatory guidance, and by actual practice in recent certification programs. The report will also address how any regulations and associated guidance material proposed by ARAC would manage specific risk. For the relevant ARAC proposals, the report will include the intended improvements and safety benefits of the recommended changes. The approaches and rationale used in airplane-level safety analysis for the following aspects will be reviewed and documented in the report:

#### Latent Failures

The Task 2 report will document acceptance criteria for the "significant latent failures" highlighted in paragraph 9.c.6 of the proposed ARAC Advisory Circular (AC) 25.1309—"Draft ARSENAL version," dated 6/10/2002. The report will document the following aspects:

1. Criteria used for selecting failure conditions worthy of consideration (for example, significant latent failure conditions that are not extremely remote as cited in 14 CFR 25.981.)

2. Acceptability of the next most critical failure on safe operation. As part of this consideration, the report will document the approach used to establish whether a significant latent failure should be allowed to leave the airplane one failure away from a catastrophic condition. If it is allowable, the report will identify the acceptance criteria. Examples of acceptance criteria may be critical component integrity criteria and instructions for continued airworthiness that will include a standard procedure for identification and control of the maintenance tasks required to periodically check the status of the latent failure.

3. Failure probability assumptions and methods of substantiation

4. Criteria for determining allowable exposure times

5. Criteria for limiting the exposure times

#### Master Minimum Equipment List (MMEL)

The report will document the approaches to determine:

1. Acceptability of next most critical failure on safe operation
2. Crew limitations and procedures
3. Reliability of critical components
4. Allowable exposure time

#### Airplane Configuration, Flight Conditions and Design Variations

##### Flight phase.

Maximum flight time vs. average flight time.

Average diversion time vs. maximum allowed diversion time.

#### Task 3

The ASAWG will review the results of Tasks 1 & 2 and determine the appropriateness and adequacy of existing and proposed airworthiness standards for airplane-level safety analysis. This task will demonstrate if a more consistent approach across systems is necessary. The ASAWG will report its findings from Task 3 to the TAE Issues Group. Concurrence from the TAE Issues Group and the FAA is required before continuing to Task 4.

#### Task 4

The ASAWG will develop a report containing recommendations for rulemaking or guidance material and explain the rationale and safety benefits for each proposed change. The report will define a standardized approach for applying specific risk in the appropriate circumstances. The FAA will define the report format to ensure the report contains the necessary information for developing a Notice of Proposed Rulemaking (NPRM), and/or ACs. Task 4 is contingent on the results of the analyses done in Task 3.

If an NPRM or proposed AC is published for public comment as a result of the recommendations from this tasking, the FAA may ask ARAC to review all public comments received and provide a recommendation for disposition of comments for each issue.

#### Schedule

1. The ASAWG will submit a report with the results from its Task 1 activity to the TAE Issues Group no later than August 21, 2006.

2. The ASAWG will submit a report with the results of its Task 2 activity to the TAE Issues Group no later than February 21, 2007.

3. A report describing the results of Task 3 from ASAWG to TAE Issues Group is required no later than November 21, 2007.



4. The final report containing the ASAWG's recommendations to the FAA is required no later than May 21, 2008.

Completion of this task is required no later than May 21, 2008. Any deviations from this schedule must be requested by the ASAWG and approved by the TAE Issues Group.

#### ARAC Acceptance of Task

ARAC accepted the task and assigned it to the TAE Issues Group's newly formed ASAWG. The working group serves as staff to ARAC and assists in the analysis of assigned tasks. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will forward them to the FAA. The FAA will submit the recommendations it receives to the agency's Rulemaking Management Council to address the availability of resources and prioritization.

#### Working Group Activity

The ASAWG must comply with the procedures adopted by ARAC. As part of the procedures, the working group must:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan for consideration at the next meeting of the TAE Issues Group held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations before continuing with the work stated in item 3 below.

3. Draft the appropriate documents and required analyses and/or any other related materials or documents.

4. Provide a status report at each meeting of the ARAC TAE Issues Group.

#### Participation in the Working Group

The ASAWG will be comprised of technical experts having an interest in the assigned task. A working group member need not be a representative or a member of the TAE Issue Group. The ASAWG membership will have broad system safety experience. As needed, the ASAWG may organize, oversee, guide, and monitor the activities and progress of task groups comprised of subject matter experts (SMEs). A task group member needs not be a representative or a member of the full ASAWG. The ASAWG Chair will select the membership for both the ASAWG and its task groups, with concurrence of the TAE Issues Group Assistant Chair and TAE Issues Group Assistant Executive Director. The SMEs will address individual issues and will be invited to present their views and positions for consideration by the task

groups or by the ASAWG. This allows for an optimum ASAWG group size with appropriate representation to achieve informed consensus and foster successful completion of the task. This also allows the participation of a large number of cross-functional SMEs, such as those from the Systems, Flight Controls, Powerplants, Structures, and Flight Operations harmonization working groups. The ASAWG members should have the appropriate subject matter knowledge, broad system safety experience and responsibility within their organization, and authority to represent their respective part of the aviation community. ASAWG members should:

1. Have proven proficiency in airplane system safety and failure analysis methodologies;

2. Have the appropriate knowledge to evaluate the likely impacts on safety, airplane system designs, manufacturing, operation, and maintenance following adoption of any relevant ARAC recommendation;

3. Have proficient knowledge of existing methods of compliance to one or more of the following relevant sections of 14 CFR: 25.671, 25.901, 25.933, 25.981, 25.1309, 25.1529, 33.28, 33.75, including JAR MMEL/MEL 0-10; and

4. Have a commitment to communicate with interested parties to establish a common understanding of all issues, and facilitate developing consensus explanations.

#### Task Group Members Should:

1. Have proven proficiency in airplane system safety and failure analysis methodologies;

2. Have hands-on experience in existing methods of compliance to one or more of the relevant sections of 14 CFR listed above; and

3. Have the appropriate backgrounds to explain to the ASAWG the rationales behind one or more of the relevant ARAC proposals (25.671, AC 25.901X, AC 25.933X, AC 25.1309—"Draft ARSENAL version," 33.75) as they pertain to latent failures and the MMEL.

Invited experts should have the knowledge appropriate to the subjects of interest, as determined by the task groups or ASAWG.

In addition to industry representatives and the FAA, representatives from the European Aviation Safety Agency (EASA), Brazil's Centro Técnico Aeroespacial (CTA), and Transport Canada Civil Aviation (TCCA) are invited to participate. The working group and task group membership and size will be optimized to ensure credibility of representation and to

facilitate efficiently accomplishing the tasking.

If you have expertise in the subject matter and wish to become a member of the working group, contact the person listed under the caption **FOR FURTHER INFORMATION CONTACT**. Describe your interest in the task and state the expertise you would bring to the working group. We must receive all requests by April 25, 2006. The assistant chair, the assistant executive director, and the working group chairs will review the requests and advise you whether your request is approved.

If you are chosen for membership on the working group, you must represent your aviation community segment and actively participate in the working group by attending all meetings and providing written comments when requested to do so. You must devote the resources necessary to support the working group in meeting any assigned deadlines. You must keep your management chain and those you may represent advised of working group activities and decisions to ensure the proposed technical solutions don't conflict with your sponsoring organization's position when the subject being negotiated is presented to ARAC for approval. Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group chair.

The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC are open to the public. Meetings of the ASAWG will not be open to the public, except to the extent individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on March 14, 2006.

**Anthony F. Fazio,**

*Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. E6-4024 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Research, Engineering and Development Advisory Committee**

**AGENCY:** Federal Aviation Administration.

**ACTION:** Notice of meeting.

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

*Name:* Research, Engineering & Development Advisory Committee.

*Time and Date:* April 13—9 a.m. to 5 p.m.

*Place:* Federal Aviation Administration, 800 Independence Avenue, SW., Bessie Coleman Room, Washington, DC 20591.

*Purpose:* The meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy. Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at (202) 267-8937 or [gloria.dunderman@faa.gov](mailto:gloria.dunderman@faa.gov). Attendees will have to present picture ID at the security desk and escorted to the Bessie Coleman Room.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on March 14, 2006.

**John Rekstad,**

*Program Manager, Research Division.*

[FR Doc. 06-2670 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration**

[Policy Statement Number PS-ACE100-2005-10039]

**Standardization and Clarification of Application of 14 CFR Part 23, §§ 23.1301 and 23.1309, Regarding Environmental Qualification**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of issuance of policy statement.

**SUMMARY:** This notice announces the issuance of a Federal Aviation

Administration (FAA) policy. The policy standardizes and clarifies the FAA application of 14 CFR part 23, sections 23.1301 and 23.1309, Amendment 23-41 or later for environmental qualification. This notice is necessary to advise the public, especially manufacturers of normal, utility, and acrobatic category airplanes, and commuter category airplanes and their suppliers, that the FAA has adopted the policy.

**DATES:** Policy statement PS-ACE100-2005-10039 was issued by the Manager of the Small Airplane Directorate on February 16, 2006.

*How to Obtain Copies:* A paper copy of the policy statement may be obtained by writing to the following: Small Airplane Directorate, Standards Office (ACE-110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The policy statement will also be available on the Internet at the following address [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/).

**FOR FURTHER INFORMATION CONTACT:**

Ervin Dvorak, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE-111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (316) 329-4123; fax: 816-329-4090; e-mail: [erv.dvorak@faa.gov](mailto:erv.dvorak@faa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

We announced the availability of the policy statement on December 8, 2005 (70 FR 73059). We revised the policy in response to the comments, and the policy has been adopted.

Issued in Kansas City, Missouri on March 10, 2006.

**Kim Smith,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E6-4022 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION****Maritime Administration**

[Docket No. 2006 24165]

**Requested Administrative Waiver of the Coastwise Trade Laws**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PROTECTOR.

**SUMMARY:** As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006-24165 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before April 20, 2006.

**ADDRESSES:** Comments should refer to docket number MARAD 2006 24165. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dms.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel PROTECTOR is:

*Intended Use:* "Sightseeing along the east coast of Hawaii Islands for not more than twelve passengers."

*Geographic Region:* Pacific Ocean, east coast of Hawaii Island between Upolu Point and Ka Lae Point, not more than five miles offshore.

Dated: March 10, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6-4020 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2006-23684; Notice 2]

#### Continental Tire North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Continental Tire North America, Inc. (Continental Tire) has determined that certain tires it produced in 2004 and 2005 do not comply with the labeling requirements specified in S5.5(d) of 49 CFR 571.139, Federal Motor Vehicle Safety Standard (FMVSS) No. 139, "New pneumatic radial tires for light vehicles." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Continental Tire has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of a petition was published, with a 30-day comment period, on January 31, 2006, in the *Federal Register* (71 FR 5116). NHTSA received no comments.

Affected are a total of approximately 2,500 model 235/85R16 C Grabber TR tires manufactured in 2004 and 2005. S5.5(d) of FMVSS No. 139 requires that each tire must be marked on each sidewall with the maximum load rating. The noncompliant tires are marked on the sidewall "max load single 1380 kg (3042 lbs)" whereas the correct marking should be "max load single 1400 kg (3085 lbs)." Continental Tire has corrected the problem that caused these errors so that they will not be repeated in future production.

Continental Tire believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Continental Tire states,

All other sidewall identification markings and safety information is correct. A consumer acting on the incorrect information would underload the vehicle by 20 kg per tire. This incorrect load capacity molding does not affect the safety, performance and durability of the tire; the tire was built as designed.

The agency agrees with Continental Tire's statement that the mismarking does not present a serious safety concern. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. In the agency's judgment, the incorrect labeling will have an inconsequential effect on motor vehicle safety because, as Continental Tire states, a consumer acting on the incorrect information would underload the vehicle by 20 kg per tire which does not present a safety issue. In addition, the tires are certified to meet all the performance requirements of FMVSS No. 139, which is a compliance option for these tires. All other informational markings as required by FMVSS No. 139 are present.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Continental Tire's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

**Authority:** (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

Issued on: March 14, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6-4019 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2006-23553; Notice 2]

#### Pacific Coast Retreaders, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Pacific Coast Retreaders, Inc. (Pacific Coast) has determined that certain tires that it imported do not comply with S6.5(b) of 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Pacific Coast has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of a petition was published, with a 30-day comment

period, on January 19, 2006, in the *Federal Register* (71 FR 3152). NHTSA received no comments.

Affected are a total of approximately 780 tires produced in March 2005 by Linglong Rubber Company in China and imported by Pacific Coast in April 2005. One requirement of S6.5 of FMVSS No. 119, tire markings, is that the tire identification shall comply with 49 CFR part 574, "Tire Identification and Recordkeeping," which includes the marking requirements of 574.5(b) DOT size code. The subject tires are missing the required tire size code. Pacific Coast has corrected the problem that caused these errors so that they will not be repeated in future production.

Pacific Coast believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Pacific Coast explains that, as a result of mold cleaning and repair, some of the tire size code symbols were not restamped after repair, and worn symbols were not re-traced. Pacific Coast states that "the tire size is embossed in very larger (sic) raised characters on both sidewalls and [is] easily identifiable from a great distance." The petitioner states that as a result, there is no confusion as to the tire size.

NHTSA agrees with Pacific Coast that the noncompliance is inconsequential to motor vehicle safety. As Pacific Coast points out, the tires do have markings which provide the correct size. Therefore, there should be no confusion by the user of this information.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Pacific Coast's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

**Authority:** (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

Issued on: March 14, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6-4018 Filed 3-20-06; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF THE TREASURY

**Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Cross-Border Electronic Transmittals of Funds Survey**

**AGENCY:** Financial Crimes Enforcement Network, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Financial Crimes Enforcement Network requests comments on a survey that seeks input from trade groups representing members of the U.S. financial services industry on the feasibility of requiring reporting of cross-border electronic transmittals of funds, and the impact such reporting would have on the industry. The survey is part of a study of these issues required by section 6302 of the Intelligence Reform and Terrorism Prevention Act of 2004. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 105-13, 44 U.S.C. 3506 (c)(2)(A).

**DATES:** Written comments should be received on or before May 5, 2006.

**ADDRESSES:** Written comments should be submitted to: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—Cross-Border Survey. Comments also may be submitted by electronic mail to the following Internet address: [regcomments@fincen.gov](mailto:regcomments@fincen.gov), with a caption in the body of the text, "Attention: PRA Comments—Cross-Border Survey."

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or requests for copies of the questions for the new cross-border survey that is the subject of this notice should be directed to: Financial Crimes Enforcement Network, Regulatory Policy and Programs Division at (800) 949-2732.

**SUPPLEMENTARY INFORMATION:** On December 17, 2004, President Bush signed into law S. 2845, the Intelligence Reform and Terrorism Prevention Act of 2004 (Act).<sup>1</sup> Among other things, the Act requires that the Secretary of the Treasury study the feasibility of "requiring such financial institutions as

the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing." The report must identify what cross-border information would be reasonably necessary to combat money laundering and terrorist financing; outline the criteria to be used in determining what situations will require reporting; outline the form, manner, and frequency of reporting; and identify the technology necessary for Financial Crimes Enforcement Network to keep, analyze, protect, and disseminate the data collected. This survey seeks input from trade groups representing members of the U.S. financial services industry on the feasibility of requiring reporting of cross-border electronic transmittals of funds, and the impact such reporting would have on the industry.

Title 31 CFR 103.33 (e)-(g) provides uniform recordkeeping and transmittal requirements for financial institutions and are intended to help law enforcement and regulatory authorities detect, investigate and prosecute money laundering and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system. Although the requirements for banks and non-bank financial institutions are similar, their respective rules contain different terminology. For the purposes of this document, when terminology for banks is used, the intent is for it to apply to the broader universe of financial institutions.

Under current regulations, for each payment order that it receives, a financial institution must obtain and retain the following information on funds transfers of \$3,000 or more: (a) Name and address of the originator; (b) the amount of the funds transfer; (c) the date of the request; (d) any payment instructions received from the originator with the payment order; (e) the identity of the beneficiary's bank; (f) and as much information pertaining to the beneficiary as is received, such as name and address, account number, and any other identifying information. Intermediary and beneficiary banks receiving a payment order are required to keep an original or a copy of the payment order. An originator bank is required to verify the identity of the person placing a payment order if it is made in person and if the person is not already a customer. Similarly, if a beneficiary bank delivers the proceeds

to the beneficiary in person, the beneficiary bank is required to verify the identity of that person if not already a customer.

The feasibility study will examine the advisability of imposing the requirement that financial institutions report to the Financial Crimes Enforcement Network certain of the transactions of which it must currently maintain records under those regulations. The intent of this survey is to gather information from the banking and financial services industries to assist in determining the feasibility and impact of such a reporting requirement. If feasible, the Act requires the Secretary to promulgate rules imposing a reporting requirement by December 2007. An inadequate understanding of the impact could result in ineffective regulations that impose unreasonable regulatory burdens with little or no corresponding anti-money laundering benefits.

We would appreciate receiving comments on this survey on or before April 15, 2006.

You may submit comments or questions about this survey by e-mail to [eric.kringel@fincen.gov](mailto:eric.kringel@fincen.gov) or by U.S. Mail to: Financial Crimes Enforcement Network, Post Office, Box 39, Vienna, VA 22183, Attn: Eric Kringel, Senior Policy Advisor. Thank you for your assistance.

Solely for purposes of clarity and in aiding respondents in your comments to the questions below, we propose the following definition:

*Cross-Border Electronic Transmittal of Funds.* Cross-border electronic transmittal of funds means any wire transfer in which either the originator or the beneficiary of the transfer is located in the United States and the other is located outside the United States. This term also refers to any chain of wire transfer instructions that has at least one cross-border element, and encompasses any such transfer in which an institution is involved as originator's institution, beneficiary's institution, intermediary, or correspondent, whether that institution's involvement involves direct transmission to or from a foreign institution. The definition does not include any debit transmittals, point-of-sale (POS) systems, transaction conducted through an Automated Clearing House (ACH) process, or Automated Teller Machine (ATM).

To the extent your member financial institutions can provide the following information, we would like responses to the questions outlined below. We are seeking general or aggregated information (i.e., "45% of our membership \* \* \*") rather than

<sup>1</sup> Pub. L. 108-458, 118 Stat. 3638 (2004).



specific responses about particular institutions.

#### Background Information

1. Please characterize the institutions your organization represents (i.e., banks, broker-dealers, currency dealers or exchangers, casinos, money services businesses, etc.).

2. How would you further describe the institutions your organization represents by the primary nature of your business (i.e., community banks, credit unions, money center banks, money transmitters, specialized business lanes, etc.).

3. What is the approximate volume of the overall funds transfer business (by total number and aggregate dollar amount) your member institutions conduct over a one-year period?

4. What is the approximate volume cross-border electronic transmittals of funds (by total number and aggregate dollar amount) your member institutions send and receive over a one-year period?

To the extent possible, please estimate the percentage of cross-border electronic transmittal of funds sent or received by your member financial institutions, in the following categories (if applicable):

a. On behalf of their own customers,  
b. As an intermediary or correspondent for other institutions  
c. As internal settlement with their own institution's foreign affiliates or branches.

d. As the U.S. financial institution that directly transmitted the payment order to or accepted the payment order from a financial institution located outside of the United States.

5. Do your member institutions send or receive cross-border electronic transmittal of funds in-house or through a correspondent?

a. What systems (e.g., SWIFT, Fedwire, CHIPS, proprietary system) are used to send or receive cross-border funds transfers?

b. What is the proportional usage of each system if more than one system is used?

c. Are there instances when the system used is dictated by the nature of the transaction or customer instruction? If possible, please exclude those situations where the decision is due to the fact that the receiving financial institution does not use a particular system.

#### Existing Record Maintenance and Compliance Process

6. How do your member institutions maintain the funds transfer records required by 31 CFR 103.33 (i.e., message system logs or backups, wire transfer

instruction database, account history files, etc.)?

a. If the data is stored electronically, can the storage systems export such data into a spreadsheet or database file for reporting?

7. Approximately how many times in a one-year period does the government subpoena or otherwise issue a legal demand requiring your member institutions to produce cross-border wire transfer information?

**Note:** We understand that many requests seek "any and all records" pertaining to an account or subject. Where possible, please distinguish those requests from more specific requests for cross-border electronic transmittals of funds.

8. Can you estimate the approximate total cost (e.g., person-hours or other costs) to your member institutions in time and expense responding to these legal demands? If you cannot estimate the costs incurred, please describe generally the resources involved in complying with such requests.

#### Foreign Transactions

9. Do your member institutions or any of their branches, subsidiaries, or affiliates transmit or receive cross-border electronic transmittals of funds from a location in either Australia or Canada?

a. If yes, please briefly describe the measures taken, including the general estimates of the costs in time and expense incurred, to ensure compliance with the cross-border funds transfer reporting requirements in those jurisdictions and the measures in place to monitor and maintain compliance.

10. If the Department of the Treasury required reports of cross-border electronic transmittals of funds involving amounts over \$3,000, what general steps would your member institutions need to take (and how burdensome would it be) to comply?

a. Would the answer differ if the value threshold were \$10,000?

b. Would the answer differ if there were no value threshold?

c. How would these different thresholds affect the volume of the reporting from your member institutions?

d. How would the answer differ with the type of required reporting (e.g., electronic file upload, Web-based form)?

e. How would the answer differ with the timing of required reporting (e.g., real-time, end-of-day, within 30 days)?

f. To the extent possible, please estimate any cost increase for cross-border electronic transmittals of funds that may result.

g. To the extent possible, please describe any effects that reporting

requirements may have on the volume or value of cross-border electronic transmittals of funds.

#### Potential Impact on Financial Institutions

11. If the Department of Treasury required reports of cross-border electronic transmittals of funds in a SWIFT, CHIPS or other file format specified by the Department, what steps would your member institutions need to take to extract such data from existing records to submit the information as required?

12. If the Department of Treasury required reports of cross-border electronic transmittals of funds but also provided exceptions for certain customers or types of transactions (i.e., internal settlement, identical originator and beneficiary, transfers to government entities, etc.), what exemptions would you suggest?

a. How difficult would it be for your member institutions to build such exceptions into the business process for creating the report?

b. Would the costs to implement the exceptions outweigh the benefits?

13. If the Department of the Treasury required reports of cross-border electronic transmittals of funds, should the requirement be limited to certain institutions (e.g., only the originating institution, only the beneficiary's institution, only the U.S. financial institution that directly transmits the payment order to or accepts the payment order from a financial institution located outside of the United States)? Please explain the rationale for your response.

14. Can your member financial institutions' automated systems distinguish between domestic funds transfer and a cross-border electronic transmittal of funds?

15. Among the following definitions of "cross-border electronic transmittal of funds" what potential advantages and disadvantages do you perceive? Do you have any suggestions for such a definition or can you highlight any particular issues that should be addressed in such a definition?

(Note: All of the following definitions would exclude check, debit transmittal, ATM, or ACH payments.)

a. Cross-border electronic transfer of funds means any wire transfer where the originator's and beneficiary's institutions are located in different countries and one of the institutions is located in the United States. This term also refers to any chain of wire transfers that has at least one cross-border element



b. Cross-border electronic transfers of funds include transactions where either (1) a foreign office of a financial institution instructs a U.S. office of a financial institution to effect payment in the U.S., directly or indirectly, or (2) where U.S. office of a financial institution instructs a foreign office of a financial institution to effect a payment abroad, directly or indirectly.

c. Cross-border electronic transmittal of funds means the transmission—through any electronic, magnetic or optical device, telephone instrument or computer—of instructions for the transfer of funds, other than the transfer of funds within the United States. In the case of SWIFT messages, only SWIFT MT 100 and SWIFT MT 103 messages are included

d. Cross-border electronic transmittal of funds means an instruction for a transfer of funds that is transmitted into or out of the United States electronically or by telegraph, where the financial institution is acting on behalf of, or at the request of, another person who is not a financial institution

*Title:* Cross-Border Electronic Transmittals of Funds Survey.

*OMB Number:* 1506-0048.

*Abstract:* Survey to be conducted with business owners and managers in the Cross-Border Electronic Transmittals of Funds industry. Survey asks respondents to report on cross-border financial services provided by their businesses.

*Type of Review:* New information collection.

*Affected Public:* Business or other for profit institutions.

*Frequency:* One time.

*Estimated Burden:* Reporting average of 60 minutes per response.

*Estimated Number of Respondents:* 23,262.

*Estimated Total Responses:* 23,262.

*Estimated Total Annual Burden*

*Hours:* 23,262.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: March 14, 2006.

**Robert Werner,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. E6-4073 Filed 3-20-06; 8:45 am]

BILLING CODE 4810-02-P

## DEPARTMENT OF THE TREASURY

### Request for Comments on Treasury's Report to Congress on International and Exchange Rate Policies

**AGENCY:** Office of the Under Secretary for International Affairs, Treasury.

**ACTION:** Request for comments.

**SUMMARY:** The Office of the Under Secretary for International Affairs of the U.S. Department of the Treasury invites all interested parties to comment on the methodology used in preparing its semi-annual report to Congress on International and Exchange Rate Policies and to submit views on the contents of its next report.

**DATES:** Written comments must be received on or before April 7, 2006.

**ADDRESSES:** Comments may be submitted by mail, facsimile or email. All comments should contain the following information in the heading: "Attn: Request for Public Comments on the Report to Congress on International and Exchange Rate Policies."

*Mailing address:* Office of the Under Secretary for International Affairs, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

*Facsimile:* (202) 622-2009 (not a toll-free number).

*Email:* ashby.mccown@do.treas.gov.

For further information concerning the submission of comments, refer to the heading "Request for Comments" in the SUPPLEMENTARY INFORMATION portion of this notice.

**FOR FURTHER INFORMATION CONTACT:** John Weeks, Director, Global Economics Unit, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 622-9885 (not a toll-free number), john.weeks@do.treas.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 3004 of Public Law 100-418 (22 U.S.C. 5304) requires, inter alia, that the Secretary of the Treasury analyze on

an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund, and consider whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustment or gaining unfair competitive advantage in international trade. Section 3004 further requires that: "If the Secretary considers that such manipulation is occurring with respect to countries that (1) have material global current account surpluses; and (2) have significant bilateral trade surpluses with the United States, the Secretary of the Treasury shall take action to initiate negotiations with such foreign countries on an expedited basis, in the International Monetary Fund or bilaterally, for the purpose of ensuring that such countries regularly and promptly adjust the rate of exchange between their currencies and the United States dollar to permit effective balance of payment adjustments and to eliminate the unfair advantage."

Section 3005 (22 U.S.C. 5305) requires, inter alia, the Secretary of the Treasury to provide each six months a report on international economic policy, including exchange rate policy. Among other matters, the reports are to contain the results of negotiations conducted pursuant to Section 3004. Each of these reports bears the title, Report to Congress on International Economic and Exchange Rate Policies, (the "Report").

Treasury is soliciting comments on the methods used by Treasury to analyze the economies and exchange rate policies of foreign countries in order to help improve the process of carrying out its responsibilities under Sections 3004 and 3005. The most recent Report can be found on the Web site of the Office of the Under Secretary for International Affairs, at <http://www.treas.gov/offices/international-affairs/economic-exchange-rates/>. Treasury is also soliciting views on approaches that might be fruitful in the upcoming spring 2006 Report.

#### Request for Comments

Comments must be submitted in writing by one of the methods specified in the ADDRESSES portion of this notice. All comments should contain the following information in the heading: "Attn: Request for Comments on the Report to Congress on International and Exchange Rate Policies." Comments must be received by April 7, 2006. Treasury requests that comments be no more than two pages in length.

The Office of the Under Secretary for International Affairs will not accept

comments accompanied by a request that all or part of the submission be treated as confidential because of its business proprietary nature or for any other reason. All comments received by April 7, 2006 will be a matter of public record.

Clay Lowery,

Assistant Secretary of the Treasury.

[FR Doc. 06-2768 Filed 3-20-06; 8:45 am]

BILLING CODE 4811-37-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8900

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8900, Qualified Railroad Track Maintenance Credit.

**DATES:** Written comments should be received on or before May 22, 2006 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622-3179, or through the Internet at Larnice.Mack@irs.gov.

**SUPPLEMENTARY INFORMATION:** *Title:* Qualified Railroad Track Maintenance Credit.

*OMB Number:* 1545-1983.

*Form Number:* 8900.

*Abstract:* Form 8900 Qualified Railroad Track Maintenance Credit, was developed to carry out the provisions of new Code section 45G. This new section was added by section 245 of the American Jobs Creation Act of 2004 (Pub. L. 108-357). The new form provides a means for the eligible

taxpayer to compute the amount of credit.

*Current Actions:* There are no changes being made to Form 8900 at this time.

*Type of Review:* Extension of a current OMB approval.

*Affected Public:* Business or other for-profit organizations and farms.

*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 8 hours, 3 minutes.

*Estimated Total Annual Burden Hours:* 4,030.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 9, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-4014 Filed 3-20-06; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 13388

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13388, Improving the Accuracy of EITC Prepared Returns.

**DATES:** Written comments should be received on or before May 22, 2006 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622-3179, or through the Internet at Larnice.Mack@irs.gov.

#### SUPPLEMENTARY INFORMATION:

*Title:* Improving the Accuracy of EITC Prepared Returns.

*OMB Number:* 1545-1825.

*Form Number:* 13388.

*Abstract:* This postcard will be sent to tax preparers that submitted a mixture of paper and electronic returns for their clients. The postcard provides these professionals an opportunity to acquire additional information about the EITC. It is part of a brochure to encourage 100% filing of EITC returns.

*Current Actions:* There are no changes being made to Form 13388 at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 3,000.

*Estimated Number of Respondents:* 9 minutes.

*Estimated Total Annual Burden Hours:* 150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 9, 2006.

**Glenn Kirkland,**

*IRS Reports Clearance Office.*

[FR Doc. E6-4015 Filed 3-20-06; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the AD Hoc Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the AD Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, April 13, 2006 at 2 p.m. ET.

**FOR FURTHER INFORMATION CONTACT:** Inez De Jesus at 1-888-912-1227, or 954-423-7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Thursday, April 13, 2006 at 2 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7977, or write Inez De Jesus, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez De Jesus. Ms. De Jesus can be reached at 1-888-912-1227 or 954-423-7977, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include: Various IRS issues.

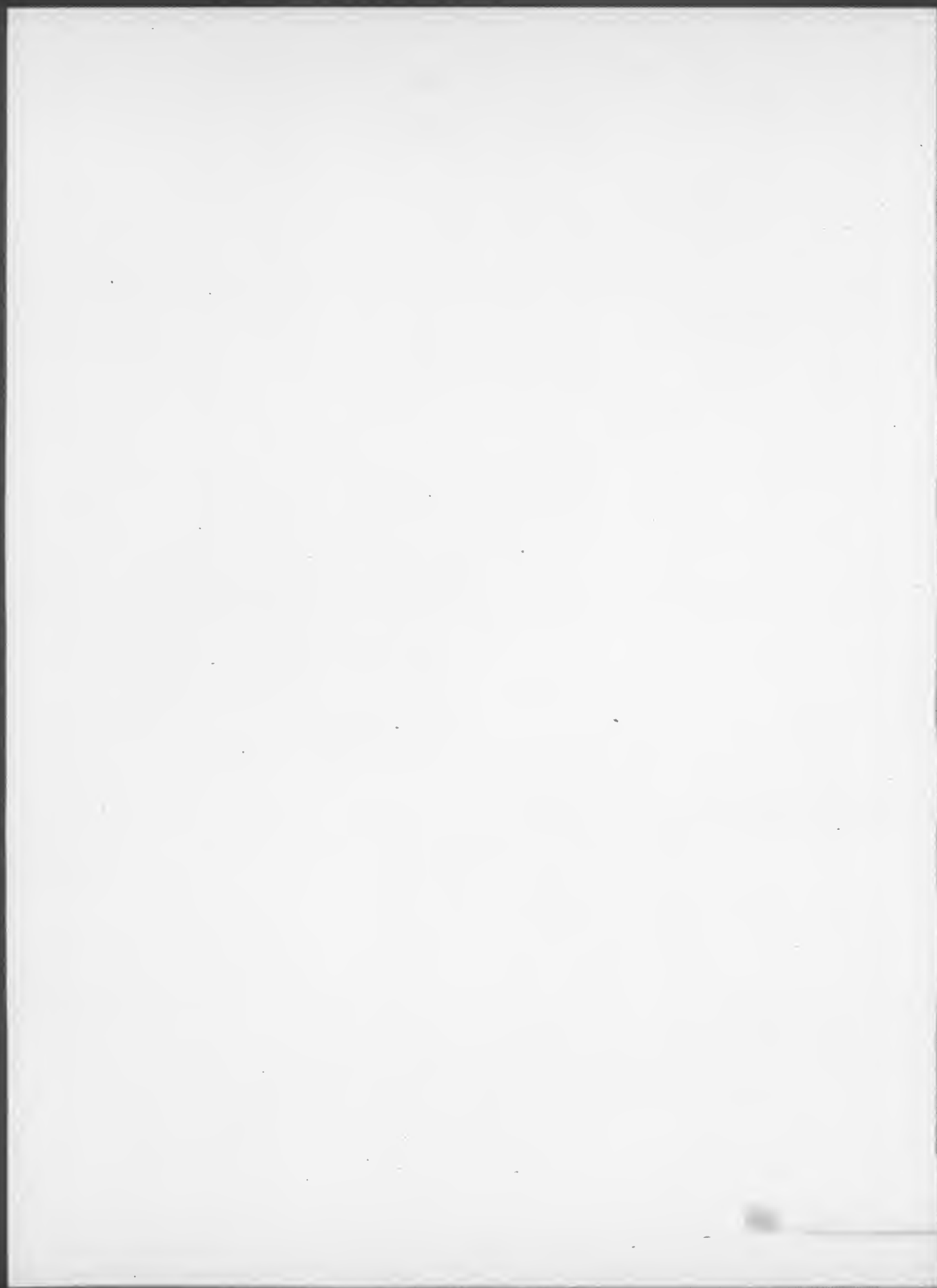
Dated: March 13, 2006.

**John Fay,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E6-4013 Filed 3-20-06; 8:45 am]

BILLING CODE 4830-01-P





# Federal Register

---

Tuesday,  
March 21, 2006

---

Part II

## Millennium Challenge Corporation

---

Notice of Entering Into a Compact With  
the Government of the Republic of  
Vanuatu; Notice



## MILLENNIUM CHALLENGE CORPORATION

[MCC FR 06-06]

### Notice of Entering Into a Compact With the Government of the Republic of Vanuatu

**AGENCY:** Millennium Challenge Corporation.

**ACTION:** Notice.

**SUMMARY:** In accordance with section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108-199, Division D), the Millennium Challenge Corporation (MCC) is publishing a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Republic of Vanuatu. Representatives of the United States Government and the Government of the Republic of Vanuatu executed the Compact documents on March, 2, 2006.

Dated: March 13, 2006.

**John C. Mantini,**

*Assistant General Counsel, Millennium Challenge Corporation.*

### Summary of Millennium Challenge Compact With the Government of the Republic of Vanuatu

#### I. Introduction

Vanuatu is a small island nation in the South Pacific comprised of 83 separate islands, where approximately half of the population lives in poverty. As a small, open, island economy, agriculture and tourism are central to Vanuatu's growth. These two sectors together employ more than 70% of Vanuatu's working population<sup>1</sup> and represent approximately 34% of Vanuatu's GDP.<sup>2</sup> Vanuatu's poor transportation infrastructure, however, continues to hinder formal economic activity and investment in the

agriculture and tourism sectors, thereby constraining private-sector led economic growth. Vanuatu's capital outlays, at 7% of national expenditures, are the lowest in the Pacific region.<sup>3</sup>

The five-year, \$65.69 million Vanuatu Compact provides an in-depth focus on one economic development priority: overcoming transport infrastructure constraints to poverty reduction and economic growth, specifically for rural areas. Consisting of eleven infrastructure projects—including roads, wharves, an airstrip, and warehouses, as well as institutional strengthening initiatives for enhanced maintenance capacity, the program aims to benefit poor, rural agricultural producers and providers of tourist-related goods and services by reducing transportation costs and improving the reliability of access to transportation services (the "MCA Program").

#### II. Program Overview and Budget

Vanuatu's MCA Program consists of two principal components: (i) Civil works for the reconstruction of priority transport infrastructure on eight islands, covering roads, wharves, airstrips, and warehouses (the "Transport Infrastructure Project"); and (ii) institutional strengthening efforts in Vanuatu's Public Works Department ("PWD"), including the provision of plant and equipment for maintenance, in order to facilitate enhanced sustainability and maintenance of infrastructure assets (the "Institutional Strengthening Project"). Technical, economic, environmental, and social assessments were completed on each of the eleven civil works subprojects and institutional strengthening components contained in the MCA Program.

The following eleven sub-projects are included as part of the U.S. \$54.47 million Transport Infrastructure Project:

1. Efate island—Upgrade 90km of the Ring Road;

2. Santo island—Upgrade 70km of the East Coast Road from Luganville to Port Orly;

3. Santo island—Upgrade South Coast Road Bridges (5);

4. Malekula island—Reconstruct 11km of the Norsup Lakatoro Lits Lits Road;

5. Malekula island—Upgrade South West Bay Airstrip;

6. Pentecost island—Construct the Loltong Wharf and Upgrade of North-South Road to Wharf;

7. Tanna island—Reconstruct the Whitesands Road;

8. Epi island—Upgrade Lamén Bay Wharf;

9. Ambae island—Reconstruct Creek Crossings on 50km Road section;

10. Malo island—Upgrade 15km of Roads; and

11. Warehouses (for produce and freight storage):

(i) Ambae island (Lolowai).

(ii) Epi island (Lamen Bay).

(iii) Pentecost island (Loltong).

(iv) Malo island (Nunuka).

(v) Malekula island (South West Bay).

Recognizing the importance of the maintenance of transport infrastructure in meeting program objectives, the Vanuatu Compact will provide focused assistance of U.S. \$6.22 million to the principal institution in the Transport Infrastructure Project, namely PWD, to remove key constraints that face the institution in effectively delivering maintenance and repair services. The MCA Program also provides support for the sustainability and viability of the institution through organizational reform and policy changes. (Refer to Sections V. C. Government Commitment and Effectiveness and D. Sustainability, for further information on these maintenance initiatives.) The following table presents the total Compact cost, by component:

Description	Timeline					Total
	CY1 (\$US mil)	CY2 (\$US mil)	CY3 (\$US mil)	CY4 (\$US mil)	CY5 (\$US mil)	
Transport Infrastructure Project .....	4.00	22.45	25.80	2.21	0.03	54.47
Institutional Strengthening for sustainability/Maintenance .....	5.47	0.48	0.09	0.09	0.09	6.22
Program Administration & Audits .....	1.67	0.53	0.49	0.49	0.49	3.63
Monitoring & Evaluation .....	0.28	0.06	0.06	0.06	0.91	1.37
<b>Total .....</b>	<b>11.42</b>	<b>23.51</b>	<b>26.43</b>	<b>2.85</b>	<b>1.52</b>	<b>65.69</b>

<sup>1</sup> Source: Vanuatu Labor Market Survey (2000).

<sup>2</sup> Derived from IMF Article IV Consultation statistics and WTTCC Satellite Account data.

<sup>3</sup> IMF Article IV Consultation (2005).

### III. Impact

The Transport Infrastructure Project is expected to have a transformational impact on Vanuatu's economic development, increasing average income per capita (in real terms) by approximately \$200, or 15% of current income per capita, by 2010. GDP is expected to increase by an additional 3% a year as a result of the program.

Based on the areas covered by the transport assets, the program can be expected to benefit approximately 65,000 poor, rural inhabitants living nearby and using the roads to access markets and social services. The program is also expected to expand the tourism sector by approximately 15% once construction is complete. Based on the most recent employment data<sup>4</sup> this translates to the creation of 280 additional formal sector jobs and 25 new locally-owned businesses each year in this sector, impacting the lives of over 1,300 people. The total number of beneficiaries would be higher if the spillover impact of tourism activities on agriculture, fishery and construction sectors—as well as impact of the national maintenance strengthening component—could be measured.

### IV. Program Management

The Government of Vanuatu ("GOV") is creating an independent entity, MCA-Vanuatu, housed within the Ministry of Finance and Economic Management, with primary responsibility for oversight and management of Compact implementation, particularly all monitoring and evaluation activities. To oversee MCA-Vanuatu, the GOV has established a Steering Committee consisting of five Director General-level and four Director-level civil servants, one private sector representative (General Manager of Vanuatu Chamber of Commerce), and one civil society representative (Secretary General of Vanuatu Association of NGOs), with all members of the Steering Committee possessing voting rights. Observers to the Steering Committee will include two Government Directors and an MCC representative.

The PWD will serve as the project manager, holding responsibility for oversight of the specific activities of the Transport Infrastructure Project. External professional services (for construction supervision) will be contracted through MCA-Vanuatu to assist PWD in its functions.

The Department of Finance in the Ministry of Finance and Economic

Management will serve as the fiscal agent on behalf of MCA-Vanuatu. For procurements, an external procurement agent will be used, and is currently being selected through a competitive process. Procurements will be conducted in accordance with MCC-modified World Bank Procurement Guidelines. A special U.S. Dollar account will be established at the Reserve Bank of Vanuatu for receipt of MCC disbursements.

### V. Assessment

#### A. Economic Analysis

The economic internal rate of return ("ERR") for the overall program is estimated to be 25%, calculated over a twenty-year time horizon. Expected benefits include: Increased agricultural and fisheries production, induced tourism investment and expenditures, reduced transport operating costs, reduced infrastructure closures, reduced freight spoilage, value-added from storage warehouses, and maintenance cost savings.

In addition to the quantifiable benefits described above, the upgraded road network is expected to improve the quality of life of all ni-Vanuatu living within the vicinity of the road by improving access (via lower costs and shorter travel times) to social services, such as health centers and schools.

#### B. Consultative Process

Vanuatu engaged in a comprehensive consultative process, consisting of: (i) Ongoing national and provincial public forums, such as the Comprehensive Reform Program Summit, National Business Forum, Rural Economic Development Initiative, and Government Investment Program workshops, which included specific discussion on priorities and projects for the MCA proposal; and (ii) public outreach meetings in four of Vanuatu's six provinces. Consulted groups included Vanuatu's council of chiefs, women's group leaders, the private sector, NGOs, church leaders, and government officials from Vanuatu's provinces. The proposed projects for MCC consideration were derived from each province's Rural Economic Development Plan, which included extensive local-level stakeholder consultation forums in each of Vanuatu's six provinces.

To sustain public awareness and participation in the Compact development process, the GOV held MCA public outreach meetings in various provinces and engaged local media regarding proposal due diligence,

project selection, and Compact development.

#### C. Government Commitment and Effectiveness

The GOV is undertaking several major policy changes as a part of the MCA Program. These include:

Policy changes to ensure sufficient budget allocations for road maintenance activities by the GOV. This policy change will provide PWD with sufficient means to maintain all new and existing transport infrastructure.

The GOV or the respective province will develop a revenue collection mechanism and an implementation plan for the collection of wharf user fees and their application towards wharf maintenance. This policy change would provide sufficient funds for maintenance of the wharves, thereby preserving their useful life and ability to contribute to economic growth and higher incomes.

#### D. Sustainability

In addition to the efforts mentioned above, the program will support the following major institutional changes to promote enhanced maintenance and sustainability of infrastructure assets:

Establishment of a service performance contract between the Ministry of Infrastructure and Public Utilities and PWD in order to make PWD accountable for service delivery against targets set on an annual basis (the "Service Performance Contract"). The Service Performance Contract is expected to reduce the overall cost of maintenance on an annual basis, and assure proper and timely maintenance of infrastructure assets.

Establishment of maintenance contracts with community representatives for various sub-projects to involve local communities (users) in maintenance activities.

#### E. Environment and Social Impacts

Initial environmental and social assessment of each of the eleven proposed projects included in the Transport Infrastructure Project has been completed. Impacts associated with these projects, which primarily involve the rehabilitation of existing infrastructure, are likely to be site-specific and readily mitigable, and are therefore screened as Category B activities in accordance with the MCC Environmental Guidelines. No significant adverse environmental or social impacts, such as the need for resettlement, were identified in the initial assessment. However, further environmental and social assessment will be required during the design stage

<sup>4</sup> National Tourism Development Office (2000) and assuming 2% growth rate based on labor force growth.

to confirm the findings of the initial assessment and to address design alternatives. Project-specific environmental management plans will be completed prior to construction.

To address environmental and social issues during program implementation, MCA-Vanuatu will select in an open and competitive process, subject to the approval of MCC, an environmental and social impact officer ("ESI Officer"). The ESI Officer will provide MCA-Vanuatu with expertise in environmental, social, and gender impact assessment, and will be responsible for ensuring that the activities related to the Transport Infrastructure Project and Institutional Strengthening Project are undertaken in accordance with the MCC Environmental Guidelines and safeguard policies. The ESI Officer will be located within the Environmental Unit of the Government, but will be dedicated to the management of environmental and social issues associated with implementation of the Transport Infrastructure Project and Institutional Strengthening Project. The ESI Officer will convene periodic public meetings to provide implementation updates to identify and address public concerns.

#### F. Donor Coordination

The GOV and MCC have convened various meetings with donor partners such as Australia, New Zealand, France, the European Union, Japan, the Asian Development Bank ("ADB"), the World Bank, and the IMF to discuss potential project-level coordination opportunities and collaborative partnerships for implementation and monitoring. It is widely accepted among donors that Vanuatu has a substantial need for investments in transport infrastructure, particularly for rural areas and the outer islands. The MCA Program builds upon analytical work previously conducted by the ADB on outer island transport infrastructure development in Vanuatu.

Donors such as Australia and New Zealand have recently committed to enlarging their assistance to the productive sectors in response to the priorities for growth and poverty reduction outlined in the GOV's National Priorities and Action Agenda. MCC's focus on transport infrastructure presents a number of mutually beneficial coordination opportunities with ongoing and planned donor programs, such as: The EU and France's Agricultural Producers Organization Project; the EU and ADB's Tourism Training and Education project; ADB's Rural Credit Strengthening and Secured Transaction Framework projects;

AusAID's Business Climate Reform program; the EU and France's International Airport upgrading; and the EU and JICA's Institutional Strengthening for Infrastructure Maintenance programs. Moreover, AusAID is providing funding for key household data surveys (such as the Household Income and Expenditure Survey), which will be used in monitoring program impacts.

### Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Government of the Republic of Vanuatu

#### Table of Contents

Article I. Purpose and Term	
Section 1.1	Project Objectives
Section 1.2	Projects
Section 1.3	Entry into Force; Compact Term
Article II. Funding and Resources	
Section 2.1	MCC Funding
Section 2.2	Government Resources
Section 2.3	Limitations on the Use of Treatment of MCC Funding
Section 2.4	Incorporation; Notice; Clarification
Section 2.5	Refunds; Violations
Article III. Implementation	
Section 3.1	Implementation Framework
Section 3.2	Government Responsibilities
Section 3.3	Government Deliveries
Section 3.4	Government Assurances
Section 3.5	Implementation Letters; Supplemental Agreements
Section 3.6	Procurement; Awards of Assistance
Section 3.7	Policy Performance; Policy Reforms
Section 3.8	Records and Information; Access; Audits; Reviews
Section 3.9	Insurance
Section 3.10	Domestic Requirements
Section 3.11	No Conflict
Section 3.12	Reports
Article IV. Conditions Precedent; Deliveries	
Section 4.1	Conditions Prior to the Entry into Force and Deliveries
Section 4.2	Conditions Precedent to MCC Disbursements or Re-Disbursements
Article V. Final Clauses	
Section 5.1	Communications
Section 5.2	Representatives
Section 5.3	Amendments
Section 5.4	Termination; Suspension
Section 5.5	Privileges and Immunities
Section 5.6	Attachments
Section 5.7	Inconsistencies
Section 5.8	Indemnification
Section 5.9	Headings
Section 5.10	Interpretation; Definitions
Section 5.11	Signatures
Section 5.12	Designation
Section 5.13	Survival
Section 5.14	Consultation
Section 5.15	MCC Status
Section 5.16	Language
Section 5.17	Publicity; Information and Marking
Exhibit A:	Definitions
Exhibit B:	List of Certain Supplemental

Agreements  
Annex I: Program Description  
Schedule 1: Transport Infrastructure Project  
Annex II: Financial Plan Summary  
Annex III: Description of the M&E Plan

#### Millennium Challenge Compact

This Millennium Challenge Compact (the "Compact") is made between the United States of America, acting through the Millennium Challenge Corporation, a United States Government corporation ("MCC"), and the Government of the Republic of Vanuatu (the "Government") (referred to herein individually as a "Party" and collectively, the "Parties"). A compendium of capitalized terms defined herein is included in Exhibit A attached hereto.

#### Recitals

Whereas, MCC, acting through its Board of Directors, has selected Vanuatu as eligible to present to MCC a proposal for the use of Millennium Challenge Account ("MCA") assistance to help facilitate poverty reduction through economic growth in Vanuatu;

Whereas, the Government has carried out a consultative process with the country's private sector and civil society to outline the country's priorities for the use of MCA assistance and developed a proposal, which was submitted to MCC on March 31, 2005 (the "Proposal");

Whereas, the Proposal focused on, among other things, increasing economic activity and incomes in rural areas through comprehensive investments in transport infrastructure, including roads, wharfs, airstrips and warehouses;

Whereas, MCC has evaluated the Proposal and related documents to determine whether the Proposal is consistent with core MCA principles and includes proposed activities and projects that will advance the progress of Vanuatu towards achieving economic growth and poverty reduction; and

Whereas, based on MCC's evaluation of the Proposal and related documents and subsequent discussions and negotiations between the Parties, the Government and MCC determined to enter into this Compact to implement a program using MCC Funding to advance Vanuatu's progress towards economic growth and poverty reduction (the "Program");

Now, therefore, in consideration of the foregoing and the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

#### Article I. Purpose and Term

Section 1.1 *Project Objectives.* The overall objective of this Compact is to

reduce poverty and increase incomes in rural areas by stimulating economic activity in the tourism and agricultural sectors through the improvement of transport infrastructure, which is key to economic growth and poverty reduction in Vanuatu (the "Compact Goal"). The Parties have identified the following project-level objectives (each a "Project Objective" and together the "Project Objectives") to advance the Compact Goal, each of which is described in more detail in the Annexes attached hereto:

(a) Provide improved or new priority transport infrastructure in rural areas and outer islands, including roads, wharfs, airstrips and warehouses (the "Infrastructure Objective"); and

(b) Strengthen the ability of the Government, specifically the capacity and capability of the Department of Public Works, to maintain and sustain Vanuatu's infrastructure assets (the "Institutional Strengthening Objective").

The Government expects to achieve, and shall use its best efforts to ensure the achievement of, these Project Objectives during the Compact Term.

**Section 1.2 Projects.** The Annexes attached hereto describe the specific projects and the policy reforms and other activities related thereto (each, a "Project") that the Government will carry out, or cause to be carried out, in furtherance of this Compact to achieve the Project Objectives.

**Section 1.3 Entry into Force; Compact Term.** This Compact shall enter into force on the date of the last letter in an exchange of letters between the Principal Representatives of each Party confirming that each Party has completed its domestic requirements for entry into force of this Compact and that all conditions set forth in section 4.1 have been satisfied by the Government and MCC (such date, the "Entry into Force"). This Compact shall remain in force for five (5) years from the date of the entry into force of this Compact, unless earlier terminated in accordance with section 5.4 (the "Compact Term").

## Article II. Funding and Resources

### Section 2.1 MCC Funding.

(a) MCC's Contribution. MCC hereby grants to the Government, subject to the terms and conditions of this Compact, an amount not to exceed Sixty-Five Million Six Hundred Ninety Thousand United States Dollars (USD \$65,690,000) ("MCC Funding") during the Compact Term to enable the Government to implement the Program and achieve the Project Objectives.

(i) Subject to sections 2.1(a)(ii), 2.2.(b) and 5.4, the allocation of MCC Funding within the Program and among and

within the Projects shall be as generally described in Annex II or as otherwise agreed upon by the Parties from time to time.

(ii) If at any time MCC determines that a condition precedent to an MCC Disbursement has not been satisfied, MCC may, upon written notice to the Government, reduce the total amount of MCC Funding by an amount equal to the amount estimated in the applicable Detailed Financial Plan for the Program or Project activity for which such condition precedent has not been met. Upon the expiration or termination of this Compact, (1) any amounts of MCC Funding not disbursed by MCC to the Government shall be automatically released from any obligation in connection with this Compact and (2) any amounts of MCC Funding disbursed by MCC to the Government as provided in section 2.1(b)(i), but not re-disbursed as provided in section 2.1(b)(ii) or otherwise incurred as permitted pursuant to section 5.4(e) prior to the expiration or termination of this Compact, shall be returned to MCC in accordance with section 2.5(a)(ii).

#### (b) Disbursements.

(i) Disbursements of MCC Funding. MCC shall from time to time make disbursements of MCC Funding (each such disbursement, an "MCC Disbursement") to a Permitted Account or through such other mechanism agreed by the Parties under and in accordance with the procedures and requirements set forth in Annex I, the Disbursement Agreement or as otherwise provided in any other relevant Supplemental Agreement.

(ii) Re-Disbursements of MCC Funding. The release of MCC Funding from a Permitted Account (each such release, a "Re-Disbursement"), shall be made in accordance with the procedures and requirements set forth in Annex I, the Disbursement Agreement or as otherwise provided in any other relevant Supplemental Agreement.

(c) Interest. Unless the Parties agree otherwise in writing, any interest or other earnings on MCC Funding that accrue (collectively, "Accrued Interest") shall be held in a Permitted Account and accrue in accordance with the requirements for the accrual and treatment of Accrued Interest as specified in Annex I or any relevant Supplemental Agreement. On a quarterly basis and upon the termination or expiration of this Compact, the Government shall return, or ensure the return of, all Accrued Interest to any United States Government account designated by MCC.

(d) Conversion; Exchange Rate. The Government shall ensure that all MCC Funding that is held in the Permitted Account(s) shall be denominated in the currency of the United States of America ("United States Dollars") prior to Re-Disbursement; provided, that a certain portion of MCC Funding may be transferred to a Local Account and may be held in such Local Account in the currency of Vanuatu prior to Re-Disbursement in accordance with the requirements of Annex I and any relevant Supplemental Agreement. To the extent that any amount of MCC Funding held in United States Dollars must be converted into the currency of the Republic of Vanuatu for any purpose, including for any Re-Disbursement or any transfer of MCC Funding into a Local Account, the Government shall ensure that such amount is converted consistent with Annex I, including the rate and manner set forth in Annex I, and the requirements of the Disbursement Agreement or any other Supplemental Agreement between the Parties.

(e) Guidance. From time to time, MCC may provide guidance to the Government through Implementation Letters on the frequency, form and content of requests for MCC Disbursements and Re-Disbursements or any other matter relating to MCC Funding. The Government shall apply such guidance in implementing this Compact.

### Section 2.2 Government Resources.

(a) The Government shall provide or cause to be provided such Government funds and other resources, and shall take or cause to be taken such actions, including obtaining all necessary approvals and consents, as are specified in this Compact or in any Supplemental Agreement to which the Government is a party or as are otherwise necessary and appropriate to effectively carry out the Government Responsibilities or other responsibilities or obligations of the Government under or in furtherance of this Compact during the Compact Term and through the completion of any post-Compact Term activities, audits or other responsibilities.

(b) If at any time during the Compact Term, the Government materially reallocates or reduces the allocation in its national budget or any other ni-Vanuatu governmental authority at a departmental, municipal, regional or other jurisdictional level materially reallocates or reduces the allocation of its respective budget, of the normal and expected resources that the Government or such other governmental authority, as applicable, would have otherwise received or budgeted, from external or



domestic sources, for the activities contemplated herein, the Government shall notify MCC in writing within fifteen (15) days of such reallocation or reduction, such notification to contain information regarding the amount of the reallocation or reduction, the affected activities, and an explanation for the reallocation or reduction. In the event that MCC independently determines upon review of the executed national annual budget that such a material reallocation or reduction of resources has occurred, MCC shall notify the Government and, following such notification, the Government shall provide a written explanation for such reallocation or reduction and MCC may (i) reduce, in its sole discretion, the total amount of MCC Funding or any MCC Disbursement by an amount equal to the amount estimated in the applicable Detailed Financial Plan for the activity for which funds were reduced or reallocated or (ii) otherwise suspend or terminate MCC Funding in accordance with section 5.4(b).

(c) The Government shall use its best efforts to ensure that all MCC Funding is fully reflected and accounted for in the annual budget of Vanuatu on a multi-year basis.

(d) The Government shall establish an independent unit within the Ministry of Finance and Economic Management, or such other entity as may be acceptable to MCC, which shall be responsible for the oversight and management of the Program as specified in Annex I ("MCA-Vanuatu"). The Government shall ensure the independent and proper administration of MCA-Vanuatu in accordance with the terms of the Compact, the Governing Documents of MCA-Vanuatu and any relevant Supplemental Agreements.

*Section 2.3 Limitations on the Use or Treatment of MCC Funding.*

(a) Abortions and Involuntary Sterilizations. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is subject to prohibitions on use of funds contained in (i) paragraphs (1) through (3) of section 104(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)(1)-(3)), a United States statute, which prohibitions shall apply to the same extent and in the same manner as such prohibitions apply to funds made available to carry out Part I of such Act; or (ii) any provision of law comparable to the eleventh and fourteenth provisos under the heading "Child Survival and Health Programs Fund" of division E of Public Law 108-7 (117 Stat. 162), a United States statute.

(b) United States Job Loss or Displacement of Production. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production, including:

(i) Providing financial incentives to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(ii) Supporting investment promotion missions or other travel to the United States with the intention of inducing United States firms to relocate a substantial number of United States jobs or a substantial amount of production outside the United States;

(iii) Conducting feasibility studies, research services, studies, travel to or from the United States, or providing insurance or technical and management assistance, with the intention of inducing United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(iv) Advertising in the United States to encourage United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(v) Training workers for firms that intend to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(vi) Supporting a United States office of an organization that offers incentives for United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States; or

(vii) Providing general budget support for an organization that engages in any activity prohibited above.

(c) Military Assistance and Training. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support the purchase or use of goods or services for military purposes, including military training, or to provide any assistance to the military, police, militia, national guard or other quasi-military organization or unit.

(d) Prohibition of Assistance Relating to Environmental, Health or Safety Hazards. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard. Unless MCC and the Government agree otherwise in writing, the Government shall ensure that

activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by MCC Funding comply with environmental guidelines delivered by MCC to the Government or posted by MCC on its Web-site or otherwise publicly made available, as such guidelines may be amended from time to time (the "Environmental Guidelines"), including any definition of "likely to cause a significant environmental, health, or safety hazard" as may be set forth in such Environmental Guidelines.

(e) Taxation.

(i) Taxes. As required by applicable United States law and consistent with the applicable requirement of Vanuatu law that international cooperation assistance shall be exempt from taxes, the Government shall ensure that the Program, all Program Assets, MCC Funding and Accrued Interest shall be free from any taxes imposed under laws currently or hereafter in effect in Vanuatu during the Compact Term. This exemption shall apply to any use of any Program Asset, MCC Funding and Accrued Interest, including any Exempt Uses, and to any work performed under or activities undertaken in furtherance of this Compact by any person or entity (including contractors and grantees) funded by MCC Funding, and shall apply to all taxes, tariffs, duties, and other levies (each a "Tax" and collectively, "Taxes"), including:

(1) To the extent attributable to MCC Funding, income taxes and other taxes on profit or businesses imposed on organizations or entities, other than nationals of Vanuatu, receiving MCC Funding, including taxes on the acquisition, ownership, rental, disposition or other use of real or personal property, taxes on investment or deposit requirements and currency controls in Vanuatu, or any other tax, duty, charge or fee of whatever nature, except fees for specific services rendered; for purposes of this section 2.3(e), the term "national" refers to organizations established under the laws of Vanuatu, other than MCA-Vanuatu or any other entity established solely for purposes of managing or overseeing the implementation of the Program or any wholly-owned subsidiaries, divisions, or Affiliates of entities not registered or established under the laws of Vanuatu;

(2) Customs duties, tariffs, import and export taxes, or other levies on the importation, use and re-exportation of goods, services, or the personal belongings and effects, including personally-owned automobiles, for Program use or the personal use of individuals who are neither citizens nor



permanent residents of Vanuatu and who are present in Vanuatu for purposes of carrying out the Program or their family members, including all charges based on the value of such imported goods;

(3) Taxes on the income or personal property of all individuals who are neither citizens nor permanent residents of Vanuatu, including income and social security taxes of all types and all taxes on the personal property owned by such individuals, to the extent such income or property are attributable to MCC Funding; and

(4) Taxes or duties levied on the purchase of goods or services funded by MCC Funding, including sales taxes, tourism taxes, value-added taxes (VAT), or other similar charges.

(ii) This section 2.3(e) shall apply, but is not limited to (1) any transaction, service, activity, contract, grant or other implementing agreement funded in whole or in part by MCC Funding; (2) any supplies, equipment, materials, property or other goods (referred to herein collectively as "goods") or funds introduced into, acquired in, used or disposed of in, or imported into or exported from, Vanuatu by MCC, or by any person or entity (including contractors and grantees) as part of, or in conjunction with, MCC Funding or the Program; (3) any contractor, grantee, or other organization carrying out activities funded in whole or in part by MCC Funding; and (4) any employee of such organizations (the uses set forth in clauses (1) through (4) are collectively referred to herein as "Exempt Uses").

(iii) If a Tax has been levied and paid contrary to the requirements of this section 2.3(e), whether inadvertently, due to the impracticality of implementation of this provision with respect to certain types or amounts of taxes, or otherwise, the Government shall refund promptly to MCC to an account designated by MCC the amount of such Tax in the currency of Vanuatu, within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified in writing according to procedures agreed by the Parties, whether by MCC or otherwise, of such levy and tax payment; *provided, however*, the Government shall apply national funds to satisfy its obligations under this section 2.3(e)(iii) and no MCC Funding, Accrued Interest, or any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part (directly or indirectly) by MCC Funding ("Program Assets") may be applied by the Government in satisfaction of its obligations under this paragraph.

(iv) The Parties shall memorialize in a mutually acceptable Supplemental Agreement or other suitable document the mechanisms for implementing this section 2.3(e), including (1) a formula for determining refunds for Taxes paid, the amount of which is not susceptible to precise determination, (2) a mechanism for ensuring the tax-free importation, use, and re-exportation of goods, services, or the personal belongings of individuals (including all Providers) described in paragraph (i)(2) of this section 2.3(e), and (3) any other appropriate Government action to facilitate the administration of this section 2.3(e).

(f) Alteration. The Government shall ensure that neither MCC Funding nor Accrued Interest or Program Assets shall be subject to any impoundment, rescission, sequestration or any provision of law now or hereafter in effect in Vanuatu that would have the effect of requiring or allowing any impoundment, rescission or sequestration of any MCC Funding, Accrued Interest or Program Asset.

(g) Liens or Encumbrances. The Government shall ensure that no MCC Funding, Accrued Interest or Program Assets shall be subject to any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (each a "Lien"), except with the prior approval of MCC in accordance with section 3(c) of Annex I, and in the event of the imposition of any Lien not so approved, the Government shall promptly seek the release of such Lien and shall promptly pay any amounts owed to obtain such release; *provided, however*, the Government shall satisfy its obligations under this section 2.3(g) at its own expense and no MCC Funding, Accrued Interest or Program Assets may be applied by the Government in satisfaction of its obligations under this section 2.3(g).

(h) Other Limitations. The Government shall ensure that the use or treatment of MCC Funding shall be subject to such other limitations (i) as required by the applicable law of the United States of America now or hereafter in effect during the Compact Term, (ii) as advisable under or required by applicable United States Government policies now or hereafter in effect during the Compact Term, or (iii) to which the Parties may otherwise agree in writing.

(i) Utilization of Goods, Services and Works. The Government shall ensure that any Program Assets, services, facilities or works funded in whole or in part (directly or indirectly) by MCC Funding, unless otherwise agreed by the

Parties in writing, shall be used solely in furtherance of this Compact.

(j) Notification of Applicable Laws and Policies. MCC shall notify the Government of any applicable United States law or policy affecting the use or treatment of MCC Funding, whether or not specifically identified in this section 2.3, and shall provide to the Government a copy of the text of any such applicable law and a written explanation of any such applicable policy.

#### *Section 2.4 Incorporation; Notice; Clarification.*

(a) The Government shall include, or ensure the inclusion of, all of the requirements set forth in section 2.3 in all Supplemental Agreements to which MCC is not a party and shall use its best efforts to ensure that no such Supplemental Agreement is implemented in violation of the prohibitions set forth in section 2.3.

(b) The Government shall ensure notification of all of the requirements set forth in section 2.3 to any Provider and all relevant officers, directors, employees, agents, representatives, Affiliates, contractors, sub-contractors, grantees and sub-grantees of any Provider. The term "Provider" shall mean (i) MCA-Vanuatu and any Government Affiliate or Permitted Designee involved in any activities in furtherance of this Compact or (ii) any third party who receives at least USD \$50,000 in the aggregate of MCC Funding (other than employees of MCA-Vanuatu) during the Compact Term or such other amount as the Parties may agree in writing, whether directly from MCC, indirectly through Re-Disbursements, or otherwise.

(c) In the event the Government or any Provider requires clarification from MCC as to whether an activity contemplated to be undertaken in furtherance of this Compact violates or may violate any provision of section 2.3, the Government shall notify, or ensure that such Provider notifies, MCC in writing and provide in such notification a detailed description of the activity in question. In such event, the Government shall not proceed, and shall use its best efforts to ensure that no relevant Provider proceeds, with such activity, and the Government shall ensure that no Re-Disbursements shall be made for such activity, until MCC advises the Government or such Provider in writing that the activity is permissible.

#### *Section 2.5 Refunds; Violation.*

(a) Notwithstanding the availability to MCC, or exercise by MCC of, any other remedies, including under international law, this Compact, or any Supplemental Agreement:

(i) If any amount of MCC Funding or Accrued Interest, or any Program Asset, is used for any purpose prohibited under this Article II or otherwise in violation of any of the terms and conditions of this Compact, any guidance in any Implementation Letter, or any Supplemental Agreement between the Parties, MCC may require the Government to repay promptly to MCC to an account designated by MCC or to others as MCC may direct the amount of such misused MCC Funding or Accrued Interest, or the cash equivalent of the value of any misused Program Asset, in United States Dollars, plus any interest that accrued or would have accrued thereon, within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified, whether by MCC or otherwise, of such prohibited use; *provided, however*, the Government shall apply national funds to satisfy its obligations under this section 2.5(a)(i) and no MCC Funding, Accrued Interest, nor Program Assets may be applied by the Government in satisfaction of its obligations under this section 2.5(a)(i); and

(ii) If all or any portion of this Compact is terminated or suspended and upon the expiration of this Compact, the Government shall, subject to the requirements of sections 5.4(e) and 5.4(f), refund, or ensure the refund, to MCC to such account(s) designated by MCC the amount of any MCC Funding, plus any Accrued Interest, promptly, but in no event later than thirty (30) days after the Government receives MCC's request for such refund; *provided*, that if this Compact is terminated or suspended in part, MCC may request a refund for only the amount of MCC Funding, plus any Accrued Interest, then allocated to the terminated or suspended portion; *provided, further*, that any refund of MCC Funding or Accrued Interest shall be to such account(s) as designated by MCC.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this section 2.5 for a refund shall continue during the Compact Term and for a period of (i) five (5) years thereafter or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

(c) If MCC determines that any activity or failure to act violates, or may violate, any section in this Article II, MCC may refuse any further MCC Disbursements for or conditioned upon such activity, and may take any action to prevent any Re-Disbursement related to such activity.

### Article III. Implementation

*Section 3.1 Implementation Framework.* This Compact shall be implemented by the Parties in accordance with this Article III and as further specified in the Annexes and in relevant Supplemental Agreements.

#### *Section 3.2 Government Responsibilities.*

(a) The Government shall have principal responsibility for oversight and management of the implementation of the Program (i) in accordance with the terms and conditions specified in this Compact and relevant Supplemental Agreements, (ii) in accordance with all applicable laws then in effect in the Republic of Vanuatu, and (iii) in a timely and cost-effective manner and in conformity with sound technical, financial and management practices (collectively, the "Government Responsibilities"). Unless otherwise expressly provided, any reference to the Government Responsibilities or any other responsibilities or obligations of the Government herein shall be deemed to apply to any Government Affiliate and any of their respective directors, officers, employees, contractors, sub-contractors, grantees, sub-grantees, agents or representatives.

(b) The Government shall ensure that no person or entity shall participate in the selection, award, administration or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding, in which (i) the entity, the person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a financial or other interest or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the Government the conflict of interest and, following such disclosure, the Parties agreed in writing to proceed notwithstanding such conflict. The Government shall ensure that no person or entity involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding shall solicit or accept from or offer to a third party or seek or be promised (directly or indirectly) for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time.

(c) The Government shall not designate any person or entity, including any Government Affiliate, to implement, in whole or in part, this Compact or any Supplemental Agreement between the Parties (including any Government Responsibilities or any other responsibilities or obligations of the Government under this Compact or any Supplemental Agreement between the Parties) or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties, except as expressly provided herein or with the prior written consent of MCC; *provided, however*, the Government may designate MCA-Vanuatu or, with the prior written consent of MCC, such other mutually acceptable persons or entities, to implement some or all of the Government Responsibilities or any other responsibilities or obligations of the Government or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties (referred to herein collectively as "*Designated Rights and Responsibilities*"), in accordance with the terms and conditions set forth in this Compact or such Supplemental Agreement (each, a "*Permitted Designee*"). Notwithstanding any provision herein or any other agreement to the contrary, no such designation shall relieve the Government of such Designated Rights and Responsibilities, for which the Government shall retain ultimate responsibility. In the event that the Government designates any person or entity, including any Government Affiliate, to implement any portion of the Government Responsibilities or other responsibilities or obligations of the Government, or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties, in accordance with this section 3.2(c), then the Government shall (i) cause such person or entity to perform such Designated Rights and Responsibilities in the same manner and to the full extent to which the Government is obligated to perform such Designated Rights and Responsibilities, (ii) ensure that such person or entity does not assign, delegate, or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any other person or entity and (iii) cause such person or entity to certify to MCC in writing that it will so perform such Designated Rights and Responsibilities and will not assign, delegate, or contract (or otherwise transfer) any of such Designated Rights

and Responsibilities to any person or entity without the prior written consent of MCC.

(d) The Government shall, upon a request from MCC, execute, or ensure the execution of, an assignment to MCC of any cause of action which may accrue to the benefit of the Government, a Government Affiliate or any Permitted Designee including MCA-Vanuatu in connection with or arising out of any activities funded in whole or in part (directly or indirectly) by MCC Funding.

(e) The Government shall ensure that (i) no decision of MCA-Vanuatu is modified, supplemented, unduly influenced or rescinded by any governmental authority, except by a non-appealable judicial decision or any judicial decision which MCA-Vanuatu, with the agreement of MCC, decides not to appeal, and (ii) the authority of MCA-Vanuatu shall not be expanded, restricted, or otherwise modified, except in accordance with this Compact, the Governance Agreement, or any other Supplemental Agreement between the Parties.

(f) The Government shall ensure that all persons and individuals that enter into agreements to provide goods, services or works under the Program or in furtherance of this Compact shall do so in accordance with the Procurement Guidelines and shall obtain all necessary immigration, business and other permits, licenses, consents and approvals to enable them and their personnel to fully perform under such agreements.

**Section 3.3 Government Deliveries.** The Government shall proceed, and cause others to proceed, in a timely manner to deliver to MCC all Government deliveries required to be delivered by the Government under this Compact or any Supplemental Agreement between the Parties, in form and substance as set forth in this Compact or in any such Supplemental Agreement.

**Section 3.4 Government Assurances.** The Government hereby provides the following assurances to MCC that as of the date this Compact is signed:

(a) The information contained in the Proposal and any agreement, report, statement, communication, document or otherwise delivered or otherwise communicated to MCC by or on behalf of the Government on or after the date of the submission of the Proposal (i) are true, correct and complete in all material respects and (ii) do not omit any fact known to the Government that if disclosed would (1) alter in any material respect the information delivered, (2) likely have a material adverse effect on the Government's

ability to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of this Compact, or (3) have likely adversely affected MCC's determination to enter into this Compact or any Supplemental Agreement between the Parties;

(b) Unless otherwise disclosed in writing to MCC, the MCC Funding made available hereunder is in addition to the normal and expected resources that the Government usually receives or budgets for the activities contemplated herein from external or domestic sources;

(c) This Compact does not conflict and will not conflict with any international agreement or obligation to which the Government is a party or by which it is bound; and

(d) No payments have been (i) received by any official of the Government or any other government body in connection with the procurement of goods, services or works to be undertaken or funded in whole or in part (directly or indirectly) by MCC Funding, except fees, taxes, or similar payments legally established in Vanuatu or (ii) made to any third party, in connection with or in furtherance of this Compact, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a *et seq.*).

**Section 3.5 Implementation Letters; Supplemental Agreements.**

(a) MCC may, from time to time, issue one or more letters to furnish additional information or guidance to assist the Government in the implementation of this Compact (each, an "Implementation Letter"). The Government shall apply such guidance in implementing this Compact.

(b) The details of any funding, implementing and other arrangements in furtherance of this Compact may be memorialized in one or more agreements between (i) the Government (or any Government Affiliate or Permitted Designee) and MCC, (ii) MCC and/or the Government (or any Government Affiliate or Permitted Designee) and any third party, including any of the Providers or Permitted Designee or (iii) any third parties where neither MCC nor the Government is a party, before, on or after the Entry into Force (each, a "Supplemental Agreement"). The Government shall deliver, or cause to be delivered, to MCC within five (5) days of its execution a copy of any Supplemental Agreement to which MCC is not a party.

**Section 3.6 Procurement; Awards of Assistance.**

(a) The Government shall ensure that the procurement of all goods, services and works by the Government or any Provider in furtherance of this Compact shall be consistent with the procurement guidelines (the "Procurement Guidelines") reflected in a Supplemental Agreement between MCC and MCA-Vanuatu (the "Procurement Agreement"), which Procurement Guidelines shall include the following requirements:

(i) Internationally accepted procurement rules with open, fair and competitive procedures are used in a transparent manner to solicit, award and administer contracts, grants, and other agreements and to procure goods, services and works;

(ii) Solicitations for goods, services, and works shall be based upon a clear and accurate description of the goods, services or works to be acquired;

(iii) Contracts shall be awarded only to qualified and capable contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost effective and timely basis; and

(iv) No more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, shall be paid to procure goods, services, and works.

(b) The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, records regarding the receipt and use of goods, services and works acquired in furtherance of this Compact, the nature and extent of solicitations of prospective suppliers of goods, services and works acquired in furtherance of this Compact, and the basis of award of contracts, grants and other agreements in furtherance of this Compact.

(c) The Government shall use its best efforts to ensure that information, including solicitations, regarding procurement, grant and other agreement actions funded (or to be funded) in whole or in part (directly or indirectly) by MCC Funding shall be made publicly available in the manner outlined in the Procurement Guidelines or in any other manner agreed upon by the Parties in writing.

(d) The Government shall ensure that no goods, services or works funded in whole or in part (directly or indirectly) by MCC Funding are procured pursuant to orders or contracts firmly placed or entered into prior to the Entry into Force, except as the Parties may otherwise agree in writing.

(e) The Government shall ensure that MCA-Vanuatu and any other Permitted

Designee follows, and uses its best efforts to ensure that all Providers follow, the Procurement Guidelines in procuring (including soliciting) goods, services and works and in awarding and administering contracts, grants and other agreements in furtherance of this Compact, and shall furnish MCC evidence of the adoption of the Procurement Guidelines by MCA-Vanuatu no later than the time specified in the Disbursement Agreement.

(f) The Government shall include, or ensure the inclusion of, the requirements of this section 3.6 into all Supplemental Agreements between the Government or any Government Affiliate or Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, on the one hand, and a Provider, on the other hand.

*Section 3.7 Policy Performance; Policy Reforms.* In addition to the specific policy and legal reform commitments identified in Annex I and the Schedules thereto, the Government shall seek to maintain and improve its level of performance under the policy criteria identified in section 607 of the Millennium Challenge Act of 2003, as amended (the "Act"), and the MCA selection criteria and methodology published by MCC pursuant to section 607 of the Act from time to time ("*MCA Eligibility Criteria*").

*Section 3.8 Records and Information; Access; Audits; Reviews.*

(a) Reports and Information. The Government shall furnish to MCC, and shall use its best efforts to ensure that all Providers and any other third party receiving MCC Funding, as appropriate, furnish to the Government (and the Government shall provide to MCC), any records and other information required to be maintained under this section 3.8 and such other information, documents and reports as may be necessary or appropriate for the Government to effectively carry out its obligations under this Compact, including under section 3.12.

(b) Government Books and Records. The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, accounting books, records, documents and other evidence relating to this Compact adequate to show, to the satisfaction of MCC, without limitation, the use of all MCC Funding, including all costs incurred by the Government and the Providers in furtherance of this Compact, the receipt, acceptance and use of goods, services and works acquired in furtherance of this Compact by the Government and the Providers,

agreed-upon cost sharing requirements, the nature and extent of solicitations of prospective suppliers of goods, services and works acquired by the Government and the Providers in furtherance of this Compact, the basis of award of Government and other contracts and orders in furtherance of this Compact, the overall progress of the implementation of the Program, and any documents required by this Compact or any Supplemental Agreement between the Parties or reasonably requested by MCC upon reasonable notice ("*Compact Records*"). The Government shall maintain, and shall use its best efforts to ensure that all Covered Providers maintain, Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with the prior written approval by MCC, other accounting principles, such as those (i) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (ii) then prevailing in Vanuatu. Compact Records shall be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

(c) Access. At the request of MCC, the Government, at all reasonable times, shall permit, or cause to be permitted, authorized representatives of MCC, the Inspector General, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or a Permitted Designee to conduct any assessment, review or evaluation of the Program, at all reasonable times the opportunity to audit, review, evaluate or inspect activities funded in whole or in part (directly or indirectly) by MCC Funding or undertaken in connection with the Program, the utilization of goods and services purchased or funded in whole or in part (directly or indirectly) by MCC Funding, and Compact Records, including of the Government or any Provider, relating to activities funded or undertaken in furtherance of, or otherwise relating to, this Compact, and shall use its best efforts to ensure access by MCC, the Inspector General, the United States Government Accountability Office or relevant auditor, reviewer or evaluator or their respective representatives or agents to all relevant directors, officers, employees, Affiliates, contractors,

representatives and agents of the Government or any Provider.

(d) Audits.

(i) Government Audits. The Government shall, on at least an annual basis and as the Parties may otherwise agree in writing, conduct, or cause to be conducted, financial audits of all MCC Disbursements and Re-Disbursements during the year since the Entry into Force or since the prior anniversary of the Entry into Force in accordance with the following terms, except as the Parties may otherwise agree in writing. As requested by MCC in writing, the Government shall use, or cause to be used, or select, or cause to be selected, an auditor named on the approved list of auditors in accordance with the *Guidelines for Financial Audits Contracted by Foreign Recipients* (the "*Audit Guidelines*") issued by the Inspector General of the United States Agency for International Development (the "*Inspector General*"), and as approved by MCC, to conduct such annual audits. Such audits shall be performed in accordance with such Audit Guidelines and be subject to quality assurance oversight by the Inspector General in accordance with such Audit Guidelines. An audit shall be completed no later than 90 days after the first anniversary of the Entry into Force of this Compact and no later than 90 days after each anniversary of the Entry into Force of this Compact thereafter, or such other period as the Parties may otherwise agree in writing.

(ii) Audits of U.S. Entities. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States nonprofit organization, on the other hand, state that the United States organization is subject to the applicable audit requirements contained in OMB Circular A-133, notwithstanding any other provision of this Compact to the contrary. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, state that the United States organization is subject to audit by the cognizant United States Government agency, unless the Government and MCC agree otherwise in writing.

(iii) Audit Plan. The Government shall submit, or cause to be submitted, to MCC, no later than twenty (20) days prior to the date of its adoption, in form and substance satisfactory to MCC, a plan, in accordance with the Audit Guidelines, for the audit of the expenditures of any Covered Providers, which audit plan, in the form and



substance as approved by MCA-Vanuatu, the Government shall adopt, or cause to be adopted, no later than sixty (60) days prior to the end of the first anniversary of the Entry into Force of this Compact or prior to the end of the first period to be audited.

(iv) Covered Provider. A "Covered Provider" is (1) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) USD \$300,000 or more of MCC Funding in any MCA-Vanuatu fiscal year or any other non-United States person or entity that receives (directly or indirectly) USD \$300,000 or more of MCC Funding from any Provider in such fiscal year or (2) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) USD \$500,000 or more of MCC Funding in any MCA-Vanuatu fiscal year or any other United States person or entity that receives (directly or indirectly) USD \$500,000 or more of MCC Funding from any Provider in such fiscal year.

(v) Corrective Actions. The Government shall use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, consider whether a Covered Provider's audit necessitates adjustment of its own records, and require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(vi) Audit Reports. The Government shall furnish, or use its best efforts to cause to be furnished, to MCC an audit report in a form satisfactory to MCC for each audit required by this section 3.8, other than audits arranged for by MCC, no later than 90 days after the end of the period under audit, or such other time as may be agreed by the Parties from time to time.

(vii) Other Providers. For Providers who receive MCC Funding under this Compact pursuant to direct contracts or agreements with MCC, MCC shall include appropriate audit requirements in such contracts or agreements and shall, on behalf of the Government, unless otherwise agreed by the Parties, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.

(viii) Audit by MCC. MCC retains the right to perform, or cause to be performed, the audits required under this section 3.8 by utilizing MCC Funding or other resources available to MCC for this purpose, and to audit, conduct a financial review, or otherwise ensure accountability of any Provider or any other third party receiving MCC Funding, regardless of the requirements

of this section 3.8. MCC will provide notice to the Government of its intent to exercise such right.

(e) Application to Providers. The Government shall include, or ensure the inclusion of, at a minimum, the requirements of:

(i) Paragraphs (a), (b), (c), (d)(ii), (d)(iii), (d)(v), (d)(vi), and (d)(viii) of this section 3.8 into all Supplemental Agreements between the Government, any Government Affiliate, any Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents (each, a "Government Party"), on the one hand, and a Covered Provider that is not a non-profit organization domiciled in the United States, on the other hand;

(ii) Paragraphs (a), (b), (c), (d)(ii), and (d)(viii) of this section 3.8 into all Supplemental Agreements between a Government Party and a Provider that does not meet the definition of a Covered Provider; and

(iii) Paragraphs (a), (b), (c), (d)(ii), (d)(v) and (d)(viii) of this section 3.8 into all Supplemental Agreements between a Government Party and a Covered Provider that is a non-profit organization domiciled in the United States.

(f) Reviews or Evaluations. The Government shall conduct, or cause to be conducted, such performance reviews, data quality reviews, environmental audits, or program evaluations during the Compact Term or otherwise and in accordance with the M&E Plan or as otherwise agreed in writing by the Parties.

(g) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to fund the costs of any Audits, reviews or evaluations required under this Compact, including as reflected on Exhibit A to Annex II, and in no event shall the Government be responsible for the costs of any such Audits, reviews or evaluations from financial sources other than MCC Funding.

**Section 3.9 Insurance.** The Government shall, to MCC's satisfaction, insure or cause to be insured all Program Assets and shall obtain or cause to be obtained such other appropriate insurance and other protections to cover against risks or liabilities associated with the operations of the Program, including by requiring Providers to obtain adequate insurance and post adequate performance bonds or other guarantees. MCA-Vanuatu or the Implementing Entity, as applicable, shall be named as the payee on any such insurance and the beneficiary of any such guarantee, including performance

bonds. MCC and, to the extent it is not named as the insured party, MCA-Vanuatu shall be named as additional insured on any such insurance or other guarantee, to the extent permissible under applicable laws. The Government shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss of Program Assets or to pursue the procurement of the covered goods, services or works; *provided, however*, at MCC's election, such proceeds shall be deposited in a Permitted Account as designated by MCA-Vanuatu and acceptable to MCC or otherwise as directed by MCC. To the extent MCA-Vanuatu is held liable under any indemnification or other similar provision of any agreement between MCA-Vanuatu, on the one hand, and any other Provider or other third party, on the other hand, the Government shall pay in full on behalf of MCA-Vanuatu any such obligation; *provided, further*, the Government shall apply national funds to satisfy its obligations under this section 3.9 and no MCC Funding, Accrued Interest, or Program Asset may be applied by the Government in satisfaction of its obligations under this section 3.9.

**Section 3.10 Domestic Requirements.** The Government shall proceed in a timely manner to seek any required ratification of this Compact or similar domestic requirement, which process the Government shall initiate promptly after the conclusion of this Compact. Notwithstanding anything to the contrary in this Compact, this section 3.10 shall provisionally apply prior to the Entry into Force.

**Section 3.11 No Conflict.** The Government shall undertake not to enter into any agreement in conflict with this Compact or any Supplemental Agreement during the Compact Term.

**Section 3.12 Reports.** The Government shall provide, or cause to be provided, to MCC at least on each anniversary of the Entry Into Force and otherwise within thirty (30) days of any written request by MCC, or as otherwise agreed in writing by the Parties, the following information:

(a) The name of each entity to which MCC Funding has been provided;

(b) The amount of MCC Funding provided to such entity;

(c) A description of the Program and each Project funded in furtherance of this Compact, including:

(i) A statement of whether the Program or any Project was solicited or unsolicited; and



(ii) A detailed description of the objectives and measures for results of the Program or Project;

(d) The progress made by Vanuatu toward achieving the Compact Goal and Project Objectives;

(e) A description of the extent to which MCC Funding has been effective in helping Vanuatu to achieve the Compact Goal and Project Objectives;

(f) A description of the coordination of MCC Funding with other United States foreign assistance and other related trade policies;

(g) A description of the coordination of MCC Funding with assistance provided by other donor countries, subject to the relevant protocols governing such assistance;

(h) Any report, document or filing that the Government, any Government Affiliate or any Permitted Designee submits to any government body in connection with this Compact;

(i) Any report or document required to be delivered to MCC under the Environmental Guidelines, any Audit Plan, or any component of the Implementation Plan; and

(j) Any other report, document or information requested by MCC or required by this Compact or any Supplemental Agreement between the Parties.

#### Article IV. Conditions Precedent; Deliveries

*Section 4.1 Conditions Prior to the Entry into Force and Deliveries.* As conditions precedent to the Entry into Force, the Parties shall satisfy the conditions set forth in this section 4.1.

(a) The Government (or a mutually acceptable Government Affiliate) and MCC shall execute a Disbursement Agreement, which agreement shall be in full force and effect as of the Entry into Force.

(b) The Government (or a mutually acceptable Government Affiliate) and MCC shall execute one or more of the Supplemental Agreements identified in Exhibit B attached hereto, which agreements shall be in full force and effect as of the Entry into Force, or execute one or more term sheets that set forth the material and principal terms and conditions that will be included in any such Supplemental Agreement that has not been entered into as of the Entry into Force (the "Supplemental Agreement Term Sheets").

(c) The Government (or mutually acceptable Government Affiliate) and MCC shall execute a Procurement Agreement, which agreement shall be in full force and effect as of the Entry into Force.

(d) The Government shall deliver a written statement as to the incumbency and specimen signature of the Principal Representative and each Additional Representative executing any document under this Compact, such written statement to be signed by a duly authorized official of the Government other than the Principal Representative or any such Additional Representative.

(e) The Government shall deliver a certificate signed and dated by the Principal Representative of the Government certifying:

(i) That the Government has completed all of its domestic requirements for this Compact to be fully enforceable under Vanuatu law; and

(ii) That attached thereto are true, correct and complete copies of any decree, legislation, regulation or other governmental document relating to its domestic requirements for this Compact to enter into force, which MCC may post on its Web site or otherwise make publicly available.

(f) MCC shall deliver a certificate signed and dated by the Principal Representative of MCC certifying that MCC has completed its domestic requirements for this Compact to enter into force.

(g) MCC shall deliver a written statement as to the incumbency and specimen signature of the Principal Representative and each Additional Representative executing any document under this Compact such written statement to be signed by a duly authorized officer of MCC other than the Principal Representative or any such Additional Representative.

*Section 4.2 Conditions Precedent to MCC Disbursements or Re-Disbursements.* Prior to, and as condition precedent to, any MCC Disbursement or Re-Disbursement, the Government shall satisfy, or ensure the satisfaction of, all applicable conditions precedent in the Disbursement Agreement.

#### Article V. Final Clauses

*Section 5.1 Communications.* Unless otherwise expressly stated in this Compact or otherwise agreed in writing by the Parties, any notice, certificate, request, report, document or other communication required, permitted, or submitted by either Party to the other under this Compact shall be: (a) In writing; (b) in English; and (c) deemed duly given: (i) Upon personal delivery to the Party to be notified; (ii) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party, if not, then on the next business day; or (iii) two (2)

business days after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt to the Party to be notified at the address indicated below, or at such other address as such Party may designate:

To MCC:

Millennium Challenge Corporation,  
Attention: Vice President of Operations,  
(with a copy to the Vice President and General Counsel), 875 Fifteenth Street, NW., Washington, DC 20005, United States of America, Facsimile: (202) 521-3700, E-mail: [VPOperations@mcc.gov](mailto:VPOperations@mcc.gov) (Vice President of Operations); [VPGeneralCounsel@mcc.gov](mailto:VPGeneralCounsel@mcc.gov) (Vice President and General Counsel)

To the Government:

Office of the Prime Minister,  
Attention: Director-General, Office of the Prime Minister, PMB 9053 Port Vila, Republic of Vanuatu, Facsimile: (678) 26708.

Notwithstanding the foregoing, any audit report delivered pursuant to section 3.8, if delivered by facsimile or electronic mail, shall be followed by an original in overnight express mail. This section 5.1 shall not apply to the exchange of letters contemplated in section 1.3 or any amendments under section 5.3.

*Section 5.2 Representatives.* Unless otherwise agreed in writing by MCC, for all purposes relevant to this Compact, the Government shall be represented by the Director-General of the Prime Minister's Office, or in his absence the relevant designated Additional Representative, and MCC shall be represented by the individual holding the position of, or acting as, Vice President, Department of Operations (each, a "Principal Representative"), each of whom, by written notice, may designate one or more additional representatives (each, an "Additional Representative") for all purposes other than signing amendments to this Compact. The names of the Principal Representative and any Additional Representative of each of the Parties shall be provided, with specimen signatures, to the other Party, and the Parties may accept as duly authorized any instrument signed by such representatives relating to the implementation of this Compact, until receipt of written notice of revocation of their authority. MCC may change its Principal Representative to a new representative of equivalent or higher rank upon written notice to the Government, which notice shall include the specimen signature of the new Principal Representative.

*Section 5.3 Amendments.* The Parties may amend this Compact only by a written agreement signed by the Principal Representatives of the Parties and subject to the respective domestic approval requirements to which this Compact was subject.

*Section 5.4 Termination; Suspension.*

(a) Subject to section 2.5 and paragraphs (e) through (h) of this section 5.4, either Party may terminate this Compact in its entirety by giving the other Party thirty (30) days' written notice.

(b) Notwithstanding any other provision of this Compact, including section 2.1, or any Supplemental Agreement between the Parties, MCC may suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation or sub-obligation related thereto, upon giving the Government written notice, if MCC determines, in its sole discretion that:

(i) Any use or proposed use of MCC Funding or Program Assets or continued implementation of the Compact would be in violation of applicable law or United States Government policy, whether now or hereafter in effect;

(ii) The Government, any Provider, or any other third party receiving MCC Funding or using Program Assets is engaged in activities that are contrary to the national security interests of the United States;

(iii) The Government or any Permitted Designee has committed an act or omission or an event has occurred that would render Vanuatu ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(iv) The Government or any Permitted Designee has engaged in a pattern of actions or omissions inconsistent with the MCA Eligibility Criteria, or there has occurred a significant decline in the performance of Vanuatu on one or more of the eligibility indicators contained therein;

(v) The Government or any Provider has materially breached one or more of its assurances or any covenants, obligations or responsibilities under this Compact or any Supplemental Agreement;

(vi) An audit, review, report or any other document or other evidence reveals that actual expenditures for the Program or any Project or any Project Activity were greater than the projected expenditure for such activities identified in the applicable Detailed

Financial Plan or are projected to be greater than projected expenditures for such activities;

(vii) If the Government (1) materially reduces the allocation in its national budget or any other Government budget of the normal and expected resources that the Government would have otherwise received or budgeted, from external or domestic sources, for the activities contemplated herein; (2) fails to contribute or provide the amount, level, type and quality of resources required to effectively carry out the Government Responsibilities or any other responsibilities or obligations of the Government under or in furtherance of this Compact; or (3) fails to pay any of its obligations as required under this Compact or any Supplemental Agreement, including such obligations which shall be paid solely out of national funds;

(viii) If the Government, any Provider, or any other third party receiving MCC Funding or using Program Assets, or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking;

(ix) Any MCC Funding or Program Assets are applied (directly or indirectly) to the provision of resources and support to, individuals and organizations associated with terrorism, sex trafficking or prostitution;

(x) An event or condition of any character has occurred that: (1) Materially and adversely affects, or is likely to materially and adversely affect, the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of this Compact or any Supplemental Agreement or to perform its obligations under or in furtherance of this Compact or any Supplemental Agreement or to exercise its rights thereunder; (2) makes it improbable that the Project Objectives will be achieved during the Compact Term; (3) materially and adversely affects the Program Assets or any Permitted Account; or (4) constitutes misconduct injurious to MCC, or constitutes a fraud or a felony, by the Government, any Government Affiliate, Permitted Designee or Provider, or any officer, director, employee, agent, representative, Affiliate, contractor, grantee, subcontractor or sub-grantee thereof;

(xi) The Government or any Permitted Designee or Provider has taken any

action or omission or engaged in any activity in violation of, or inconsistent with, the requirements of this Compact or any Supplemental Agreement to which the Government or any Permitted Designee or Provider is a party;

(xii) There has occurred a failure to meet a condition precedent or series of conditions precedent or any other requirements or conditions in connection with MCC Disbursement as set out in and in accordance with any Supplemental Agreement between the Parties; or

(xiii) Any MCC Funding, Accrued Interest or Program Asset becomes subject to a Lien without the prior approval of MCC, and the Government fails to (i) obtain the release of such Lien and (ii) pay solely with national funds (and not with MCC Funding, Accrued Interest or Program Assets) any amounts owed to obtain such release, all within 30 days after the imposition of such Lien.

(c) MCC may reinstate any suspended or terminated MCC Funding under this Compact or any Supplemental Agreement if MCC determines, in its sole discretion, that the Government or other relevant party has demonstrated a commitment to correcting each condition for which MCC Funding was suspended or terminated.

(d) The authority to suspend or terminate this Compact or any MCC Funding under this section 5.4 includes the authority to suspend or terminate any obligations or sub-obligations relating to MCC Funding under any Supplemental Agreement without any liability to MCC whatsoever.

(e) All MCC Disbursements and Re-Disbursements shall cease upon expiration, suspension, or termination of this Compact; *provided, however*, (i) reasonable expenditures for goods, services and works that are properly incurred under or in furtherance of this Compact before expiration, suspension or termination of the Compact and (ii) reasonable expenditures for goods and services (including administrative expenses) properly incurred within one hundred twenty (120) days after the expiration, suspension or termination of the Compact in connection with the winding up of the Program may be paid from MCC Funding, provided that in the case of clauses (i) and (ii) the request for such payment is (A) properly submitted within ninety (90) days after the expiration, suspension or termination of the Compact and (B) subject to the prior written consent of MCC.

(f) Except for payments which the Parties are committed to make under noncancelable commitments entered into with third parties before such

suspension or termination, the suspension or termination of this Compact or any Supplemental Agreement, in whole or in part, shall suspend, for the period of the suspension, or terminate, or ensure the suspension or termination of, as applicable, any obligation or sub-obligation of the Parties to provide financial or other resources under this Compact or any Supplemental Agreement, or to the suspended or terminated portion of this Compact or such Supplemental Agreement, as applicable. In the event of such suspension or termination, the Government shall use its best efforts to suspend or terminate, or ensure the suspension or termination of, as applicable, all such noncancelable commitments related to the suspended or terminated MCC Funding. Any portion of this Compact or any such Supplemental Agreement that is not suspended or terminated shall remain in full force and effect.

(g) Upon the full or partial suspension or termination of this Compact or any MCC Funding, MCC may, at its expense, direct that title to Program Assets be transferred to MCC if such Program Assets are in a deliverable state; *provided*, for any Program Asset(s) partially purchased or funded (directly or indirectly) by MCC Funding, the Government shall reimburse to a United States Government account designated by MCC the cash equivalent of the portion of the value of such Program Asset(s).

(h) Prior to the expiration of this Compact or upon the termination of this Compact, the Parties shall consult in good faith with a view to reaching an agreement in writing on (i) the post-Compact Term treatment of MCA-Vanuatu, (ii) the process for ensuring the refunds of MCC Disbursements that have not yet been released from a Permitted Account through a valid Re-Disbursement nor otherwise committed in accordance with section 5.4(e), or (iii) any other matter related to the winding up of the Program and this Compact.

**Section 5.5 Privileges and Immunities.** MCC is an agency of the Government of the United States of America and its personnel assigned to Vanuatu will be notified pursuant to the Vienna Convention on Diplomatic Relations as members of the mission of the Embassy of the United States of America. The Government shall ensure that any personnel of MCC, including individuals detailed to or contracted by MCC, and the members of the families of such personnel, while such personnel are performing duties in Vanuatu, shall enjoy the privileges and immunities that

are enjoyed by a member of the United States Foreign Service, or the family of a member of the United States Foreign Service, as appropriate, of comparable rank and salary of such personnel, if such personnel or the members of the families of such personnel are not a national of, or permanently resident in Vanuatu.

**Section 5.6 Attachments.** Any annex, schedule, exhibit, table, appendix or other attachment expressly attached hereto (collectively, the "Attachments") is incorporated herein by reference and shall constitute an integral part of this Compact.

**Section 5.7 Inconsistencies.**

(a) Conflicts or inconsistencies between any parts of this Compact shall be resolved by applying the following descending order of precedence:

- (i) Articles I through V; and
- (ii) Any Attachments.

(b) In the event of any conflict or inconsistency between this Compact and any Supplemental Agreement between the Parties, the terms of this Compact shall prevail. In the event of any conflict or inconsistency between any Supplemental Agreement between the Parties and any other Supplemental Agreement, the terms of the Supplemental Agreement between the Parties shall prevail. In the event of any conflict or inconsistency between Supplemental Agreements between any parties, the terms of a more recently executed Supplemental Agreement between such parties shall take precedence over a previously executed Supplemental Agreement between such parties. In the event of any inconsistency between a Supplemental Agreement between the Parties and any component of the Implementation Plan, the terms of the relevant Supplemental Agreement shall prevail.

**Section 5.8 Indemnification.** The Government shall indemnify and hold MCC and any MCC officer, director, employee, Affiliate, contractor, agent or representative (each of MCC and any such persons, an "MCC Indemnified Party") harmless from and against, and shall compensate, reimburse and pay such MCC Indemnified Party for, any liability or other damages which (i) are (directly or indirectly) suffered or incurred by such MCC Indemnified Party, or to which any MCC Indemnified Party may otherwise become subject, regardless of whether or not such damages relate to any third-party claim, and (ii) arise from or as a result of the negligence or willful misconduct of the Government, any Government Affiliate, or any Permitted Designee, (directly or indirectly) connected with, any activities (including acts or omissions)

undertaken in furtherance of this Compact; *provided, however*, the Government shall apply national funds to satisfy its obligations under this Section 5.8 and no MCC Funding, Accrued Interest, or Program Asset may be applied by the Government in satisfaction of its obligations under this section 5.8.

**Section 5.9 Headings.** The section and subsection headings used in this Compact are included for convenience only and are not to be considered in construing or interpreting this Compact.

**Section 5.10 Interpretation;**

**Definitions.**

(a) Any reference to the term "including" in this Compact shall be deemed to mean "including without limitation" except as expressly provided otherwise.

(b) Any reference to activities undertaken "in furtherance of this Compact" or similar language shall include activities undertaken by the Government, any Government Affiliate or Permitted Designee, any Provider or any other third party receiving MCC Funding involved in carrying out the purposes of this Compact or any Supplemental Agreement, including their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, whether pursuant to the terms of this Compact, any Supplemental Agreement or otherwise.

(c) References to "day" or "days" shall be calendar days unless provided otherwise.

(d) The term "United States Government" shall, for the purposes of this Compact, mean any branch, agency, bureau, government corporation, government chartered entity or other body of the Federal government of the United States.

(e) The term "Affiliate" of a party is a person or entity that controls, is controlled by, or is under the same control as the party in question, whether by ownership or by voting, financial or other power or means of influence.

(f) The term "Government Affiliate" is an Affiliate, ministry, bureau, department, agency, government corporation or any other entity chartered or established by the Government.

(g) References to any Affiliate or Government Affiliate herein shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

(h) Any references to "Supplemental Agreement between the Parties" shall

mean any agreement between MCC on the one hand, and the Government or any Government Affiliate or Permitted Designee on the other hand.

**Section 5.11 Signatures.** Other than a signature to this Compact or an amendment to this Compact pursuant to section 5.3, a signature delivered by facsimile or electronic mail in accordance with section 5.1 shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying document, certificate, notice, instrument or agreement on the basis of the signature's legal effect, validity or enforceability solely because it is in facsimile or electronic form. Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

**Section 5.12 Designation.** MCC may designate any Affiliate, agent, or representative to implement, in whole or in part, its obligations, and exercise any of its rights, under this Compact or any Supplemental Agreement between the Parties.

**Section 5.13 Survival.** Any Government Responsibilities, covenants, or obligations or other responsibilities to be performed by the Government after the Compact Term shall survive the termination or expiration of this Compact and expire in accordance with their respective terms. Notwithstanding the termination or expiration of this Compact, the following provisions shall remain in force: Sections 2.2, 2.3, 2.5, 3.2, 3.3, 3.4, 3.5, 3.8, 3.9 (for one year), 3.12, 5.1, 5.2, 5.4(d), 5.4(e) (for sixty days), 5.4(f), 5.4(g), 5.4(h), 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, this section 5.13, 5.14, and 5.15.

**Section 5.14 Consultation.** Either Party may, at any time, request consultations relating to the interpretation or implementation of this Compact or any Supplemental Agreement between the Parties. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter consultations and the other Party shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within 20 days from the commencement of the consultations then each Party shall forward the consultation to the Principal Representative or such other representative of comparable or higher rank. The consultations shall last no longer than 45 days from date of commencement. If the matter is not

resolved within such time period, either Party may terminate this Compact pursuant to section 5.4(a). The Parties shall enter any such consultations guided by the principle of achieving the Compact Goal in a timely and cost-effective manner.

**Section 5.15 MCC Status.** MCC is a United States government corporation acting on behalf of the United States Government in the implementation of this Compact. As such, MCC has no liability under this Compact, is immune from any action or proceeding arising under or relating to this Compact and the Government hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Compact, MCC is not subject to the jurisdiction of the courts or other body of Vanuatu.

**Section 5.16 Language.** This Compact is prepared in English and in the event of any ambiguity or conflict between this official English version and any other version translated into any language for the convenience of the Parties, this official English version shall prevail.

**Section 5.17 Publicity; Information and Marking.** The Government shall give appropriate publicity to this Compact as a program to which the United States, through MCC, has contributed, including by posting this Compact, and any amendments thereto, on the MCA-Vanuatu Web site, identifying Program activity sites, and marking Program Assets; *provided*, any announcement, press release or statement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, including the publicity described in this section 5.17, shall be subject to prior approval by MCC and shall be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters. Upon the termination or expiration of this Compact, MCC may request the removal of, and the Government shall, upon such request, remove, or cause the removal of, any such markings and any references to MCC in any publicity materials or on the MCA-Vanuatu Web site.

In Witness Whereof, the undersigned, duly authorized by their respective governments, have signed this Compact this 2nd day of March, 2006 and this Compact shall enter into force in accordance with section 1.3.

Done at Port Vila, Vanuatu in the English language.

For the United States of America, acting through the Millennium Challenge Corporation, Name: Charles

O. Sethness, Title: Vice President, Accountability.

For the Government of The Republic of Vanuatu, Name: Ham Lini, Title: Prime Minister of the Republic of Vanuatu.

#### Exhibit A—Definitions

The following compendium of capitalized terms that are used herein is provided for the convenience of the reader. To the extent that there is a conflict or inconsistency between the definitions in this Exhibit A and the definitions elsewhere in the text of this Compact, the definition elsewhere in this Compact shall prevail over the definition in this Exhibit A.

**Accrued Interest** is any interest or other earnings on MCC Funding that accrues or are earned.

**Act** means the Millennium Challenge Act of 2003, as amended.

**ADB** means the Asian Development Bank.

**Additional Representative** is a representative as may be designated by a Principal Representative, by written notice, for all purposes other than signing amendments to this Compact.

**Affiliate** means the affiliate of a party, which is a person or entity that controls, is controlled by, or is under the same control as the party in question, whether by ownership or by voting, financial or other power or means of influence. References to Affiliate herein shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

**Attachments** means any annex, schedule, exhibit, table, appendix or other attachment to this Compact.

**Audit Guidelines** means the "Guidelines for Financial Audits Contracted by Foreign Recipients" issued by the Inspector General of the United States Agency for International Development.

**Auditor** means the auditor(s) as defined in, and engaged pursuant to, section 3(h) of Annex I and as required by section 3.8(d) of the Compact.

**Auditor/Reviewer Agreement** is an agreement between MCA-Vanuatu and each Auditor or Reviewer, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Auditor or Reviewer with respect to the audit, review or evaluation, including access rights, required form and content of the applicable audit, review or evaluation and other appropriate terms and conditions such as payment of the Auditor or Reviewer.

**AusAID** means the Australian Agency for International Development.



*Bank(s)* means each individually and collectively, any bank holding an account referenced in section 4(d) of Annex I.

*Bank Agreement* means an agreement between MCA-Vanuatu and a Bank, satisfactory to MCC, that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to the Permitted Account.

*Beneficiaries* means the intended beneficiaries identified in accordance with section 3 of Schedule 1 of Annex I.

*Chair* means the Chair of the Steering Committee.

*Compact* means the Millennium Challenge Compact made between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Republic of Vanuatu.

*Compact Goal* means reducing poverty and increasing incomes in rural areas by stimulating economic activity in the tourism and agricultural sectors through the improvement of transport infrastructure in Vanuatu.

*Compact Records* shall have the meaning set forth in section 3.8(b).

*Compact Reports* means any documents or reports delivered to MCC in satisfaction of the Government's reporting requirements under this Compact or any Supplemental Agreement between the Parties.

*Compact Term* means the term for which this Compact shall remain in force, which shall be the five (5) year period from the Entry into Force, unless earlier terminated in accordance with section 5.4.

*Covered Provider* shall have the meaning set forth in section 3.8(d)(iv).

*Designated Rights and Responsibilities* shall have the meaning set forth in section 3.2(c).

*Detailed Financial Plan* means the financial plans that detail the annual and quarterly budget and projected cash requirements for the Program (including administrative costs) and the Transport Infrastructure Project, projected both on a commitment and cash requirement basis.

*Disbursement Agreement* is a Supplemental Agreement that MCC, the Government (or a mutually acceptable Government Affiliate) and MCA-Vanuatu shall enter into that (i) further specifies the terms and conditions of any MCC Disbursements and Re-Disbursements, (ii) is in a form and substance mutually satisfactory to the Parties, and (iii) is signed by the Principal Representative of each Party (or in the case of the Government, the principal representative of the

applicable Government Affiliate) and of MCA-Vanuatu.

*EMPs* means environmental management plans.

*Entry into Force* means the entry into force of this Compact, which shall be on the date of the last letter in an exchange of letters between the Principal Representatives of each Party confirming that all conditions set forth in section 4.1 have been satisfied by the Government and MCC.

*Environmental Guidelines* means the environmental guidelines delivered by MCC to the Government or posted by MCC on its Web site or otherwise publicly made available, as such guidelines may be amended from time to time.

*Equipment Subproject Activity* shall have the meaning set forth in section 2(b)(i) of Schedule 1 of Annex I.

*ESI Officer* means Environmental and Social Impact Officer.

*EU* means the European Union.

*Evaluation Component* means the component of the M&E Plan that specifies a methodology, process and timeline for the evaluation of planned, ongoing, or completed Project Activities to determine their efficiency, effectiveness, impact and sustainability.

*Exempt Uses* shall have the meaning set forth in section 2.3(e)(ii).

*Final Evaluation* shall have the meaning set forth in section 3(a) of Annex III.

*Financial Plan* means collectively, the Multi-Year Financial Plan, each Detailed Financial Plan, and each amendment, supplement or other change thereto.

*Financial Plan Annex* means Annex II of this Compact, which summarizes the Multi-Year Financial Plan for the Program.

*Fiscal Accountability Plan* shall have the meaning set forth in section 4(c) of Annex I.

*Fiscal Agent* shall have the meaning set forth in section 3(g) of Annex I.

*Fiscal Agent Agreement* is an agreement between MCA-Vanuatu and each Fiscal Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions, such as payment of the Fiscal Agent.

*GDP* means gross domestic product.

*Goal Indicator* means the Indicator in the M&E Plan that will measure results for the overall Program. A table of Compact Goal Indicator definitions is set forth at section 2(a)(i) of Annex III.

*Governance Agreement* is the governance agreement to be entered into by the Government and MCA-Vanuatu and, at MCC's option, MCC, that, in

addition to the Governing Documents, sets forth the terms and conditions to govern MCA-Vanuatu.

*Governing Documents* shall have the meaning set forth in section 3(c)(i)(10) of Annex I.

*Government* means the Government of the Republic of Vanuatu.

*Government Affiliate* is an Affiliate, ministry, bureau, department, agency, government corporation or any other entity chartered or established by the Government. References to Government Affiliate shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

*Government Members* are the government members identified in section 3(d)(ii)(2)(A)(i-x) of Annex I serving as voting members on the Steering Committee, and any replacements thereof in accordance with section 3(d)(ii)(2)(A) of Annex I.

*Government Party* means the Government, any Government Affiliate, any Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents.

*Government Responsibilities* shall have the meaning set forth in section 3.2(a).

*HIES* means the Household Income and Expenditure Survey.

*Implementation Letter* is a letter that may be issued by MCC from time to time to furnish additional information or guidance to assist the Government in the implementation of this Compact.

*Implementation Plan* is a detailed plan for the implementation of the Program and each Project activity, which will be memorialized in one or more documents and shall consist of: (i) A Financial Plan, (ii) a Fiscal Accountability Plan, (iii) a Procurement Plan, (iv) Work Plans, and (v) an M&E Plan.

*Implementing Entity* means a Government agency, nongovernmental organization or other public- or private-sector entity or persons to which MCA-Vanuatu may provide MCC Funding, directly or indirectly, through the Outside Project Manager to implement and carry out the Transport Infrastructure Project or any other activities to be carried out in furtherance of this Compact.

*Implementing Entity Agreement* is an agreement between MCA-Vanuatu and an Implementing Entity, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of such Implementing Entity and other



appropriate terms and conditions, such as payment of the Implementing Entity.

*Indicator(s)* means the quantitative, objective and reliable data that the M&E Plan will use to measure the results of the Program.

*Indicator Baseline* shall have the meaning set forth in section 2(a) of Annex III.

*Infrastructure Activity* is the Project Activity described in section 2(a) of Schedule 1 of Annex I.

*Infrastructure Objective* means the Project Objective to provide improved or new priority transport infrastructure in rural areas and outer islands, including roads, wharfs, airstrips and warehouses.

*Infrastructure Subproject Activity* shall have the meaning set forth in section 2(a) of Schedule 1 of Annex 1.

*Inspector General* means the Inspector General of the United States Agency for International Development.

*Institutional Strengthening Activity* shall have the meaning set forth in section 2(b) of Schedule 1 of Annex 1.

*Institutional Strengthening Objective* means the Project Objective to strengthen the ability of the Government, specifically the capacity and capability of the Department of Public Works, to maintain and sustain Vanuatu's infrastructure assets.

*Institutional Strengthening Subproject Activity* shall have the meaning set forth in Section 2(b) of Schedule 1 of Annex 1.

*Lien* means any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind.

*Local Account* shall have the meaning set forth in section 4(d)(ii) of Annex I.

*M&E Annex* means Annex III of this Compact, which generally describes the components of the M&E Plan for the Program.

*M&E Implementation Manual* means the implementation manual to be developed by MCA-Vanuatu and approved by MCC consistent with the M&E Plan.

*M&E Plan* means the plan to measure and evaluate progress toward achievement of the Compact Goal and Objectives of this Compact.

*Managing Director* means the Managing Director of MCA-Vanuatu. Material Agreement shall have the meaning set forth in section 3(c)(i)(3) of Annex I.

*Material Re-Disbursement* means any Re-Disbursement that requires MCC approval under applicable law, the Governing Documents, the Procurement Agreement, Procurement Guidelines, or any Supplemental Agreement.

*Material Terms of Reference* means any terms of reference for the

procurement of goods, services or works that require MCC approval under applicable law, the Governing Documents, the Procurement Agreement, Procurement Guidelines, or any Supplemental Agreement.

*MCA* means the Millennium Challenge Account.

*MCA Eligibility Criteria* means the MCA selection criteria and methodology published by MCC pursuant to section 607 of the Act from time to time.

*MCA-Vanuatu* shall have the meaning set forth in section 2.2(d) of this Compact and as is further described in section 3(d) of Annex I.

*MCA-Vanuatu Web site* means the Web site operated by MCA-Vanuatu.

*MCC* means the Millennium Challenge Corporation.

*MCC Disbursement* means the disbursement of MCC Funding by MCC to a Permitted Account or through such other mechanism agreed by the Parties as defined in and in accordance with section 2.1(b)(i) of this Compact.

*MCC Disbursement Request* means the applicable request that the Government and MCA-Vanuatu will jointly submit for an MCC Disbursement as may be specified in the Disbursement Agreement.

*MCC Funding* shall have the meaning set forth in section 2.1(a).

*MCC Indemnified Party* means MCC and any MCC officer, director, employee, Affiliate, contractor, agent or representative.

*MCC Representative* is a representative appointed by MCC to serve as an Observer on the Steering Committee.

*Monitoring Component* means the component of the M&E Plan that specifies how progress toward the Project Objectives and intermediate results of the Transport Infrastructure Project will be monitored and as set forth in section 2 of Annex III.

*Multi-Year Financial Plan* means the multi-year financial plan for the Program and for the Transport Infrastructure Project, which is summarized in Annex II.

*Multi-Year Financial Plan Summary* means a multi-year financial plan summary attached to this Compact as Exhibit A of Annex II.

*NGOs* means non-governmental organizations.

*Non-Government Members* are the General Manager of the Chamber of Commerce and the Secretary-General of the Vanuatu Non-Governmental Organization serving as Voting Members on the Steering Committee.

*Objective Indicator* means the Indicator in the M&E Plan for each Project Objective that will measure the

final results of the Transport Infrastructure Project in order to monitor its success in meeting each of the Project Objectives. A table of Objective Indicator definitions is set forth at section 2(a)(ii) of Annex III.

*Observers* means the non-voting observers of the Steering Committee described in section 3(d)(ii)(2) of Annex I.

*Outcome Indicator* means the Indicator in the M&E Plan that will measure the intermediate results achieved under each of the Project Activities to provide an early measure of the likely impact of the Transport Infrastructure Project. A table of Outcome Indicator definitions is set forth at section 2(a)(ii) of Annex III.

*Outside Project Manager* means the qualified persons or entities engaged by MCA-Vanuatu, to serve as outside project managers in accordance with section 3(e) of Annex I.

*PAA* is the Government's National Priorities and Action Agenda.

*Parties* means the United States, acting through MCC, and the Government.

*Party* means (i) the United States, acting through MCC or (ii) the Government.

*Permitted Account(s)* shall have the meaning set forth in section 4(d) of Annex I.

*Permitted Designee* shall have the meaning set forth in section 3.2(c).

*Pledge* means any pledge of any MCC Funding or any Program Assets, or any guarantee (directly or indirectly) of any indebtedness.

*Principal Representative* means (i) for the Government, the individual holding the position of the Director-General of the Prime Minister's Office, or in his absence the relevant designated Additional Representative and (ii) for MCC, the individual holding the position of, or acting as, the Vice President of Operations.

*Procurement Agent* are the procurement agents that MCA-Vanuatu will engage to carry out and/or certify specified procurement activities in furtherance of this Compact on behalf of the Government, MCA-Vanuatu, the Project Manager or Implementing Entity.

*Procurement Agent Agreement* is the agreement that MCA-Vanuatu enters into with the Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Agent.

*Procurement Agreement* is a Supplemental Agreement between MCC and MCA-Vanuatu, which includes the Procurement Guidelines, and governs the procurement of all goods, services and works by the Government or any Provider in furtherance of this Compact.

*Procurement Guidelines* shall have the meaning set forth in section 3.6(a).

*Procurement Plan* shall have the meaning set forth in section 3(i) of Annex I.

*Program* means a program, to be implemented under this Compact, using MCC Funding to advance Vanuatu's progress towards economic growth and poverty reduction.

*Program Annex* means Annex I to this Compact, which generally describes the Program that MCC Funding will support in Vanuatu during the Compact Term and the results to be achieved from the investment of MCC Funding.

*Program Assets* means (i) MCC Funding, (ii) Accrued Interest, or (iii) any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part (directly or indirectly) by MCC Funding.

*Program Management Unit* means a management unit of MCA-Vanuatu to have overall management responsibility for the implementation of this Compact.

*Project* means the Transport Infrastructure Project, and the policy reforms and other activities related thereto that the Government will carry out, or cause to be carried out in furtherance of this Compact to achieve the Objectives and the Compact Goal.

*Project Activity* means the activities that will be undertaken in furtherance of the Transport Infrastructure Project.

*Project Activity Indicator* shall have the meaning set forth in section 2(a)(iii) of Annex III.

*Project Activity Outcomes* is the progress made toward the Project Objectives and the intermediate results of the Transport Infrastructure Project and each Project Activity.

*Project Objective(s)* means the Infrastructure Objective and the Institutional Strengthening Objective.

*Proposal* is the proposal for use of MCA assistance submitted to MCC by the Government on March 31, 2005.

*Provider* shall have the meaning set forth in section 2.4(b).

*PWD* means the Public Works Department.

*PWD Project Management Unit* shall have the meaning set for in section 3(e) of Annex 1.

*REDI* means the Rural Economic Development Initiative coordinated by the Department of Strategic Management of the Government.

*Re-Disbursement* is the release of MCC Funding from a Permitted Account.

*Reviewer* shall have the meaning set forth in section 3(h) of Annex I.

*Road Maintenance Budget Allocation* shall have the meaning set forth in section 5(b)(i) of Schedule 1 of Annex 1.

*Special Account* shall have the meaning set forth in section 4(d)(i) of Annex I.

*Steering Committee* means an independent Steering Committee of MCA-Vanuatu to oversee MCA-Vanuatu's responsibilities and obligations under this Compact.

*Supplemental Agreement* shall have the meaning set forth in section 3.5(b).

*Supplemental Agreement Between the Parties* means any agreement between MCC on the one hand, and the Government or any Government Affiliate or Permitted Designee on the other hand.

*Supplemental Agreement Term Sheets* shall have the meaning set forth in section 4.1(b).

*Target* means one or more expected results that specify the expected value and the expected time by which that result will be achieved.

*Tax(es)* shall have the meaning set forth in section 2.3(e)(i).

*Transport Infrastructure Project* means the Project and Project Activities that the Parties intend to implement in furtherance of the Infrastructure Objective and the Institutional Strengthening Objective and as further described in Schedule 1 to Annex I.

*Technical Assistance Subproject Activity* shall have the meaning set forth in section 2(b)(ii) of Schedule 1 of Annex I.

*United States Dollars (USD)* means the currency of the United States of America.

*United States Government* means any branch, agency, bureau, government corporation, government chartered entity or other body of the Federal government of the United States.

*Vice Chair* means the Vice Chair of the Steering Committee.

*Voting Members* are the voting members on the Steering Committee described in section 3(d)(ii)(2) of Annex I.

*Work Plans* means work plans for the overall administration of the Program and for the Transport Infrastructure Project.

#### **Exhibit B—List of Certain Supplemental Agreements**

1. Governance Agreement.
2. Fiscal Agent Agreement.
3. Implementing Entity Agreements.

4. Bank Agreement.

5. Procurement Agent Agreement.

#### **Annex I—Program Description**

This Annex I to the Compact (the "Program Annex") generally describes the Program that MCC Funding will support in Vanuatu during the Compact Term and the results to be achieved from the investment of MCC Funding. Prior to any MCC Disbursement or Re-Disbursement, including for the Transport Infrastructure Project (described in Schedule I to this Program Annex), MCC, the Government (or a mutually acceptable Government Affiliate) and MCA-Vanuatu shall enter into a Supplemental Agreement that (i) further specifies the terms and conditions of such MCC Disbursements and Re-Disbursements, (ii) is in a form and substance mutually satisfactory to the Parties, and (iii) is signed by the Principal Representative of each Party (or in the case of the Government, the principal representative of the applicable Government Affiliate) and of MCA-Vanuatu (the "Disbursement Agreement").

Except as specifically provided herein, the Parties may amend this Program Annex only by written agreement signed by the Principal Representative of each Party. Except as defined in this Program Annex, each capitalized term in this Program Annex shall have the same meaning given such term elsewhere in this Compact. Unless otherwise expressly stated, each Section reference herein is to the relevant Section of the main body of the Compact.

#### **1. Background; Consultative Process**

(a) Background. Over the past decade, Vanuatu's economic growth has fallen short of its population growth. From 1994 to 2003, annual real gross domestic product ("GDP") growth in Vanuatu has averaged 1.0% while annual population growth has averaged 2.6% and average per capita income in real terms declined by 15.4%. Although the Government has fostered macroeconomic stability by reducing fiscal deficits and maintaining prudent levels of external debt over the past five years, this progress has largely come at the expense of capital expenditures. Vanuatu's capital outlays are the lowest in the Pacific region (whereas, in contrast, Vanuatu's budget allocation for education from 2000 to 2003 was significantly higher than most Pacific countries).

The Government has identified the major constraints to economic development as the lack of an attractive investment climate for private sector investment, a lack of income earning

opportunities for a fast growing population due to the high cost of doing business, and poor access to basic health and primary education services in rural areas. The Government needs to spend considerably more on infrastructure in order to reduce business costs and therefore improve the environment for private sector-led economic growth.

The current state of Vanuatu's transportation infrastructure is hindering formal economic activity and investment in the agriculture and tourism sector—the two primary sources of growth and employment in Vanuatu. These two sectors together employ 92% of Vanuatu's working population and represent approximately 32% of Vanuatu's GDP. Furthermore, small-scale agriculture is the mainstay of Vanuatu's rural areas, where 80% of the population resides and 51% of the population in such rural areas lives in hardship. Consequently, specific policies and investments aimed at reducing the transport cost burden faced by those engaged in economic activity within these sectors are key to bringing about a reduction in rural hardship.

(b) National Development Plan. The Government's National Priorities and Action Agenda ("PAA") serves as the country's national development strategy and integrates and prioritizes the action plans for economic development. The PAA is intended to more effectively link these plans with the Government's medium-term investment program and annual budget. Moreover, the PAA has been subject to broad stakeholder consultation through public consultative workshops with the provincial governments, non-governmental organizations ("NGOs"), private sector, and civil society.

The top two priorities in the latest PAA include: (i) "Improving the lives of people in rural areas by improving service delivery, expanding market access to rural produce, lowering costs of credit and transportation, and ensuring sustainable use of natural resources;" and (ii) "raising private investment by lowering obstacles to growth of private enterprise including lowering costs of doing business, facilitating long-term secure access to land, and providing better support services to businesses." The Program's focus on transport infrastructure, with the goals of reducing transport costs of doing business and stimulating agricultural and tourism-based economic activity in the rural areas, is consistent with the key priorities contained in the PAA for reducing poverty and increasing economic growth.

(c) Consultative Process. Vanuatu engaged in a comprehensive consultative process, which included: (i) Ongoing national and provincial public forums, such as the CRP Summit, National Business Forum, and REDI workshops which included specific discussion on priorities and projects for the Proposal; (ii) one MCA-specific public awareness meeting on the outer island of Ambrym; and (iii) public outreach meetings in four of Vanuatu's six provinces. Consulted groups included the Republic of Vanuatu's council of chiefs, women's group leaders, the private sector, NGOs, church leaders, and provincial government officials. During the consultation process, the lack of adequate transport infrastructure repeatedly surfaced as a priority (and even served as a barrier to meeting attendance). With respect to selection of specific transport infrastructure projects for MCC consideration, all projects in Vanuatu's Proposal were derived from previous local-level stakeholder consultation forums in each of six provinces. In these forums, government provincial leaders met with representative groups of civil society, NGOs, and private sector to identify economic opportunities limited by a lack of adequate infrastructure and proposing infrastructure projects. This process resulted in a pool of projects from which specific selection criteria (such as economic and poverty impact) were used to select a short-list of projects to be subjected to detailed feasibility studies. Subsequently, in each province's ongoing consultation workshops, it was confirmed that a number of the priority infrastructure projects remained unfunded.

The Government recently conducted a significant public outreach campaign, in which the short-list of projects subject to MCC due diligence were released to local newspaper and radio media, discussed in provincial "public outreach meetings" (led by the Government's MCA transaction team), and sent to civil society, private sector organizations, and donors for comment and input. The Government intends to continue these modes of outreach in order to sustain public awareness and foster stakeholder participation in the design of maintenance and monitoring arrangements.

## 2. Overview

(a) Program Objectives. The Program involves a series of specific and complementary interventions that the Parties expect will achieve the Infrastructure Objective and the Institutional Strengthening Objective

and advance the progress of Vanuatu toward the Compact Goal.

(b) Project. The Parties have identified the Transport Infrastructure Project, which they intend for the Government to implement, or cause to be implemented, using MCC Funding. Schedule I to this Program Annex identifies the activities that will be undertaken in furtherance of the Transport Infrastructure Project (each, a "Project Activity"). Notwithstanding anything to the contrary in this Compact, the Parties may agree to amend, terminate or suspend the Transport Infrastructure Project or the Project Activities or create a new project by written agreement signed by the Principal Representative of each Party without amending this Compact; *provided, however*, any such amendment of the Transport Infrastructure Project or any Project Activity or creation of a new project is (i) consistent with the Project Objectives; (ii) does not cause the amount of MCC Funding to exceed the aggregate amount specified in section 2.1(a) of this Compact; (iii) does not cause the Government's responsibilities or contribution of resources to be less than specified in section 2.2 of this Compact or elsewhere in this Compact; and (iv) does not extend the Compact Term.

(c) Beneficiaries. The intended beneficiaries of the Transport Infrastructure Project are described in Schedule I to this Program Annex to the extent identified as of the date hereof. The intended beneficiaries shall be identified more precisely during the initial phases of the implementation of the Program. The Parties shall agree upon the description of the intended beneficiaries of the Program, including publishing such description on the Web site operated by MCA-Vanuatu.

(d) Civil Society. Civil society will participate in overseeing the implementation of the Program through its representation on the MCA-Vanuatu Steering Committee. In addition, the Work Plans for the Transport Infrastructure Project shall note the extent to which civil society will have a role in the implementation of a particular Project Activity.

(e) Monitoring and Evaluation. Annex III of this Compact generally describes the plan to measure and evaluate progress toward achievement of the Project Objectives of this Compact (the "M&E Plan"). As outlined in the Disbursement Agreement and other Supplemental Agreements, continued payment of MCC Funding under this Compact will be contingent on

successful achievement of targets set forth in the M&E Plan.

### 3. Implementation Framework

The implementation framework and the plan for ensuring adequate governance, oversight, management, monitoring, evaluation and fiscal accountability for the use of MCC Funding is summarized below and in Schedule I attached to this Program Annex, or as may otherwise be agreed in writing by the Parties.

(a) General. The elements of the implementation framework will be further described in relevant Supplemental Agreements and in a detailed plan for the implementation of the Program and each Project Activity, which will be memorialized in one or more documents and shall consist of a Financial Plan, a Fiscal Accountability Plan, a Procurement Plan, Work Plans, and an M&E Plan (such documents and plans collectively, the "*Implementation Plan*"). MCA-Vanuatu shall adopt each component of the Implementation Plan in accordance with the requirements and timeframe as may be specified in this Program Annex, the Disbursement Agreement or as may otherwise be agreed by the Parties from time to time. MCA-Vanuatu may amend the Implementation Plan or any component thereof without amending this Compact, provided any material amendment of the Implementation Plan or any component thereof has been approved by MCC and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement between the Parties. By such time as may be specified in the Disbursement Agreement or as may otherwise be agreed by the Parties from time to time, MCA-Vanuatu shall adopt one or more work plans for the overall administration of the Program and for the Transport Infrastructure Project (collectively, the "*Work Plans*"). The Work Plan(s) shall set forth the details of each activity to be undertaken or funded by MCC Funding as well as the allocation of roles and responsibilities for specific Project Activities, or other programmatic guidelines, performance requirements, targets, or other expectations for the Transport Infrastructure Project.

(b) Government. The Government shall promptly take all necessary and appropriate actions to carry out the Government Responsibilities and other obligations or responsibilities of the Government under and in furtherance of this Compact, including undertaking or pursuing such legal, legislative or regulatory actions, procedural changes and contractual arrangements as may be

necessary or appropriate to achieve the Project Objectives, to successfully implement the Program, and to establish MCA-Vanuatu. The Government shall ensure that MCA-Vanuatu is duly authorized and sufficiently organized, staffed and empowered to fully carry out the Designated Rights and Responsibilities. Without limiting the generality of the preceding sentence, MCA-Vanuatu shall be organized, and have such roles and responsibilities, as described in section 3(d) of this Program Annex and as provided in the Governance Agreement and any Governing Documents, which shall be in a form and substance satisfactory to MCC.

#### (c) MCC.

(i) Notwithstanding section 3.1 of this Compact or any provision in this Program Annex to the contrary, and except as may be otherwise agreed upon by the Parties from time to time, MCC must approve in writing each of the following transactions, activities, agreements and documents prior to the execution or carrying out of such transaction, activity, agreement or document and prior to MCC Disbursements or Re-Disbursements in connection therewith:

- (1) MCC Disbursements;
- (2) The Financial Plan and any amendments and supplements thereto;
- (3) Agreements (i) between the Government and MCA-Vanuatu, (ii) between the Government, MCA-Vanuatu or other Government Affiliate, on the one hand, and any Provider or Affiliate of a Provider, on the other hand, which require such MCC approval under applicable law, the Governing Documents, the Procurement Agreement, Procurement Guidelines or any Supplemental Agreement, or (iii) in which the Government, MCA-Vanuatu or other Government Affiliate appoints, hires or engages any of the following in furtherance of this Compact:
  - (A) Auditor and Reviewer;
  - (B) Fiscal Agent;
  - (C) Bank;
  - (D) Procurement Agent;
  - (E) Project Manager;
  - (F) Implementing Entity; and
  - (G) Director, Observer, analysts and/or other key employee or contractor of MCA-Vanuatu, including any compensation for such person. (Any agreement described in clause (i) through (iii) of this section 3(c)(i)(3) and any amendments and supplements thereto, each, a "*Material Agreement*");
- (4) Any modification, termination or suspension of a Material Agreement, or any action that would have the effect of such a modification, termination or suspension of a Material Agreement;

(5) Any agreement that is (i) not at arm's length or (ii) with a party related to the Government, including MCA-Vanuatu, or any of their respective Affiliates;

(6) Any Re-Disbursement (each, a "*Material Re-Disbursement*") that requires such MCC approval under applicable law, the Governing Documents (defined below), the Procurement Agreement, Procurement Guidelines or any Supplemental Agreement;

(7) Terms of reference for the procurement of goods, services or works that require such MCC approval under applicable law, the Governing Documents (defined below), the Procurement Agreement, Procurement Guidelines or any Supplemental Agreement (each, a "*Material Terms of Reference*");

(8) The Implementation Plan, including each component plan thereto, and any material amendments and supplements to the Implementation Plan or any component thereto;

(9) Any pledge of any MCC Funding or any Program Assets or any guarantee (directly or indirectly) of any indebtedness (each, a "*Pledge*");

(10) Any decree, legislation, contractual arrangement, charter, by-laws or other document establishing or governing MCA-Vanuatu, including the governance agreement to be entered into by the Government, MCA-Vanuatu, and at MCC's option, MCC (the "*Governance Agreement*") (collectively, the "*Governing Documents*"), and any disposition (in whole or in part), liquidation, dissolution, winding up, reorganization or other change of (A) MCA-Vanuatu, including any revocation or modification of, or supplement to, any decree, legislation, contractual arrangement or other document establishing MCA-Vanuatu, or (B) any subsidiary or Affiliate of MCA-Vanuatu;

(11) Any change in character or location of any Permitted Account;

(12) Formation or acquisition of any subsidiary (direct or indirect) or other Affiliate of MCA-Vanuatu;

(13) Any (A) change of the Director, Observer, officer or other key employee or contractor of MCA-Vanuatu, or in the composition of the Steering Committee, or (B) filling of any vacant seat of the Chair, the Director or an Observer or vacant position of an officer or other key employee or contractor of MCA-Vanuatu;

(14) The selection of the ESI Officer;

(15) The management information system to be developed and maintained by the Program Management Unit of MCA-Vanuatu, and any material modifications to such system;



(16) Any decision to amend, supplement, replace, terminate or otherwise change any of the foregoing; and

(17) Any other activity, agreement, document or transaction requiring the approval of MCC in this Compact, applicable law, the Governing Documents, the Procurement Agreement, Procurement Guidelines, the Disbursement Agreement, or any other Supplemental Agreement between the Parties.

The Chair of the Steering Committee (the "Chair"), or in his absence the Vice Chair of the Steering Committee (the "Vice Chair") or other designated voting member of the Steering Committee, as provided in the Governing Documents, shall certify any documents or reports delivered to MCC in satisfaction of the Government's reporting requirements under this Compact or any Supplemental Agreement between the Parties (the "Compact Reports").

(ii) MCC shall have the authority to exercise its approval rights set forth in this section 3(c) in its sole discretion and independent of any participation or position taken by the MCC Representative at a meeting of the Steering Committee. MCC retains the right to revoke its approval of a matter if MCC concludes that its approval was issued on the basis of incomplete, inaccurate or misleading information furnished by the Government or MCA-Vanuatu.

(d) MCA-Vanuatu.

(i) General. Unless otherwise agreed by MCC in writing, MCA-Vanuatu shall be responsible for the oversight and management of the implementation of this Compact. MCA-Vanuatu shall be governed by the terms and conditions set forth in the Governing Documents based on the following principles:

(1) MCA-Vanuatu shall be established by the Government as an independent unit within the Ministry of Finance and Economic Management and shall report to the Steering Committee. The Government shall ensure the independent and proper administration of MCA-Vanuatu in accordance with the terms of the Compact, the Governing Documents of MCA-Vanuatu and any relevant Supplemental Agreements;

(2) The Government shall ensure that MCA-Vanuatu shall not assign, delegate or contract any of the Designated Rights and Responsibilities without the prior written consent of the Government and MCC. MCA-Vanuatu shall not establish any Affiliates or subsidiaries (direct or indirect) without the prior written consent of the Government and MCC; and

(3) Unless otherwise agreed by MCC in writing, MCA-Vanuatu shall consist of (a) an independent governing committee (the "Steering Committee") to oversee MCA-Vanuatu's responsibilities and obligations under this Compact (including any Designated Rights and Responsibilities) and (b) a management unit (the "Program Management Unit") to have overall management responsibility for the implementation of the Compact.

(ii) Steering Committee.

(1) Formation. The Government shall ensure that the Steering Committee shall be formed, constituted, governed, maintained and operated in accordance with applicable law and the terms and conditions set forth in this section 3(d), the Governing Documents and the relevant Supplemental Agreements.

(2) Composition. Unless otherwise agreed by MCC in writing, the Steering Committee shall consist of twelve (12) voting members (the "Voting Members"), three (3) non-voting observers (the "Observers"), each of whom must be acceptable to MCC, taking into consideration appropriate gender and ethnic representation, and the Director of the Program Management Unit, who shall serve as an ex officio non-voting member.

(A) The Voting Members shall be as follows, provided that the Government members identified in subsection (i) through (x) (the "Government Members") may be replaced by another government official of comparable rank from a ministry or other government body relevant to the Program activities, subject to approval by the Government and MCC (such replacement to be referred to thereafter as a Government Member):

- (i) Director-General of the Office of the Prime Minister;
- (ii) Director-General of the Ministry of Finance and Economic Management;
- (iii) Director-General of the Ministry of Foreign Affairs and External Trade;
- (iv) Director-General of the Ministry of Infrastructure & Public Utilities;
- (v) Director-General of the Ministry of Lands;
- (vi) Director of the Public Works Department;
- (vii) Director of Finance;
- (viii) Director of the Department of Economics and Social Development;
- (ix) Director of the Department of Strategic Management;
- (x) Head of Development Cooperation, Ministry of Foreign Affairs;
- (xi) General Manager of the Chamber of Commerce (representing the private sector); and
- (xii) Secretary-General, Vanuatu Non-Governmental Organizations

(representing non-state actors) (together with the General Manager of Chamber of Commerce, the "Non-Government Members").

The following provisions shall apply to the Voting Members:

(i) Each Government Member may be replaced by another government official, subject to approval by the Government and MCC;

(ii) Subject to the Governing Documents, the Parties contemplate that the Director-General of the Office of the Prime Minister shall serve as Chair of the Steering Committee and the Director-General, Ministry of Finance and Economic Management shall serve as the Vice Chair; and

(iii) Each Government Member position shall be filled by the individual then holding the office identified and such individuals shall serve in their capacity as the applicable Government official and not in their personal capacity.

(B) The Observers shall be (i) a representative appointed by MCC (the "MCC Representative"); (ii) the Director of Environment Unit, Ministry of Lands; and (iii) the General Manager, Vanuatu Tourism Office. The Observers shall have the right to attend all meetings of the Steering Committee, participate in discussions of the Steering Committee, and receive all information and documents provided to the Steering Committee, together with any other rights of access to records, employees or facilities as would be granted to a member of the Steering Committee under the Governance Agreement and any Governing Document.

(C) The Director of the Program Management Unit shall serve as an ex officio member of the Steering Committee and shall make reports to the Steering Committee as required from time to time.

(3) Roles and Responsibilities.

(A) The Steering Committee shall oversee the overall implementation of the Program and the performance of the Designated Rights and Responsibilities.

(B) Certain actions may be taken, and certain agreements and other documents may be executed and delivered, by MCA-Vanuatu only upon the approval and authorization of the Steering Committee as provided under applicable law and in the Governing Documents, including each MCC Disbursement Request, selection or termination of certain Providers, any component of the Implementation Plan, certain Re-Disbursements and certain terms of reference.

(C) The Chair shall certify the approval by the Steering Committee of all Compact Reports or any other



documents or reports from time to time delivered to MCC by MCA-Vanuatu (whether or not such documents or reports are required to be delivered to MCC), and that such documents or reports are true, accurate and complete.

(D) Without limiting the generality of the Designated Rights and Responsibilities, and subject to MCC's contractual rights of approval as set forth in section 3(c) of this Program Annex or elsewhere in this Compact or any relevant Supplemental Agreement, the Steering Committee shall have the exclusive authority for all actions defined for the Steering Committee under applicable law and in the Governing Documents and which are expressly designated therein as responsibilities that cannot be delegated further.

(4) Meetings. The Steering Committee shall hold monthly meetings as well as such other periodic meetings or subcommittee meetings as may be necessary from time to time.

(5) Indemnification of the Observers; MCC Representative. The Government shall ensure, at the Government's sole cost and expense, that appropriate insurance is obtained and appropriate indemnifications and protections are provided, acceptable to MCC, to ensure that the Observers shall not be held personally liable for the actions or omissions of the Steering Committee. Pursuant to section 5.5 and section 5.8 of this Compact, the Government and MCA-Vanuatu shall hold harmless the MCC Representative for any liability or action arising out of the MCC Representative's role as a non-voting observer on the Steering Committee. The Government hereby waives and releases all claims related to any such liability. In matters arising under or relating to the Compact, the MCC Representative is not subject to the jurisdiction of the courts or other body of Vanuatu.

(iii) Program Management Unit. Unless otherwise agreed in writing by the Parties, the Program Management Unit shall report, through the Director or other officer as designated in the Governing Documents, directly to the Steering Committee, and shall have the composition, roles and responsibilities described below and set forth more particularly in the Governing Documents.

(1) Composition. The Government shall ensure that the Program Management Unit shall be composed of qualified experts from the public or private sectors, including such officers and staff as may be necessary to carry out effectively its responsibilities, each with such powers and responsibilities

as set forth in the Governance Agreement, any Governing Document, and from time to time in any Supplemental Agreement between the Parties, including without limitation the following: (i) one Director, (ii) two analysts, and (iii) appropriate administrative and support personnel.

(2) Appointment of Program Management Unit. Unless otherwise specified in the Governance Agreement or any Governing Documents, the Steering Committee shall appoint the Director after an open and competitive recruitment and selection process, which appointment shall be subject to the approval of MCC. The remaining officers of the Program Management Unit shall be appointed by the Director after an open and competitive recruitment and selection process, which appointment shall be subject to the approval of the Steering Committee and MCC.

(3) Roles and Responsibilities.

(A) The Program Management Unit shall assist the Steering Committee in overseeing the implementation of the Program and shall have principal responsibility (subject to the direction and oversight of the Steering Committee and subject to MCC's rights of approval as set forth in section 3(c) of this Program Annex or elsewhere in this Compact or any relevant Supplemental Agreement) for the overall management of the implementation of the Program.

(B) Without limiting the foregoing general responsibilities or the generality of Designated Rights and Responsibilities that the Government may designate MCA-Vanuatu, the Program Management Unit shall develop the components of the Implementation Plan, oversee the implementation of the Transport Infrastructure Project, manage and coordinate monitoring and evaluation, maintain internal accounting records, conduct and oversee certain procurements, and such other responsibilities as set out in the Governing Documents or delegated to the Program Management Unit by the Steering Committee from time to time.

(C) Appropriate officers shall have the authority to contract on behalf of MCA-Vanuatu for procurement under the Program, as designated by the Steering Committee.

(D) The Program Management Unit shall have the obligation and right to approve certain actions and documents or agreements, including certain Re-Disbursements, MCC Disbursement Requests, Compact Reports, certain human resources decisions, and certain procurement actions, as provided in the Governing Documents.

(e) Project Manager. The Department of Public Works will serve as the Project Manager for the Transport Infrastructure Project and will be responsible for oversight of the specific activities of the Transport Infrastructure Project. The duties of the Project Manager will include certification of receipt of goods and services secured for the Transport Infrastructure Project. Outside professional services will be contracted through MCA-Vanuatu to assist the Project Manager in its functions (the "Outside Project Manager"). The Department of Public Works will establish a dedicated unit (the "PWD Project Management Unit") within its headquarters, and within its regional offices, if appropriate, with a minimum of two full-time staff that are suitably qualified to support the design and engineering supervision professionals that are charged with the responsibility to execute its project management responsibilities. The PWD Project Management Unit will be guided by the contracted supervision professionals.

(f) Implementing Entities. Subject to the terms and conditions of this Compact and any other Supplemental Agreement between the Parties, MCA-Vanuatu may provide MCC Funding (directly or indirectly), through the Project Manager, to one or more Government Affiliates or to one or more nongovernmental or other public- or private-sector entities or persons to implement and carry out the Transport Infrastructure Project or any other activities to be carried out in furtherance of this Compact (each, an "Implementing Entity"). The Government shall ensure that MCA-Vanuatu (or the Project Manager) enters into an agreement with each Implementing Entity, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of such Implementing Entity and other appropriate terms and conditions, such as payment of the Implementing Entity (the "Implementing Entity Agreement"). An Implementing Entity shall report directly to MCA-Vanuatu or the Project Manager, as designated in the applicable Implementing Entity Agreement or as otherwise agreed by the Parties.

(g) Fiscal Agent. The Department of Finance in the Ministry of Finance and Economic Management of the Government shall serve as the fiscal agent on behalf of MCA-Vanuatu (the "Fiscal Agent"), who shall be responsible for, among other things, (i) ensuring and certifying that Re-Disbursements are properly authorized, and documented in accordance with established control procedures set forth in the Disbursement Agreement, the

Fiscal Agent Agreement and other relevant Supplemental Agreements, (ii) instructing a Bank to make Re-Disbursements from a Permitted Account, following applicable certification by the Fiscal Agent, (iii) providing applicable certifications for MCC Disbursement Requests, (iv) maintaining proper accounting of all MCC Funding financial transactions, and (v) producing reports on MCC Disbursements and Re-Disbursements (including any requests therefore) in accordance with established procedures set forth in the Disbursement Agreement, the Fiscal Agent Agreement or any other relevant Supplemental Agreements. Upon the written request of MCC, the Government shall ensure that MCA-Vanuatu terminates the Fiscal Agent, without any liability to MCC, and the Government shall ensure that MCA-Vanuatu engages a new Fiscal Agent, subject to the approval by the Steering Committee and MCC. The Government shall ensure that MCA-Vanuatu enters into an agreement with each Fiscal Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions, such as payment of the Fiscal Agent ("*Fiscal Agent Agreement*").

(h) Auditors and Reviewers. The Government shall ensure that MCA-Vanuatu carries out the Government's audit responsibilities as provided in sections 3.8(d), (e) and (f), including engaging one or more auditors (each, an "*Auditor*") required by section 3.8(d). As requested by MCC in writing from time to time, the Government shall ensure that MCA-Vanuatu shall also engage an independent (i) reviewer to conduct reviews of performance and compliance under this Compact pursuant to section 3.8(f), which reviewer shall (1) conduct general reviews of performance or compliance, (2) conduct environmental audits, and (3) have the capacity to conduct data quality assessments in accordance with the M&E Plan, as described more fully in Annex III, and/or (ii) evaluator to assess performance as required under the M&E Plan (each, a "*Reviewer*"). MCA-Vanuatu shall select the Auditor(s) or Reviewers in accordance with the Governing Documents or relevant Supplemental Agreement. The Government shall ensure that MCA-Vanuatu enters into an agreement with each Auditor or Reviewer, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Auditor or Reviewer with respect to the audit, review or evaluation, including

access rights, required form and content of the applicable audit, review or evaluation and other appropriate terms and conditions such as payment of the Auditor or Reviewer (the "*Auditor/Reviewer Agreement*"). In the case of a financial audit required by section 3.8(f), such Auditor/Reviewer Agreement shall be effective no later than 120 days prior to the end of the relevant fiscal year or other period to be audited; *provided, however*, if MCC requires concurrent audits of financial information or reviews of performance and compliance under this Compact, then such Auditor/Reviewer Agreement shall be effective no later than a date agreed by the Parties.

(i) Procurement Agent. If requested by MCC, the Government shall ensure that MCA-Vanuatu engages one or more procurement agents (each, a "*Procurement Agent*") to carry out and/or certify specified procurement activities in furtherance of this Compact on behalf of the Government, MCA-Vanuatu, the Project Manager or Implementing Entity. The role and responsibilities of such Procurement Agent and the criteria for selection of a Procurement Agent shall be as set forth in the applicable Implementation Letter or Supplemental Agreement. The Government shall ensure that MCA-Vanuatu enters into an agreement with the Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Agent (the "*Procurement Agent Agreement*"). Any Procurement Agent shall adhere to the procurement standards set forth in the Procurement Agreement and Procurement Guidelines and ensure procurements are consistent with the procurement plan adopted by MCA-Vanuatu pursuant to the Procurement Agreement (the "*Procurement Plan*").

#### 4. *Finances and Fiscal Accountability*

##### (a) *Financial Plan.*

(i) *Financial Plan.* The multi-year financial plan for the Program and for the Transport Infrastructure Project (the "*Multi-Year Financial Plan*") is summarized in Annex II to this Compact.

(ii) *Detailed Financial Plan.* During the Compact Term, the Government shall ensure that MCA-Vanuatu delivers to MCC for approval timely financial plans that detail the annual and quarterly budget and projected cash requirements for the Program (including administrative costs) and the Transport

Infrastructure Project, projected both on a commitment and cash requirement basis (each a "*Detailed Financial Plan*"). Each Detailed Financial Plan shall be delivered by such time as specified in the Disbursement Agreement or as may otherwise be agreed by the Parties. The Multi-Year Financial Plan and each Detailed Financial Plan and each amendment, supplement or other change thereto are collectively, the "*Financial Plan*."

(iii) *Expenditures.* No financial commitment involving MCC Funding shall be made, no obligation of MCC Funding shall be incurred, and no Re-Disbursement shall be made or MCC Disbursement Request submitted for any activity or expenditure, unless the expense is provided for in the Detailed Financial Plan and unless uncommitted funds exist in the balance of the Detailed Financial Plan for the relevant period or unless the Parties otherwise agree in writing.

(iv) *Modifications to Financial Plan.* Notwithstanding anything to the contrary in this Compact, MCA-Vanuatu may amend or supplement the Financial Plan or any component thereof without amending this Compact, provided any material amendment or supplement has been approved by MCC and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement between the Parties.

(b) *Disbursement and Re-Disbursement.* The Disbursement Agreement (and disbursement schedules thereto), as amended from time to time, shall specify the terms, conditions and procedures on which MCC Disbursements and Re-Disbursements shall be made. The obligation of MCC to make MCC Disbursements or approve Re-Disbursements is subject to the fulfillment or waiver of any such terms and conditions. The Government and MCA-Vanuatu shall jointly submit the applicable request for an MCC Disbursement (the "*MCC Disbursement Request*") as may be specified in the Disbursement Agreement. MCC will make MCC Disbursements in tranches to a Permitted Account from time to time as provided in the Disbursement Agreement or as may otherwise be agreed by the Parties, subject to Program requirements and performance by the Government, MCA-Vanuatu and other relevant parties in furtherance of this Compact. Re-Disbursements will be made from time to time based on requests by an authorized representative of the appropriate party designated for the size and type of Re-Disbursement in accordance with the Governing Documents and Disbursement

Agreement; *provided, however*, unless otherwise agreed by the Parties in writing, no Re-Disbursement shall be made unless and until the written approvals specified herein or in the Governing Documents and Disbursement Agreement for such Re-Disbursement have been obtained and delivered to the Fiscal Agent.

(c) Fiscal Accountability Plan. By such time as specified in the Disbursement Agreement or as otherwise agreed by the Parties, MCA-Vanuatu shall adopt as part of the Implementation Plan a fiscal accountability plan that identifies the principles and mechanisms to ensure appropriate fiscal accountability for the use of MCC Funding provided under this Compact, including the process to ensure that open, fair, and competitive procedures will be used in a transparent manner in the administration of grants or cooperative agreements and the procurement of goods and services for the accomplishment of the Project Objectives (the "*Fiscal Accountability Plan*"). The Fiscal Accountability Plan shall set forth, among other things, requirements with respect to the following matters: (i) Funds control and documentation; (ii) separation of duties and internal controls; (iii) accounting standards and systems; (iv) content and timing of reports; (v) policies concerning public availability of all financial information; (vi) cash management practices; (vii) procurement and contracting practices, including timely payment to vendors; (viii) the role of independent auditors; and (ix) the roles of fiscal agents and procurement agents.

(d) Permitted Accounts. The Government shall establish, or cause to be established, such accounts (each, a "*Permitted Account*," and collectively "*Permitted Accounts*") as may be agreed by the Parties in writing from time to time, including:

(i) A single, completely separate U.S. Dollar interest-bearing account (the "*Special Account*") at the Reserve Bank of Vanuatu to receive MCC Disbursements;

(ii) If necessary, an interest-bearing local currency of Vanuatu account (the "*Local Account*") at a commercial bank that is procured through a competitive process to which the Fiscal Agent may authorize transfer from any U.S. Dollar Permitted Account for the purpose of making Re-Disbursements payable in local currency; and

(iii) Such other interest-bearing accounts to receive MCC Disbursements in such banks as the Parties mutually agree upon in writing.

No other funds shall be commingled in a Permitted Account other than MCC Funding and Accrued Interest thereon. All MCC Funding held in an interest-bearing Permitted Account shall earn interest at a rate of no less than such amount as the Parties may agree in the respective Bank Agreement or otherwise. MCC shall have the right, among other things, to view any Permitted Account statements and activity directly on-line or at such other frequency as the Parties may otherwise agree. By such time as shall be specified in the Disbursement Agreement or as otherwise agreed by the Parties, the Government shall ensure that MCA-Vanuatu enters into an agreement with each Bank, respectively, satisfactory to MCC, that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to the Permitted Account, respectively (each a "*Bank Agreement*"). For purposes of this Compact, any bank holding an account referenced in section 4(d) of this Program Annex are each a "*Bank*" and, are collectively referred to as the "*Banks*."

(e) Currency Exchange. The Bank shall convert MCC Funding to the currency of Vanuatu at a rate to which the Parties mutually agree with the Bank in the Bank Agreement.

##### 5. Transparency; Accountability

Transparency and accountability to MCC and to the beneficiaries are important aspects of the Program and Transport Infrastructure Project. Without limiting the generality of the foregoing, in an effort to achieve the goals of transparency and accountability, the Government shall ensure that MCA-Vanuatu:

(a) Establishes an e-mail suggestion box as well as a means for other written comments that interested persons may use to communicate ideas, suggestions or feedback to MCA-Vanuatu;

(b) Considers as a factor in its decision-making the recommendations of the Observers;

(c) Develops and maintains a Web site (the "*MCA-Vanuatu Web site*") in a timely, accurate and appropriately comprehensive manner, such MCA-Vanuatu Web site to include postings of information and documents in English and French, as appropriate; and

(d) Posts on the MCA-Vanuatu Web site and otherwise makes publicly available via appropriate public mediums (including radio and print) in the appropriate language, from time to time, the following documents or information:

(i) The Compact and all Compact Reports;

(ii) All minutes of the meetings of the Steering Committee;

(iii) The M&E Plan, as amended from time to time, along with periodic reports on Program performance;

(iv) All relevant environmental assessments and supporting documents;

(v) All audit reports by an Auditor and any periodic reports or evaluations by a Reviewer;

(vi) All financial reports provided in accordance with the Compact and any relevant Supplemental Agreement;

(vii) Disbursement Agreement, as amended from time to time, as well as the MCC Disbursement Requests submitted thereunder;

(viii) All procurement agreements (including policies, standard documents, procurement plans, and required procedures), solicitations, and notices of awarded contracts; and

(ix) A copy of any legislation and other documents related to the formation, organization and governance of MCA-Vanuatu, including the Governing Documents, and any amendments thereto.

##### Schedule 1 to Annex I—Transport Infrastructure Project

This Schedule 1 describes and summarizes the key elements of the transport infrastructure project that the Parties intend to implement in furtherance of the Infrastructure Objective and the Institutional Strengthening Objective (the "*Transport Infrastructure Project*"). Additional details regarding the implementation of the Transport Infrastructure Project will be included in the Implementation Plan and in relevant Supplemental Agreements.

##### 1. Background

Overcoming transport infrastructure constraints to poverty reduction and economic growth, specifically for rural areas, has been consistently identified through the consultative process as a major impediment to economic growth in Vanuatu. The Government recognizes the importance of adequate and reliable transport infrastructure services as well as the negative impact Vanuatu's poor transportation infrastructure has had on formal economic activity and investment in the agriculture and tourism sectors—the two primary sources of growth and employment in Vanuatu. The Transport Infrastructure Project is intended to reduce transport costs and improve reliability of access to prioritized roads, wharfs and airstrips, and thereby, alleviate one of the

principal constraints to private sector development.

## 2. Summary of the Transport Infrastructure Project and Project Activities

The Transport Infrastructure Project consists of two principal project activities: (i) Civil works for the reconstruction or construction of priority infrastructure on eight islands, covering roads, wharfs, airstrips and warehouses (the "Infrastructure Activity"); and (ii) institutional strengthening efforts in the Public Works Department ("PWD"), including the provision of plant and equipment for maintenance of the infrastructure (the "Institutional Strengthening Activity").

### (a) Infrastructure Activity.

Pursuant to the Infrastructure Activity, MCC Funding will be used to rehabilitate or construct priority infrastructure, (each an "Infrastructure Subproject Activity"), including:

(i) Efate—Ring Road. Upgrade 90 km of the Ring Road on Efate, the most populous of Vanuatu's islands, to a two-lane bitumen seal standard, with improved drainage systems.

(ii) Santo—East Coast Road. Upgrade the 70 km road from Luganville to Port Olry on the island of Santo to a two lane, bitumen seal standard, including associated bridges and other drainage structures.

(iii) Santo—South Coast Road Bridges. Construct an additional five bridges along the south coast road on the island of Santo, improving access to the commercial center and markets at Luganville, on a 15 km section of the road.

(iv) Malekula—Norsup Lakatoro Lits Lits Road. Reconstruct the 11 km of the Norsup-Lakatoro-Lits Lits Road, the administrative and commercial center of the island of Malekula and the Malampa province, linking the three nodes to a two lane bitumen seal standard, with associated drainage works.

(v) Malekula—South West Bay Airstrip. Fill the low lying area surrounding the South West Bay airstrip on the island of Malekula and provide some subsurface drainage to reduce the frequency of closings of the airstrip.

(vi) Pentecost—Loltong Wharf and N-S Road. Construct a wharf in Loltong on the island of Pentecost, suitable for conventional boats and barges close to the Loltong village in a sheltered part of the harbor. The proposed structure will be sufficiently robust to withstand the most severe weather conditions, and is expected to require minimum maintenance. Provide a coral pavement over the 8 km length of the new section

of the North South road and an adequate storm water drainage system. In addition, the North South road, following a ridge from the north to central Pentecost will be upgraded to significantly improve access for the productive southeastern sections of the island to Loltong Wharf.

(vii) Tanna—Whitesands Road. Reconstruct the Whitesands Road on the island of Tanna, providing a coral pavement, substantial concrete-lined drains and floodways and sections of concrete pavement where gradients are very steep.

(viii) Epi—Lamen Bay Wharf. Reinforce the existing causeway of the Lamen Bay Wharf on the island of Epi to extend the life of the structure and extend the wharf face further into deeper water away from the coral reefs to provide a suitable berth for inter island shipping.

(ix) Ambae—Road Creek Crossings. Reconstruct the creek crossings on a 50 km section of road on the island of Ambae to improve the overall level of serviceability. Ambae is a relatively populous and productive island.

(x) Malo—Road Upgrade. Provide better drainage and coral surfacing of the two roads extending 15 km on the island of Malo to improve the overall level of serviceability.

(xi) Warehouses (Several Locations). Provide five new warehouses at various locations throughout the islands for storing outgoing or incoming freight for the shipping industry in Vanuatu. These warehouses are proposed to be operated under a management or lease contract, involving the local private sector.

### (b) Institutional Strengthening Activity.

Recognizing the importance of maintenance of transport infrastructure, the Institutional Strengthening Activity will provide focused assistance to the PWD, to remove key constraints that face the institution in effectively delivering maintenance and repair services. Under the Institutional Strengthening Activity, the Program also provides support for the sustainability and viability of the PWD through organizational reform and policy changes (each an "Institutional Strengthening Subproject Activity" and together, the "Institutional Strengthening Subproject Activities"). MCC Funding will be used to:

(i) Plant and Equipment. Provide essential plant and equipment to maintain road and airstrip infrastructure (the "Equipment Subproject Activity").

Supply of equipment will be made in two ways: (i) Certain new equipment (value of approximately USD \$4.35 million) will be mobilized under the

civil works contract and used initially by the contractor for civil works funded by MCC Funding, and then delivered in specified condition for use by PWD at the end of four years; and (ii) other equipment (value of approximately USD \$1.39 million) will be provided through direct procurement for use by PWD.

(ii) Technical Assistance. Fund the development of the annual PWD action plans and annual audits of PWD's performance. PWD will enter into a service performance agreement with the Ministry of Infrastructure and Public Utilities, by which PWD will be required to meet specific performance targets through an annual action plan for maintenance and repair (the "Technical Assistance Subproject Activity"). Annual audits will be undertaken to measure PWD's performance against the targets, which will form the basis for management accountability.

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks at the Transportation Infrastructure Project and Project Activity levels (i.e., the Infrastructure Activity and the Institutional Strengthening Activity) that may be used to monitor implementation progress. Performance against these benchmarks and the overall impact of the Transport Infrastructure Project and each Project Activity will be assessed and reported at regular intervals to be specified in the M&E Plan or otherwise agreed by the Parties from time to time. The Parties expect that additional benchmarks will be identified during implementation of each Project Activity. Conditions precedent to each Project Activity and sequencing of the Infrastructure Subproject Activities and the Institutional Strengthening Subproject Activities shall be set forth in the Disbursement Agreement or other relevant Supplemental Agreements.

### (c) Project Implementation.

PWD will serve as the Project Manager of the Transport Infrastructure Project, responsible for oversight of the specific Subproject Activities of the Infrastructure Activity. The duties of PWD will include certification of receipt of goods and services procured for the Transport Infrastructure Project. Outside professional services will be contracted through MCA-Vanuatu to assist the Project Manager.

## 3. Beneficiaries

The primary beneficiaries ("Beneficiaries") of the Transport Infrastructure Project fall into the following two broad categories:



- Providers (and laborers) of tourist-related goods and services, including hotels, airlines, tour companies, shops, restaurants, and artisans; and
- Local producers (including landowners, lessees, and processors of primary produce) and inhabitants of remote communities with limited access to social and other services.

The Transport Infrastructure Project is expected to have a transformational impact on Vanuatu's economic development, increasing average income per capita (in real terms) by approximately \$200 or 15% of current income per capita by 2010. GDP is expected to increase by an additional 3% each year as a result of the MCA Program.

The Program is expected to benefit approximately 65,000 poor, rural inhabitants living nearby and using the roads to access markets and social services. The program is also expected to expand the tourism sector by approximately 15% each year once construction is complete. Based on the most recent employment data, this translates to the creation of an estimated 280 additional formal sectors jobs and 25 new locally-owned businesses each year in this sector, impacting over 1,300 people.

#### 4. Donor Coordination

The majority of donors in Vanuatu have focused more consistently on the social sectors. Donors such as Australia and New Zealand have recently committed to enlarging their assistance to the agriculture and tourism sectors in response to the priorities for growth and poverty reduction outlined in the Government's PAA. MCC's focus on transport infrastructure presents a number of mutually beneficial coordination opportunities with ongoing and planned donor programs, namely: The European Union (the "EU") and France's Agricultural Producers Organization Project; the EU and the Asian Development Bank's ("ADB") Tourism Training and Education project; ADB's Rural Credit Strengthening and Secured Transaction Framework projects; New Zealand Agency for International Development's Customary Land Tenure initiatives; the Australian Agency for International Development's "AusAID") Business Climate Reform program; and the EU's Institutional Strengthening for Infrastructure Maintenance program. Moreover, AusAid is providing funding for key household data surveys (such as the Household Income and Expenditure Survey ("HIES")), which will be used in monitoring Program impacts. The United States Agency for International

Development does not maintain a mission in Vanuatu and is not currently providing any development assistance programs to Vanuatu.

#### 5. Sustainability

##### (a) Institutional Sustainability.

PWD is the principal institution responsible for the effectiveness and sustainability of the Program, including maintenance of the roads, and outer island wharfs and airstrips.

A lack of suitable equipment is the single most important factor constraining PWD's road maintenance capacity. Most of the plant is 20 years old. In most provinces, the equipment fleet lacks at least one essential item, seriously reducing the efficiency of the rest. MCC Funding will provide equipment that will allow PWD's reformed institutional capacity to carry out timely maintenance and repairs on all transport infrastructure under its responsibility. MCC Funding will expand PWD's capability and capacity in all maintenance and repair activities, and is expected to reduce its recurrent direct costs (attributable to maintenance of old equipment) by at least 10% of its current budget.

Notwithstanding the past improvements made in strengthening PWD, in order to ensure efficient and timely delivery of services by PWD and to institute sustainable accountability and management efficiency, MCC Funding will provide support for the establishment and maintenance of a Service Performance Contract for PWD. Annual action plans will be developed by the Government, with the assistance of MCA-Vanuatu, which will form the basis for annual assessments against the Service Performance Contract.

##### (b) Financial Sustainability.

(i) Roads. The Parties agree that an annual budget of about USD \$5.7 million, together with the provision of new plant and equipment for maintenance (provided by MCC Funding) is considered to be an appropriate level of funds for road maintenance (the "Road Maintenance Budget Allocation"). MCC Funding will be contingent upon the Government allocating sufficient funds in accordance with the Road Maintenance Budget Allocation.

(ii) Airstrip. PWD is funded through the Government budget process for maintenance of airstrips. Two sources of revenue related to airstrip maintenance are derived from regular air services: (i) A departure tax; and (ii) a landing charge based on aircraft weight. The total revenue collected from these two sources is sufficient for maintenance of the airstrip.

(iii) Sea Ports. Under the Decentralisation Act (1994), the provincial governments were expected to take over ownership and operations and maintenance responsibility for the outer island ports. With no budget allocation for maintenance, the provincial governments have declined to take such responsibility. As a result, PWD remains as the agency to perform maintenance works on wharfs at the request of the provincial governments. Historically, no user fees have been collected at the port facilities. Shefa Province has announced a tax on passengers and cargo departing from sea ports in the province. Although the form of construction or rehabilitation proposed for the wharfs is robust and requires minimal maintenance, some infrequent maintenance will be required. MCC Funding for the wharfs will be contingent upon successful introduction of user charges on shipping to provide a source of revenue.

##### (c) Environmental and Social Sustainability.

The key to ensuring environmental and social sustainability of the Program is ongoing public consultation and attention to environmental mitigation measures to ensure optimal design and implementation and to ensure full country-ownership of the Program. The Government will ensure that environmental and social mitigation measures are followed for all Project Activities in accordance with Environmental Guidelines and the provisions set forth in this Compact and relevant Supplemental Agreements. In agreement with MCC, MCA-Vanuatu will select through an open and competitive process, subject to the approval of MCC, an environmental and social impact officer (the "ESI Officer") to serve as the point of contact for comments and concerns of the parties affected by the Program and the implementation of all Project Activities. The ESI Officer will be located within the Environment Unit of the Government. The ESI Officer will lead the effort to find feasible resolutions to environmental and social issues in connection with the implantation of Project Activities, and will convene periodic public meetings to provide implementation updates and to identify and address public concerns.

Other important sustainability issues involve the provision of adequate maintenance of infrastructure. Insufficient maintenance of assets, such as drainage systems, could lead to environmental degradation and poor performance of the asset. Therefore, institutional sustainability of PWD and the assurance of management



effectiveness (through the proposed Service Performance Contract) are directly linked to environmental sustainability. The Service Performance Contract for PWD will address environmental and social impacts. In addition, potential environmental and social impacts of Program-induced tourism will be evaluated to ensure that Vanuatu has adequate capacity to manage such impacts.

#### 6. Policy, Legal and Regulatory Reforms

The Parties have identified the following policy actions and legislative and regulatory reforms that the Government will pursue in support of the Transport Infrastructure Project to reach its full benefits. Satisfactory implementation of these reforms may be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(a) The Government shall, in accordance with World Bank policy on involuntary resettlement, undertake consultations with land users in the Whitesands Road project area in order to establish appropriate locations for drainage lines and shall address any social issues and claims arising from such consultations to the satisfaction of MCC. Moreover, any required acquisition rights-of-way and any resettlement programs shall be amicably settled with compensation in accordance with World Bank policy on Involuntary Resettlement;

(b) The Government shall ensure that an M&E Implementation Manual ("*M&E Implementation Manual*"), describing all data collection, reporting, and quality assurance mechanisms, must be submitted to and approved by MCC;

(c) The Government will ensure completion of the Household Income and Expenditure Survey and collection of baseline data on all monitoring and evaluation indicators;

(d) PWD shall establish commercially driven maintenance contracts with community representatives for basic routine maintenance activities for the following Infrastructure Subproject Activities: Efate Ring Road (with rural villages), Santo East Coast Road (with rural villages), Malekula Norsup Lakatoro Lits Lits Road, Pentecost North South Road, Tanna Whitesands Road, and Malo Roads. These maintenance contracts must be in effect prior to the commencement of the respective Infrastructure Subproject Activities;

(e) The Government or the respective province shall develop a revenue collection mechanism and an implementation plan for the collection of wharf user fees and their application towards wharf maintenance. This shall

be a condition precedent for initial disbursement of MCC Funding for the relevant Infrastructure Subproject Activity;

(f) The Government will fund the mitigation and remediation costs related to the civil works component of the Transport Infrastructure Project as identified in the environmental management plans ("*EMPs*") in excess of the budgeted amount in the Detailed Financial Plan for such costs;

(g) The Government will ensure that a service performance contract is entered into between PWD and Ministry of Infrastructure and Public Utilities within six months of Entry into Force. The service performance contract shall monitor and assess PWD's performance against an action plan. PWD management shall be held accountable for service performance in accordance with terms to be specified in the service performance contract; and

(h) The Government will allocate sufficient funds for road maintenance activities in accordance with the Road Maintenance Budget Allocation.

Additionally, the Parties agree that the Government will explore insurance coverage options to further ensure the sustainability of the Program Assets.

#### Annex II—Financial Plan Summary

This Annex II to the Compact (the "*Financial Plan Annex*") summarizes the Multi-Year Financial Plan for the Program. Except as defined in this Financial Plan Annex, each capitalized term in this Financial Plan Annex shall have the same meaning given such term elsewhere in this Compact.

##### 1. General

A multi-year financial plan summary ("*Multi-Year Financial Plan Summary*") is attached hereto as Exhibit A. By such time as specified in the Disbursement Agreement, MCA-Vanuatu will adopt, subject to MCC approval, a Multi-Year Financial Plan that includes, in addition to the multi-year summary of anticipated estimated MCC Funding and the Government's contribution of funds and resources, an estimated draw-down rate for the first year of the Compact based on the achievement of performance milestones, as appropriate, and the satisfaction or waiver of conditions precedent. Each year, at least 30 days prior to the anniversary of the entry into force of the Compact, the Parties shall mutually agree in writing to a Detailed Financial Plan for the upcoming year of the Program, which shall include a more detailed plan for such year, taking into account the status of the Program at such time and making

any necessary adjustments to the Multi-Year Financial Plan.

##### 2. Implementation and Oversight

The Multi-Year Financial Plan and each Detailed Financial Plan shall be implemented by MCA-Vanuatu, consistent with the approval and oversight rights of MCC and the Government as provided in this Compact, the Governance Agreement and the Disbursement Agreement.

##### 3. Estimated Contributions of the Parties

The Multi-Year Financial Plan Summary identifies the estimated annual contribution of MCC Funding for Program administration, monitoring and evaluation, the Transport Infrastructure Project, and each Project Activity. The Government's contribution of resources to Program administration, monitoring and evaluation, and the Transport Infrastructure Project shall consist of (i) "in-kind" contributions in the form of Government Responsibilities and any other obligations and responsibilities of the Government identified in this Compact and (ii) such other contributions or amounts as may be identified in relevant Supplemental Agreements between the Parties or as may otherwise be agreed by the Parties; *provided*, in no event shall the Government's contribution of resources be less than the amount, level, type and quality of resources required to effectively carry out the Government Responsibilities or any other responsibilities or obligations of the Government under or in furtherance of this Compact.

##### 4. Modifications

The Parties recognize that the anticipated distribution of MCC Funding between and among the various Program activities and the Project and Project Activities will likely require adjustment from time to time during the Compact Term. In order to preserve flexibility in the administration of the Program, the Parties may, upon agreement of the Parties in writing and without amending the Compact, change the designations and allocations of funds between Program administration and the Project, between one Project Activity and another Project Activity, between different activities within the Project, or between a Project Activity identified as of the Entry into Force and a new Project Activity, without amending the Compact; *provided*, however, that such reallocation (i) is consistent with the Project Objectives, (ii) does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this

Compact, and (iii) does not cause the Government's obligations or responsibilities or overall contribution of resources to be less than specified in section 2.2(a) of this Compact, this Annex II or elsewhere in the Compact.

#### 5. Conditions Precedent; Sequencing

MCC Funding will be disbursed in tranches. The obligation of MCC to

approve MCC Disbursements and Material Re-Disbursements for the Program, the Transport Infrastructure Project, and each Project Activity is subject to satisfactory progress in achieving the Project Objectives and on the fulfillment or waiver of any conditions precedent specified in the Disbursement Agreement for the relevant Program activity, Project or

Project Activity. The sequencing of Project Activities and other aspects of how the Parties intend the Transport Infrastructure Project to be implemented will be set forth in the Implementation Plan, including Work Plans for the applicable Project Activities, and MCC Disbursements and Re-Disbursements will be disbursed consistent with that sequencing.

#### EXHIBIT A—MULTI-YEAR FINANCIAL PLAN

Component (in US\$ millions)	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. <i>Transport Infrastructure Project:</i>						
Infrastructure Activity .....	4.00	22.45	25.80	2.21	0.03	54.47
Institutional Strengthening Activity .....	5.47	0.48	0.09	0.09	0.09	6.22
2. <i>Program Management</i> .....	0.43	0.32	0.28	0.28	0.28	1.59
3. <i>Monitoring and Evaluation</i> .....	0.28	0.06	0.06	0.06	0.06	0.91
4. <i>Fiscal and Procurement Agents</i> .....	1.17	0.14	0.14	0.14	0.14	1.71
5. <i>Audit</i> .....	0.07	0.07	0.07	0.07	0.07	0.33
<b>Total MCC Investment</b> .....	<b>11.42</b>	<b>23.51</b>	<b>26.43</b>	<b>2.85</b>	<b>1.52</b>	<b>65.69</b>

Note: Figures are rounded to second decimal place. Foreign exchange rate: USD = 108 Vatu.

#### Annex III—Description of the M&E Plan

This Annex III to the Compact (the "M&E Annex") generally describes the components of the M&E Plan for the Program. Except as defined in this M&E Annex, each capitalized term in this Annex III shall have the same meaning given such term elsewhere in this Compact.

##### 1. Overview

MCC and the Government (or a mutually acceptable Government Affiliate or Permitted Designee) shall formulate, agree to and the Government shall implement, or cause to be implemented, an M&E Plan that specifies (i) how progress toward the Project Objectives and the intermediate results of each Project Activity (the "Project Activity Outcomes") will be monitored (the "Monitoring Component"), (ii) a methodology, process and timeline for the evaluation of planned, ongoing, or completed Project Activities to determine their efficiency, effectiveness, impact and sustainability (the "Evaluation Component"), and (iii) other components of the M&E Plan described below. Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as periodically generated reports, will be

made publicly available on the MCA-Vanuatu Web site and elsewhere.

##### 2. Monitoring Component

To monitor progress toward the achievement of the Project Objectives and Project Activity Outcomes, the Monitoring Component of the M&E Plan shall identify (i) the Indicators, (ii) the party or parties responsible, the timeline, and the instrument for collecting data and reporting on each Indicator to MCA-Vanuatu, and (iii) the method by which the reported data will be validated.

(a) Indicators. The M&E Plan shall measure the results of the Program using quantitative, objective and reliable data ("Indicators"). Each Indicator will have one or more expected results that specify the expected value and the expected time by which that result will be achieved (each, a "Target"). The M&E Plan will measure and report four types of Indicators. First, Indicators for the Program as a whole (each, a "Goal Indicator") will measure the impact of the Compact on the incomes and poverty of ni-Vanuatu who are directly or indirectly affected by the Project Activities anticipated under the Transport Infrastructure Project. Second, the Indicators for each Objective (each, an "Objective Indicator") will measure whether the improved infrastructure assets are having the intended impact. Third,

outcome Indicators, (each, an "Outcome Indicator") will signal whether the Transport Infrastructure Project is stimulating the expected intermediate results. Fourth, Indicators for each Project Activity (each, a "Project Activity Indicator") will measure implementation success. For each Indicator, the M&E Plan shall define a strategy for obtaining and validating the value of such Indicator prior to its being affected by the Program ("Indicator Baseline"). All Indicators will be disaggregated by gender, income level and age, to the extent practicable.

(i) Goal Indicator. The highest level of results to be achieved by the Program, i.e., the Compact Goal, is understood to be the aggregation of the estimated benefits of the Transport Infrastructure Project and which are indicative of the overall impact expected from all of the Project Activities. While these benefits can be estimated, it is methodologically impossible to attribute with a high degree of precision changes in income at the end of the Compact Term specifically to interventions undertaken under or in furtherance of the Program due to the existence of other factors, unrelated to the Program, that may affect income changes. However, these estimated benefits may be used to inform future impact evaluation. The M&E Plan shall contain the Goal Indicators listed in the table below.

## COMPACT GOAL—INCREASED ECONOMIC GROWTH AND POVERTY REDUCTION

Goal indicator	Indicator definition	Baseline <sup>1</sup>	Year 5	Year 10
Increase cash income per capita of Beneficiaries.	Average cash income per capita of residents living within the catchment area of the infrastructure sub-projects listed below (1).	\$1,206	\$1,411	\$1,695
	Efate: Round Island Road .....	\$804	\$1,160	\$1,633
	Santo: Port Olry Road .....	\$784	\$1,156	\$1,831
	Santo: South Coast Bridges .....	\$784	\$821	\$853
	Tanna: Whitesands Road .....	\$366	\$487	\$604
	Malekula: Lits Lits Road .....	\$1,000	\$1,069	\$1,150
	Malekula: SW Bay Airstrip .....	\$1,000	\$1,010	\$1,019
	Pentecost: Lolong Wharf/N-S Road .....	\$302	\$367	\$420
Reduce poverty (as measured by dependence on subsistence activities).	Fraction of individuals receiving more than X percent of their income (i.e., poverty threshold) from subsistence activities. The "poverty threshold" will be defined during the first year of the program based on the results of the Household Income Expenditure Survey.	TBD	TBD	TBD
Increase tourism employment ....	Number of additional formal tourism jobs created on Efate, Santo and Tanna.	.....	560	1,960

<sup>1</sup> Baseline cash income estimates are based on 1999 HIES, converted to USD and adjusted to 2005 prices using provincial estimates where island data was not available. Statistically representative baseline will be updated during the first year of the Compact.

(ii) Project Objective and Outcome Indicators. The M&E Plan shall contain the Objective and Outcome Indicators listed in the table below, with definitions (where necessary). The corresponding Indicator Baselines and

estimated Targets to be achieved are based on the assumptions from the economic analysis. MCA-Vanuatu may add Objective Indicators or refine the Targets of existing Objective Indicators prior to any MCC Disbursement or Re-

Disbursement for the Transport Infrastructure Project or any Project Activity that may influence that Indicator, or at such other times as may be agreed with MCC, in each case with prior written approval of MCC.

## VANUATU TRANSPORT INFRASTRUCTURE PROJECT

[Objective: Facilitate transportation to increase tourism and business development<sup>1</sup>]

Objective indicators (metric of project success observable by end of compact)	Baseline <sup>2</sup>	Year 1 <sup>3</sup>	Year 2 <sup>3</sup>	Year 3 <sup>3</sup>	Year 4 <sup>3</sup>	Year 5
Number of New Hotel Rooms <sup>4</sup> Constructed (cumulative):						
Efate .....	0	n.t.	n.t.	n.t.	200	400
Santo .....	0	n.t.	n.t.	n.t.	70	140
Number of Tourists (per annum):						
Vanuatu .....	61,453	65,755	70,358	75,283	84,170	87,743
Santo .....	6,963	7,450	7,972	8,530	11,137	13,744
Tanna .....	5,000	5,350	5,725	6,125	6,738	7,412
Malekula (South-West Bay) .....	30	30	30	30	80	130
Number of Hotel & Bungalow Bed-nights <sup>5</sup> occupied (per annum):						
Efate .....	243,380	260,420	278,650	298,160	377,430	462,250
Santo .....	64,500	69,015	73,846	79,015	84,546	90,465
Tanna .....	15,000	16,050	17,174	18,376	20,213	22,235
Malekula (South-West Bay) .....	90	90	90	90	240	390

## VANUATU TRANSPORT INFRASTRUCTURE PROJECT

[Objective: Facilitate transportation to increase agriculture production]

Objective Indicators (metric of project success observable by end of compact)	Baseline <sup>2</sup>	Year 1 <sup>3</sup>	Year 2 <sup>3</sup>	Year 3 <sup>3</sup>	Year 4 <sup>3</sup>	Year 5
Airfreight uplifted from South West Bay, Malekula (tonnes per annum) .....	35	35	35	35	45	50
Cargo shipped from Lolong wharf, Pentecost (tonnes per annum) .....	1,000	1,000	1,000	1,000	1,025	1,056

## VANUATU TRANSPORT INFRASTRUCTURE PROJECT

Outcome Indicators (indication that the project is having the intended impact)	Baseline <sup>2</sup>	Year 1 <sup>3</sup>	Year 2 <sup>3</sup>	Year 3 <sup>3</sup>	Year 4 <sup>3</sup>	Year 5
Traffic volume (average annual daily traffic): <sup>6</sup>						
Santo: South Coast Bridges .....	33	33	n.m.	36	n.m.	40

## VANUATU TRANSPORT INFRASTRUCTURE PROJECT—Continued

Outcome Indicators (indication that the project is having the intended impact)	Baseline <sup>2</sup>	Year 1 <sup>3</sup>	Year 2 <sup>3</sup>	Year 3 <sup>3</sup>	Year 4 <sup>3</sup>	Year 5
Malekula: Lits Lits Road .....	200	200	n.m.	221	n.m.	244
Pentecost: N-S Road .....	25	25	n.m.	28	n.m.	31
Days road is closed (number per annum):						
Santo: South Coast Bridges .....	90	90	n.m.	90	0	0
Pentecost: North-South Road .....	90	90	n.m.	90	0	0
Number of S-W Bay, Malekula flights cancelled due to flooding (per annum) .....	33	33	n.m.	33	7	7
Time at wharf (hours/vessel) .....	8	8	n.m.	4	4	4

## VANUATU TRANSPORT INFRASTRUCTURE PROJECT—ROAD MAINTENANCE QUALITY

[Objective: Improved road sustainability through increased funding and improved maintenance]

Outcome Indicator (Indication that the Project is having the intended impact)	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
Share of road network in "Good" or "Fair" condition (%) <sup>7</sup> .....	TBD	TBD	n.m.	TBD	n.m.	TBD

## Notes:

<sup>1</sup> Targets for all tourism projects (except South-West Bay) incorporate an assumed without-project rate of growth of tourism (7%) in addition to program's projected incremental impact beginning in Year 4. Tourism in South-West Bay, Malekula is not expected to grow until the airstrip is improved.

<sup>2</sup> The Baseline data presented in these tables was collected during due diligence for the purposes of estimating the economic impact. Data will be collected and quality checked on all indicators during the first year of the program (during the design phase and prior to construction) to validate these baseline assumptions. Hence, Year 1 will become the baseline.

<sup>3</sup> Targets in intermediate years will depend on precise implementation schedule for specific subprojects.

<sup>4</sup> Assumes approximately 2 beds per room.

<sup>5</sup> Based on 40% capacity utilization rate for major hotels. To be updated for all hotels and bungalows during initial implementation of the Project. Survey data is to be collected on room-nights of accommodation available and used (to give capacity utilization), and person-nights of accommodation used (to indicate quantity of tourism), with only the latter to be presented as in Indicator.

<sup>6</sup> Extent of reduced vehicle operating costs will be a function of the quantity of traffic and delivery of the improved road. As the latter will be monitored through an Outcome Indicator and technical supervision reports, only the traffic volume need be measured. Traffic volume is reported as the Average Annual Daily Traffic (equal to annual traffic divided by 365). Traffic on Round-Island Road (Efate), Port Orly Road (Santo), and White Sands Road (Tanna) will be monitored for evaluation purposes in the first and last years of the Compact. However, they are not included here because targets cannot be reasonably estimated as they depend on multiple factors.

<sup>7</sup> Based on an audited survey of road conditions conducted as part of the PWD action plan and performance review. An independent baseline survey will be conducted during the first year of the program to establish current road conditions. Performance targets will be a function of five year performance plan developed during the first year of the Compact. Independent audit will be repeated during the third and fifth years of the program.

All monetary values are reported in constant U.S. Dollars (2005).

n.t. (not targeted) Indicates that the indicator will not be targeted during that year given that the transportation infrastructure will not be complete until the end of year 3. However, the indicator will be monitored for evaluation purposes.

n.m. (not monitored) Signifies that an indicator will not be monitored in a given year due to the lag between construction, project completion, and commencement of benefits.

(iii) Project Activity Indicators. The M&E Plan shall contain the Project Activity Outcome Indicators listed in the table below, with definitions (where necessary). Indicators have been selected to measure the progress of construction and PWD adherence to

action plan objectives. The Baseline and estimated Targets are notional based on anticipated implementation schedule. MCA-Vanuatu may add Project Activity Outcome Indicators or refine the Targets of existing Project Activity Outcome Indicators prior to any MCC

Disbursement or Re-Disbursement for any Project Activity that may influence that Indicator, or at such other times as may be agreed with MCC, in each case with prior written approval of MCC.

## VANUATU TRANSPORT INFRASTRUCTURE PROJECT

Activity indicators <sup>1</sup> (metric of implementation performance)	Year 1	Year 2	Year 3	Year 4	Year 5
Kilometers of Roads Upgraded .....		80	213.8		
Efate: Round-Island Road .....		45	90		
Malekula: Norsup-Lits Lits Road .....			10.8		
Malo: Multiple Roads .....			5		
Pentecost: North-South Road .....			8		
Santo: East Coast Road .....		35	70		
Tanna: White Sands Road .....			30		
Number of River Crossings Constructed .....		40	5		
Ambae: Creek Crossings Reconstruction .....		40			
Santo: South Coast Road Bridges .....			5		
Airstrip Meters Upgraded at S-W Bay, Malekula .....		2,000			
Number of maritime wharves reconstructed .....			2		
Pentecost: Lolong Wharf .....			1		

## VANUATU TRANSPORT INFRASTRUCTURE PROJECT—Continued

Activity indicators <sup>1</sup> (metric of implementation performance)	Year 1	Year 2	Year 3	Year 4	Year 5
Epi: Lamén Bay Wharf .....	.....	.....	1	.....	.....
Number of Warehouses Constructed .....	.....	.....	5	.....	.....
Maintenance Activities: <sup>2</sup>					
Equipment delivered (USD millions) .....	1.00	0.39	.....	.....	4.35
Utilization of equipment <sup>3</sup> .....	.....	50%	75%	80%	80%
Annual PWD Score <sup>4</sup> .....	.....	60	70	80	90
PWD Budget as a percentage of transport revenue collected (USD millions at, 2005 prices) <sup>5</sup> .....	TBD	TBD	TBD	TBD	TBD

## Notes:

<sup>1</sup> Activity Targets are notional and will depend on the specific implementation timeline provided by the contractor. These will be finalized during the first year of the Compact.

<sup>2</sup> Country's performance relative to maintenance activity Targets will be linked to disbursements.

<sup>3</sup> Time each item of equipment is used relative to work time.

<sup>4</sup> Audited composite annual score measuring PWD's performance against targets set in the annual action plan. Maximum score is 100.

<sup>5</sup> As reported in Government revenues and budget for road maintenance.

(b) Data Collection and Reporting. The M&E Plan shall establish guidelines for data collection and a reporting framework, including a schedule of reporting required under the terms of the Compact and the responsible parties. The Program Management Unit shall conduct regular assessments of Program performance to inform MCA-Vanuatu, the Project Manager and MCC of progress under the Program and to alert these parties to any problems. These assessments will report the actual results compared to the Targets on the Indicators referenced in the Monitoring Component, explain deviations between these actual results and Targets, and in general, serve as a management tool for implementation of the Program. With respect to any data or reports received by MCA-Vanuatu, MCA-Vanuatu shall promptly deliver such reports to MCC along with any other related documents, as specified in this Annex III or as may be requested from time to time by MCC.

(c) Data Quality Reviews. From time to time, as determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan shall be reviewed to ensure that data reported are as valid, reliable, and timely as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data, across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where those levels of quality are not possible, given the realities of data collection. The data quality reviewer shall enter into an Auditor/Reviewer Agreement with MCA-Vanuatu in accordance with Annex I.

### 3. Evaluation Component

The Program shall be evaluated on the extent to which the interventions contribute to the Compact Goal. The

Evaluation Component shall contain a methodology, process and timeline for analyzing data in order to assess planned, ongoing, or completed Project Activities to determine their efficiency, effectiveness, impact and sustainability. The Evaluation Component shall contain two types of reports: Final Evaluations and Ad Hoc Evaluations, and shall be finalized before any MCC Disbursement or Re-Disbursement for specific Program related activities or Project Activities.

(a) Final Evaluation. MCA-Vanuatu, with the prior written approval of MCC, may engage an independent evaluator to conduct an evaluation at the expiration or termination of the Compact Term ("Final Evaluation") or at MCC's election, MCC may engage such independent evaluator and shall provide notification of such engagement to MCA-Vanuatu. The Final Evaluation must at a minimum (i) evaluate the efficiency and effectiveness of the Project Activities (and Subproject Activities, as appropriate); (ii) estimate, quantitatively and in a statistically valid way, the causal relationship between the Compact Goal (to the extent possible), the Project Objectives, Project Outcome and Project Activities (and Subproject Activities, as appropriate); (iii) determine if and analyze the reasons why the Compact Goal, Project Objectives and Project Outcomes and Project Activities were or were not achieved; (iv) identify positive and negative unintended results of the Program; (v) provide lessons learned that may be applied to similar projects; (vi) assess the likelihood that results will be sustained over time; and (vii) any other guidance and direction that will be provided in the M&E Plan. To the extent engaged by MCA-Vanuatu, such independent evaluator shall enter into an Auditor/Reviewer Agreement

with MCA-Vanuatu in accordance with Annex I.

(b) Ad Hoc Evaluations. Either MCC or MCA-Vanuatu may request ad hoc or interim evaluations or special studies of the Transport Infrastructure Project, Project Activities, or the Program as a whole prior to the expiration of the Compact Term. If MCA-Vanuatu engages an evaluator, the evaluator will be an externally contracted independent source selected by MCA-Vanuatu, subject to the prior written approval of MCC, following a tender in accordance with the Procurement Guidelines, and otherwise in accordance with any relevant Implementation Letter or Supplemental Agreement. The cost of an independent evaluation or special study may be paid from MCC Funding. If MCA-Vanuatu requires an ad hoc independent evaluation or special study at the request of the Government for any reason, including for the purpose of contesting an MCC determination with respect to the Transport Infrastructure Project or any Project Activity or to seek funding from other donors, no MCC Funding or MCA-Vanuatu resources may be applied to such evaluation or special study without MCC's prior written approval.

### 4. Other Components of the M&E Plan

In addition to the Monitoring and Evaluation Components, the M&E Plan shall include the following components for the Project Activities, including, where appropriate, roles and responsibilities of the relevant parties and Providers:

(a) Costs. A detailed cost estimate for all components of the M&E Plan.

(b) Assumptions and Risks. Any assumptions and risks external to the Program that underlie the accomplishment of the Objectives and Project Activity Outcomes provided, however, such assumptions and risks



shall not excuse performance of the Parties, unless otherwise expressly agreed to in writing by the Parties.

*5. Implementation of the M&E Plan*

(a) Approval and Implementation. The approval and implementation of the M&E Plan, as amended from time to time, shall be in accordance with the Program Annex, this M&E Annex, the Governance Agreement, and any other relevant Supplemental Agreement.

(b) Steering Committee. The completed portions of the M&E Plan will be presented to the Steering Committee at the Steering Committee's initial meeting, and any amendments or modifications thereto or any additional components of the M&E Plan will be presented to the Steering Committee at appropriate subsequent meetings of the

Steering Committee. Members of the Steering Committee will have the opportunity to present suggestions on the M&E Plan.

(c) MCC Disbursement and Re-Disbursement for a Project Activity. Unless the Parties otherwise agree in writing, prior to, and as a condition precedent to, the initial MCC Disbursement or Re-Disbursement with respect to certain Project Activities, the baseline data or report, as applicable and as specified in the Disbursement Agreement, with respect to such Project or Project Activity must be completed in form and substance satisfactory to MCC. As a condition to each MCC Disbursement or Re-Disbursement there shall be satisfactory progress on the M&E Plan for the Transport Infrastructure Project or any Project

Activity, and substantial compliance with the M&E Plan, including any reporting requirements.

(d) Modifications. Notwithstanding anything to the contrary in the Compact, including the requirements of this M&E Annex, MCC and the Government (or a mutually acceptable Government Affiliate or Permitted Designee) may modify or amend the M&E Plan or any component thereof, including those elements described herein, without amending the Compact; provided, any such modification or amendment of the M&E Plan has been approved by MCC in writing and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement between the Parties.

[FR Doc. 06-2553 Filed 3-20-06; 8:45 am]

BILLING CODE 9210-01-P



# Federal Register

---

Tuesday,  
March 21, 2006

---

## Part III

### Department of Housing and Urban Development

---

24 CFR Part 972

Conversion of Developments From Public  
Housing Stock; Methodology for  
Comparing Costs of Public Housing and  
Tenant-Based Assistance; Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 972**

[Docket No. FR-4718-F-02]

RIN 2577-AC33

**Conversion of Developments From Public Housing Stock; Methodology for Comparing Costs of Public Housing and Tenant-Based Assistance**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule provides the cost methodology that public housing agencies (PHAs) are required to use under HUD's regulations governing required and voluntary conversion of public housing developments to tenant-based assistance. Both programs require PHAs, before undertaking any conversion activity, to compare the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing.

**DATES:** *Effective Date:* April 20, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Bessy Kong, Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW., Room 4116, Washington, DC 20410-5000; telephone (202) 708-0713 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On September 17, 2003, HUD published a proposed rule (68 FR 54624) to establish the cost methodology that public housing agencies (PHAs) must use under HUD's programs for the required and voluntary conversion of public housing developments to tenant-based assistance. The Quality Housing and Work Responsibility Act of 1998 (title V of the Fiscal Year 1999 HUD Appropriations Act; Pub. L. 105-276, approved October 21, 1998) (QHWRA) authorized the two conversion programs. Both programs require that PHAs, before undertaking any conversion activity, compare the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing. The methodology would be codified as an

appendix to 24 CFR part 972, which contains the regulations for the required and voluntary conversion programs.

The required conversion program is authorized under section 537 of QHWRA, which added a new section 33 to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act). Section 33 requires PHAs to annually review their public housing inventory and identify distressed developments that must be removed from the public housing inventory. If it would be more expensive to modernize and operate a distressed development for its remaining useful life than to provide tenant-based assistance to all residents, or the PHA cannot assure the long-term viability of a distressed development, then it must develop and carry out a plan to remove the development from its public housing inventory and convert it to tenant-based assistance. The regulations for the required conversion program are located in subpart A of 24 CFR part 972.

The voluntary conversion program is authorized under section 533 of QHWRA, which amended section 22 of the 1937 Act. As amended, section 22 authorizes PHAs to voluntarily convert a development to tenant-based assistance by removing the development or a portion of a development from its public housing inventory and providing for relocation of the residents or provision of tenant-based assistance to them. This action is permitted only when that change would be cost effective, principally benefits residents of the development and the surrounding area, and not have an adverse impact on the availability of affordable housing. The regulations for the voluntary program are located in subpart B of 24 CFR part 972.

In tandem with the September 17, 2003, proposed cost methodology rule, HUD released a Web-based cost comparison calculator that was posted on the HUD Web site (<http://www.hud.gov/offices/pih/costcalculator.cfm>) to aid PHAs in conducting the required cost comparisons. The downloadable spreadsheet calculator is designed to walk PHAs through the required calculations and comparisons and permits PHAs to enter the relevant data for their PHA and the development being assessed.

**II. This Final Rule; Significant Changes to September 17, 2003, Proposed Rule**

This final rule follows publication of the September 17, 2003, proposed rule and takes into consideration the public comments received on it. The most significant differences between this final

rule and the September 17, 2003, proposed rule are listed below. The changes, and HUD's rationale for making the revisions, are discussed more fully in section IV of this preamble:

1. *Remaining useful life time period.* The final rule establishes uniform time periods for estimating the remaining useful life of developments for the voluntary and required conversion programs. In addition to the physical condition of a property, there are three key assumptions that guide how PHAs prepare modernization estimates that affect remaining useful life and determine whether a 20, 30, or 40-year remaining useful life evaluation period will be used for the cost-test. When calculating the public housing revitalization, operating, and accrual costs for estimating the remaining useful life and viability of a development, PHAs will use a 30-year period if the level of modernization addresses all accumulated backlog needs and the planned redesign ensures long-term viability. If the modernization is equivalent to new construction or the renovation achieves as-new conditions, a 40-year remaining useful life test is used. When light or moderate rehabilitation is undertaken that does not cover all accumulated backlog, but it is compliant with the International Existing Building Codes (ICC) or Public Housing Modernization Standards in the absence of a local rehabilitation code, the 20-year remaining useful life evaluation period must be used. The final rule does not adopt the proposed 15-year evaluation period for voluntary conversions.

2. *Inclusion of net proceeds from the sale or lease of a property for voluntary conversions.* The final rule requires that a PHA include in the cost-test calculations the residual value (or net sales proceeds) from the sale or lease of a property that is to be voluntarily converted to tenant-based voucher assistance. The PHA will be required to hire an appraiser to estimate the market value of the property using the comparable sale, tax-assessment, or revenue-based appraisal methods. HUD will permit PHAs to incorporate the appraised market value or estimated amount of any residual value or net sales proceeds that would result from the sale or lease of the property in the cost-test. PHAs must incorporate this market or residual value estimate into the cost-test depending on whether a PHA will sell a property and pay for demolition and remediation costs to prepare the site for sale.

The market value of the property is determined using one or more of the

appraisal methods identified above to obtain an accurate estimate of the actual market value. The residual value is derived by calculating the estimated market value for the property based on the appraisal, minus any costs required for demolition and remediation. Residual value must be incorporated into the cost-test instead of the actual market value only when any demolition, site remediation, and clearance costs that are necessary are covered by the selling PHA. The market value or estimated amount of any residual value or net sales proceeds that would result from the sale or lease of the property must be included in the cost-test as an additional cost (a foregone opportunity cost) of keeping the development as a public property, and it will be added to the public housing cost side of the ledger before a comparison is made to voucher costs.

As noted, this revision would apply solely to voluntary conversions. Demolition and remediation costs would now apply only in the computation of net residual value for voluntary conversion and would no longer be added to either the modernization or voucher costs for the public housing and voucher cost-comparison for voluntary or required conversion.

3. *Vacant units.* Under the cost-test, the vacancy adjustment factor is a 20 percent representation of long-term vacant units used to determine the total unit count used to estimate operating costs for a property. All funded occupied and vacant units are factored into the calculations to determine per-unit costs for respective developments. Using this vacancy adjustment factor, the cost-test distinguishes partially funded vacant units from fully funded vacant units. When calculating an estimate of operating costs per occupied unit, this final rule provides that 20 percent of long-term vacant units will be counted rather than 50 percent. This factor excludes only a limited 20 percent fraction of the unit costs associated with these partially funded vacant units instead of 50 percent. As development-level estimates become more accurate and as vacant units beyond 3 percent are not funded under the new operating fund formula, this provision will lose even its current minor impact.

4. *Payment standard used to calculate voucher costs for conversion determinations.* The final rule requires PHAs to use the payment standard of recent movers for the Fair Market Rent Area or sub-area for properties proposed for voluntary or required conversion to estimate voucher costs. HUD has revised

the cost-test factor used to calculate Housing Choice Voucher tenant-based assistance. This factor is used instead of the proposed rule requirement for a PHA to use the higher of the average cost (gross rents) for voucher units occupied by recent movers, or the applicable Section 8 payment standard to calculate the voucher costs required to provide housing assistance instead of public housing.

### III. Transition to Project-Based Accounting and Asset Management

On April 14, 2005, HUD published a proposed rule (70 FR 19858) to revise the Public Housing Operating Fund Program. This *proposed rule would require* PHAs to manage properties in their inventory in accordance with an asset management model, consistent with practices in the multifamily-assisted housing industry. Under this model, PHAs would be required to adopt project-based accounting and project-based budgeting and management practices that are essential components of asset management. Under an asset management approach, HUD and PHAs will work to improve efficiency in managing properties; assess the performance of properties; consider alternatives to preserve properties; make long-term decisions regarding re-investment of viable properties; or reposition assets of non-viable properties that are performing at a sub-par level.

Required and voluntary conversion assessments are two existing tools available for PHAs to assess the cost-effectiveness and viability of public housing properties by comparing voucher costs to the costs to continue operating a development. As HUD transforms its monitoring practices to a property-centric focus and the public housing program adopts property-based accounting, budgeting, and asset management practices, and as lessons are learned in regard to public housing properties that are converted to tenant-based assistance, it is likely the Department will need to revise the cost-test methodology in the future.

### IV. Discussion of Public Comments

The public comment period on the September 17, 2003, proposed rule closed on November 17, 2003. HUD received 14 public comments. Comments were submitted by PHAs, a private citizen, a consulting firm, three of the main national organizations representing PHAs, and several national legal aid and low-income advocacy organizations. This section of the preamble presents a summary of the significant issues raised by the public

commenters and HUD's responses to these issues.

*Comment: Support for Internet cost calculator.* Several commenters wrote that the Internet calculator posted on HUD's Web site is very useful. They congratulated HUD on developing the spreadsheet calculator to help make conversion calculations easier.

*HUD Response.* HUD appreciates the comments received from PHAs regarding the usefulness of the spreadsheet calculator. HUD believes the cost methodology is a sound approach to determine the viability and ongoing useful life of public housing properties compared with providing vouchers in a local rental market. The methodology and associated spreadsheet calculator are tools developed to facilitate the comparisons of programmatic costs. The cost methodology and cost spreadsheet outline the methodology and procedures for PHAs to uniformly conduct conversion determinations using PHA-derived cost data to identify non-viable properties with costs that exceed vouchers.

*Comment: HUD should use a simplified cost test for small PHAs to determine cost-effectiveness of conversion.* Several commenters made this suggestion. The commenters wrote that the simplified test should be based on the housing construction cost limits applicable to the developments divided by an assumed useful life of the property (e.g., 50 years), multiplied by the project age in years to determine the presumed modernization cost. The commenters wrote that this methodology should recognize that a project has an ultimate life span without requiring the calculation of repair costs for all deficiencies.

*HUD Response.* HUD has not adopted the suggestion of these commenters. This suggestion does not adequately address the statutory intent of the cost methodology to assess the viability of properties based on the physical conditions of specific developments. HUD has developed the cost spreadsheet calculator to ease the administrative efforts of all PHAs. This cost-test and cost-calculator are designed for PHAs to accurately estimate public housing costs, including estimated revitalization (modernization) costs for properties based on the unique conditions and characteristics of individual properties instead of a one-size-fits-all approach as proposed by this commenter. HUD is applying an amortization life cycle of 30 years (with 20- or 40-year options) that is based upon an accrual model that assumes all new physical need is met annually and

that all or most of the accumulated backlog and redesign necessary for viability is also addressed.

*Comment:* HUD should institute an annual review process, including a formal comment period to adjust the methodology periodically or when necessary. The commenters wrote that this is necessary to legitimize the methodology and prevent it from being error prone and irrelevant over time.

*HUD Response.* HUD believes the cost methodology is a sound approach for PHAs to conduct conversion determinations. These cost comparisons use cost-data provided by PHAs in accordance with the unique conditions and characteristics of properties within a PHA's inventory and voucher costs in the local rental market. HUD believes this cost-test and calculator spreadsheet are accurate tools for PHAs to use to assess the viability of properties compared with vouchers and whether properties should be re-invested in or removed from the inventory in tandem with the HUD approval process.

No later than 5 years following the effective date of this final rule, HUD will review the cost test, to determine whether it is necessary to update or revise the methodology to reflect new policy or more up-to-date methodologies. Should HUD determine that revisions to the cost methodology are necessary, it will implement such changes through rulemaking, Federal Register notice, PIH notice, or other means, as it determines appropriate based on the specific nature of the changes.

*Comment:* Adequate operating and capital funding would eliminate the need for the conversion programs. One commenter wrote that conversion actions are an appropriate step to rid public housing of non-viable developments, while protecting developments that are viable in the long term. However, the commenter also wrote that limited appropriations to preserve public housing would increase the need for conversion. The commenter wrote that adequate operating and capital funding would eliminate the need for this cost-test and mandatory and voluntary conversions.

*HUD Response.* The purpose of the conversion programs is to enable PHAs to identify non-viable developments whose costs, relative to vouchers, merit permanent removal from the public housing inventory. The cost test determines the most cost-effective method for a particular property, either to modernize it or replace the property with housing vouchers. The comparison is necessary for proper selection of the

alternatives, regardless of the level of appropriation.

PHAs may supplement capital and operating funding by seeking state and local funding or private financing. PHAs are authorized to leverage additional resources under section 30 of the 1937 Act. These are additional financing options available for PHAs to modernize appropriate developments.

*Comment:* The final rule should provide for construction of replacement developments after conversion. One commenter recommended that the final rule should clarify that a PHA may build replacement housing following the removal of housing deemed to be distressed as a result of the cost test. Additionally, the commenter wrote that HUD should prohibit conversion if this replacement option is more cost-effective than conversion to tenant-based rental assistance.

*HUD Response.* Under the regulations for the required and voluntary conversion programs, PHAs are permitted to determine the most feasible and cost-effective options for providing relocation and permanent replacement housing for families impacted by the conversion and removal of developments from the inventory (see §§ 972.130 and 972.230). PHAs must provide such families with either a comparable assisted unit or a housing choice voucher. Further, under § 972.127 of the required conversion program, a PHA must identify and demonstrate that funding sources are available to revitalize a development. Section 972.218 of the voluntary conversion program regulations provide that a PHA must describe the future use of a property after conversion and may include the means and timetable to complete these activities.

The applicable sections of the required and voluntary conversion program regulations cited above demonstrate that PHAs are permitted to build replacement housing. However, the statutes authorizing the programs do not direct HUD to use this cost-test to assess whether or not it is cost-effective to rebuild replacement housing. Section 9 of the 1937 Act contains a provision indicating the limitations on new construction and building new public housing units. PHAs are only permitted to build new public housing units if they are mixed-finance developments that leverage significant financing and the PHA's total inventory will not exceed the number of units owned, operated, or assisted as of October 1, 1999, except if the new units to be built are cheaper than Section 8 for the useful life of the property for the same period of time (40 years or as determined under

the required conversion regulation). Further, these units must be built in accordance with the Total Development Cost (TDC) limits for the applicable jurisdiction. HUD does not believe it would be appropriate to restrict the authority of a PHA to determine how to provide replacement housing to impacted families because this cost-test was not intended to assess construction costs for building replacement housing.

*Comment:* Support for the inclusion of net proceeds. A commenter strongly encouraged HUD to include net proceeds in the cost-test.

*HUD Response.* Upon further consideration, HUD agrees with the commenter and has revised the rule accordingly for voluntary conversions. HUD believes that the inclusion of market or residual value will help to ensure that PHAs more fully consider the cost-effectiveness of voluntary conversions and whether such conversions are warranted. This final rule requires that a PHA include in the cost-test calculations the market or residual value (or net sales proceeds) from the sale or lease of a property that is to be voluntarily converted to tenant-based voucher assistance. The PHA will be required to hire an appraiser to estimate the market value of the property using the comparable sale, tax-assessment, or revenue-based appraisal methods. HUD will issue additional guidance on the required appraisals, including information regarding the HUD protocols for reviewing and assessing the accuracy of the appraisals.

The estimated amount of any market value, residual value, or net sales proceeds that would result from the sale or lease of the property must be included in the cost-test as an additional foregone opportunity cost of maintaining the property as public housing. The residual value is to be determined by calculating the estimated market value for the property based on the appraisal, minus any costs required for demolition or remediation deletion (with such costs capped at the sales value so that the residual value will not equal a negative amount).

This revision is consistent with the policies and procedures contained in Office of Management and Budget (OMB) Circular A-94, which provides guidance on conducting cost-effective analyses for determining the optimum use of Federal resources.

*Comment:* Opposition to including net proceeds from the sale or lease of a development or land to offset voucher costs. Several commenters on this issue objected to the inclusion of net proceeds; however, the reasons for this opposition varied. Several of the



commenters wrote that assessing net proceeds would be outside the scope of the cost test for determining the viability of public housing. One commenter wrote that if the market value of property were to be considered, it would be more appropriate to add this value to the voucher costs or deduct the value from public housing revitalization costs. Another commenter suggested that if net proceeds were included, they should be offset by the estimated remaining value of a development if the property is to be operated for an additional 20- or 30-year period.

**HUD Response.** HUD does not agree with the commenters. As noted above, this final rule requires that a PHA include in the cost-test calculations the market or residual value (or net sales proceeds) from the sale or lease of a property that is to be voluntarily converted to tenant-based assistance. HUD has determined that the inclusion of residual value will help to ensure that PHAs more fully consider the cost-effectiveness of voluntary conversions and whether such conversions are warranted.

**Comment:** *The cost methodology should provide for greater consideration of local community issues and other non-quantitative factors.* Several commenters suggested that certain qualitative, social, economic, and community factors should be considered by PHAs in making conversion decisions. The commenters wrote that HUD should consider the impact of a conversion on a community, including estimated changes in housing demand, rents, and neighborhood characteristics, such as the willingness of landlords to accept voucher holders. The commenters also wrote that the cost comparisons should be considered in reference to and consistent with PHA Plan and local planning processes.

**HUD Response.** HUD believes the conversion program planning requirements and HUD approval process address these concerns. HUD believes quantitative, non-financial, and social factors that impact the conversion of developments, residents, and the surrounding neighborhoods are adequately addressed in the regulations for the required and voluntary conversion programs. PHAs must consult with residents and develop relocation plans under both conversion programs. Families are provided relocation counseling and assistance to help them successfully relocate to other project-based units or to lease quality units.

Voluntary conversions are permitted and approved by HUD only if the conversion principally benefits

residents and does not adversely affect the availability of affordable housing in the community. When making a determination of whether a conversion principally benefits residents, the PHA, and the community, the PHA must consider such factors as the availability of landlords providing tenant-based assistance, as well as access to schools, jobs, and transportation.

Under the HUD review and approval process, PHAs are required to evaluate the supply of quality units compared with the number of voucher holders that will need rental units. PHAs must demonstrate that voucher holders will be able to successfully find affordable units in the local rental market. The voluntary conversion program regulations at § 972.218 require PHAs to analyze the local rental market conditions as part of a conversion assessment required for HUD approval of conversion plans. This analysis must include an assessment of the availability of decent and safe units that can be rented at or below the payment standard set for providing housing choice voucher assistance.

**Comment:** *For required conversions, the cost test should only be used to make a presumptive finding that conversion is cost-effective.* One commenter made this suggestion. The commenter wrote PHAs should be permitted to rebut the findings of the cost-test using direct or indirect financial and social cost information.

**HUD Response.** HUD has not made any changes to the rule based on this comment; however, § 972.127 of the required conversion regulations addresses the concerns of this commenter. Under the required conversion program, more than the cost-test is used by PHAs to identify distressed developments with more than 250 units that have excessive vacancy rates over a 3-year period and which are subject to required conversion determinations. Once a PHA identifies a distressed development with costs that exceed vouchers, the PHA is still able to demonstrate the long-term viability of a development and avoid mandatory removal. A PHA must meet four regulatory factors in order for a development to satisfy this long-term viability test. HUD believes the resident advisory board consultation and relocation requirements, in addition to the conversion and PHA planning and reporting requirements, which provide that the relocation plan must be consistent with the local Consolidated Plan and be made available for inspection prior to public hearings, work together to adequately ensure that that PHA conversion plans are

meaningful and beneficial for the interests for a local community, as well as the Federal government.

**Comment:** *Post-conversion financing for rehabilitation.* Several PHAs submitting comments indicated an interest in removing developments from their inventory and applying for tax credits, site-based vouchers, or other financing to use equity and debt to cover debt service to rehabilitate properties.

**HUD Response.** HUD believes the regulations regarding HUD's review and approval of conversion assessments already address the concerns expressed by these commenters. Under § 972.218 of the voluntary conversion regulations, PHAs are permitted to remove non-viable developments with operating and revitalization costs that exceed vouchers. Properties are determined to be non-viable using a pre- and post-rehabilitation market analysis. These two market analyses are designed for PHAs and HUD to evaluate the feasibility of redeveloping and operating the property as public housing versus providing low-income, unassisted, or market rate housing. The conversion assessment must describe the planned future use of the converted developments, as well as the means and timeframes for completing these conversion and redevelopment activities. PHAs are required to identify available financing and describe the future use of properties proposed for conversion and redevelopment.

**Comment:** *HUD should award PHAs for leveraging financing for conversions.* One commenter made this suggestion. However, the commenter wrote that non-federal sources should not count against conversion through the cost-test methodology.

**HUD Response.** HUD declines to evaluate a PHA's efforts at leveraging financing for revitalization activities associated with voluntary or required conversion actions. HUD's approval relative to a PHA securing financing for revitalization activities is limited to the long-term viability test for required conversion (see § 972.139) and a description of the future use of a property for voluntary conversion (see §§ 972.218 and 972.224). HUD believes this level of review is adequate.

**Comment:** *HUD should allow PHAs the flexibility to use short- and long-term direct and indirect costs to demonstrate the appropriateness of voluntary conversion.* The commenters wrote that the proposed methodology's exclusion of local data and other relevant factors may lead to the denial of PHA requests for voluntary conversions that are cost-effective.

**HUD Response.** HUD disagrees with this comment. The required cost test calculations are derived from locally based cost data entered into the spreadsheet calculator by PHAs. The cost-test and review process permits HUD to consider local data on quantitative costs and other factors that affect the feasibility of a proposed conversion, such as: (1) The likelihood that impacted families would be successfully relocated; (2) the neighborhood's supply of affordable housing; and (3) whether the conversion primarily benefits residents of the impacted development and surrounding area. PHAs must demonstrate that impacted tenants are relocated or provided quality replacement housing assistance and that the local community's affordable housing supply will not be adversely impacted by the proposed conversion of a particular development (see § 972.224).

**Comment:** HUD should issue guidance regarding how it will use appraisal results to approve the conversion proposals. One commenter made this suggestion.

**HUD Response.** PIH is developing protocols regarding the review of appraisal results contained in conversion proposals. HUD will use these property appraisals to evaluate the pre- and post-rehabilitation market analyses for the property and to assess the feasibility of the proposed revitalization and redevelopment activities using the criteria necessary for HUD approval at § 972.224.

**Comment:** Reference to national fire protection and safety code. Two commenters suggested that the final rule should incorporate a reference to the Model Building Code ("Building Construction and Safety Code") in addition to the Public Housing Modernization Standards Handbook (7485.2) and the International Existing Building Code (ICC) 2003 Edition.

**HUD Response.** HUD has not revised the rule in response to these comments. The final rule continues to provide that, for purposes of the cost methodology, the viability of new housing construction or rehabilitation will be determined by reference to either the applicable local housing code or (in the absence of a local code) PIH Handbook 7485.2 or the ICC. The Department believes that these two housing codes are sufficient to ensure that housing meets acceptable viability standards, and that the change requested by the commenters is, therefore, unnecessary.

**Comment:** Concerns regarding the use of a national inflation factor. Several commenters wrote that the methodology incorrectly uses the national rate of

inflation to assess costs driven by local market conditions. The commenters wrote that this procedure both overstates and understates certain public housing and voucher costs and fails to derive the best estimate of the value of future public housing and voucher costs. The commenters wrote that cost increases for public housing and vouchers are tied to different HUD regulatory requirements and to cost changes in particular segments of the overall economy. For example, public housing operating costs (aside from utilities) are determined by a formula that increases estimated costs annually based primarily on a local inflation factor. The commenters presented varied options to address this perceived problem with the methodology, all of them focusing on the need to adjust the national inflation rate by local factors.

**HUD Response.** HUD has not made changes to the rule based on these recommendations. In accordance with OMB Circular A-94, the cost methodology uses the national inflation and real discount rates specified by OMB.

This net, present value method is a constant dollar method, which calculates the stream of public housing costs and voucher costs adjusted exponentially, for a fixed discount rate, by using initial year costs for vouchers and estimated public housing costs amortized over the remaining useful life of the development (20, 30, or 40 years). These cost streams are discounted using the OMB-specified real discount rate to account for program cost increases and decreases in the future to compare the net present value of both programs.

Future program costs are unknown and may fluctuate. Therefore, HUD believes it is appropriate to use national inflation measures to estimate future costs and account for program costs that may vary due to program differences and market dynamics. In response to the comments regarding understating and overstating certain public housing and voucher costs, HUD has adjusted the vacancy adjustment factor used to estimate public housing operating costs and basing the calculation of voucher costs on actual program costs as reflected in the Section 8 payment standard for the Fair Market Rent Area or sub-area.

**Comment:** Adjustment of discount rates to calculate net present value. Several commenters wrote that voucher rents are more market-driven and increase more rapidly than public housing rents that are supported by a grant formula allocation system. The commenters wrote that, over time, public housing rents are more stable and

affordable because they do not spike up when the market tightens. The commenters wrote the discount rates under this cost methodology should reflect these differences.

**HUD Response.** HUD believes the constant dollar method is appropriate to evaluate the stream of costs for both the public housing and voucher programs, considering that upward and downward cost fluctuations are possible in the future. HUD believes the net present value methodology is a sound method for making voluntary and required conversion determinations in tandem with the HUD review process. Under this constant dollar approach, the cost calculator determines the net present value of public housing compared with vouchers based on future cash flow projections for the respective programs.

Future program costs are unknown and may increase and decrease subject to market forces and other program or policy changes. For instance, even though payment standards (and other measures of voucher costs) rose more rapidly from 1999 to 2004 than underlying measures of Fair Market Rents (FMR) and average rental costs, this rate of increase is expected to be curtailed due to the budget reforms in the voucher program (particularly the transition to the dollar-based method for calculating voucher renewal costs). Within the current program parameters, HUD believes this will cause local PHAs to manage their program budgets more prudently. PHAs will adjust payment standards to more closely reflect local rental trends.

**Comment:** Cost methodology should address future budget authority for tenant-based assistance. Several commenters wrote that the cost methodology fails to address the future budget authority needed to provide tenant-based assistance to families residing in converted developments.

**HUD Response.** HUD has not revised the rule in response to these comments. The Department is committed to the successful implementation of the required and voluntary conversion programs. HUD will make necessary funding available for tenant-based assistance provided in connection with public housing conversions, consistent with congressionally appropriated amounts and HUD's other programmatic responsibilities.

**Comment:** Operating cost estimates should be adjusted for outliers. Several commenters wrote that the cost methodology should exclude projected operating cost data that is not statistically representative of a PHA's properties. The commenters wrote that PHAs might incur excessive non-

recurring expenditures for large properties that have undergone major rehabilitation, or have a small number of well-managed projects and several under-performing properties.

**HUD Response.** HUD has not made this change. Under the cost methodology, PHAs are permitted to use either the development-level or the PHA-level method to calculate operating costs. The PHA-level method is permitted when the PHA does not have accurate property-level operating cost information or a vacancy rate at or above 20 percent. To the extent accurate property or development-level operating cost data exists, PHAs should use this data to ensure that projected operating costs are tied to particular developments targeted for conversion. The asset-level approach and project-based accounting and budgeting requirements associated with the revised public housing operating fund program should accelerate the ability of PHAs to collect accurate and sound development-level data.

**Comment: Use of development-level method to estimate operating costs.** One commenter suggested that PHAs should be authorized to use development level costs or PHA-wide costs if accurate data is available.

**HUD Response.** HUD has not accepted this recommendation. However, HUD agrees with the commenter regarding the need to use development-level costs if accurate data is available. When a PHA has accurate and reliable operating cost data and the overall vacancy rate is less than 20 percent, then the development-based method must be used to determine the projected operating costs. The PHA-wide method is permitted only in the event a PHA does not have reliable cost data for a development or the property has a vacancy rate at or above 20 percent.

**Comment: Concerns regarding modernization estimates.** Several commenters wrote that in the cost methodology, use of the housing construction cost component of the total development cost limit for calculating modernization costs overestimates accruing capital needs for public housing developments. The commenters cited several studies in support of their position, including the 2000 HUD Capital Needs Study and the Harvard Public Housing Operating Cost Study. The commenters recommended that the methodology should contain a more realistic measure of accruing modernization needs for public housing that is consistent with HUD and independent estimates.

**HUD Response.** It is true that the physical-based accrual model used in

this final rule has higher costs than a financial model of accrual that includes partial funding by refinancing. In recognition that the accrual model assumes that each year a development's ongoing capital needs are met and in proposing a realistic estimate of modernization that meets accumulated backlog and such redesign needs as required to ensure viability, this rule is recognizing a 30-year amortization model as the norm with 20 years as a possibility when not all backlog need is met (but local code and viability standards are met) and 40 years is a possibility when accumulated backlog and necessary redesign bring the development to physical condition equivalent to new construction.

**Comment: Backlog capital repair costs should be excluded from the cost methodology.** One commenter wrote that, in light of limited appropriations for public housing capital funding that has not addressed a backlog in capital repairs, the cost comparison analysis for bringing developments up to a viable standard should not include the cost of long-term neglect.

**HUD Response.** HUD disagrees with this recommendation. The statutory purpose of the cost methodology and conversion determination procedures is to assess the viability and remaining useful life of public housing developments and, in the case of required conversion, to determine whether proposed modernization investments are cost effective. By amortizing these costs over a realistic time period, consistent with an accrual model that assumes all ongoing needs are met, the rule gives modernization the appropriate yearly and cumulative impact.

**Comment: HUD should increase the \$1,000 per unit relocation expense factor.** Several commenters wrote that this amount does not accurately estimate relocation and counseling expenses based on historic costs and local market conditions. The commenters wrote that HOPE VI data on relocation and counseling activities indicate that \$3,000 per household is a generally more accurate per-household cost for similar voucher relocation activities.

**HUD Response.** HUD believes that \$1,000 per unit is a reasonable benchmark for estimating relocation expenses. Under the existing policy, HUD permits a PHA to demonstrate if a higher relocation expense level is warranted based on local market conditions. HUD may approve a higher amount if justified by the PHA.

**Comment: The estimation of voucher costs must include the estimated**

*community impact, including changes in housing demand and availability of affordable housing and other neighborhood demographics.* One commenter made this suggestion.

**HUD Response.** HUD believes that quantitative, demographic, and social factors, such as access to schools, jobs, and transportation, are adequately addressed in the regulations for the required and voluntary conversion programs. PHAs are required to evaluate such factors when considering the impact of conversion on residents and the surrounding neighborhoods. PHAs must consult with residents and develop relocation plans under both conversion programs. Families must be provided relocation counseling and assistance to help them successfully relocate to other project-based units or use voucher assistance to lease a quality unit.

The voluntary conversion program regulations require that PHAs assess social and economic factors related to the conversion, including whether the conversion would adversely impact the affordable housing supply. PHAs must demonstrate that a conversion principally benefits residents and does not adversely impact the availability of affordable housing in the community. When determining whether a conversion principally benefits residents, the PHA, and the community, the PHA must consider such factors as the availability of landlords providing tenant-based assistance, as well as access to schools, jobs, and transportation.

In addition, PHAs must evaluate the supply of quality units compared with the number of voucher holders that will need rental units. PHAs must demonstrate that voucher holders will be able to successfully find affordable units in the local rental market. This evaluation of local rental market conditions is a part of the conversion assessment required for HUD approval of conversion plans. This analysis must include an assessment of the availability of decent and safe units that can be rented at or below the payment standard set for providing voucher assistance.

**Comment: HUD should ensure that converted properties are used to provide low-income housing.** One commenter wrote that the conversion program regulations do not provide guidance on the post-conversion sale of former public housing properties. The commenter wrote that if a converted property is developed as housing in the future, a portion should be reserved for low-income families.

**HUD Response.** Under both the required and voluntary conversion

programs, all residents living in impacted developments are provided relocation assistance to a comparable assisted unit or replacement housing assistance. Under the voluntary conversion program, in the event a PHA opts to not demolish a non-viable property that is removed from the inventory because the development's costs for its remaining useful life exceed the costs to provide vouchers during the same period, the low-income housing use restriction associated with the annual contributions contract is repealed. Under the HUD review and approval process, PHAs are required to describe the future use for the property, and resale proceeds must be used for low-income housing purposes as required by section 18 of the 1937 Act.

*Comment: The cost-methodology should require that PHAs conduct an impact assessment to identify the residual value of a converted development.* One commenter wrote that there are four possible activities to which converted properties will be subjected: (1) Demolition and remediation to secure the site; (2) demolition and remediation as a prelude to sale for redevelopment; (3) continued use of a property as affordable housing through retention or sale of the property to a local affordable housing provider; and (4) gradual conversion to market-rate housing. The commenter wrote that in the event any of the last three options are chosen, it is probable the property sale will result in a financial gain for the PHA.

*HUD Response.* For required conversions, residual value will not be included within the cost-test and an impact assessment is not needed because PHAs are already required to assess the local rental market and ensure there is an adequate supply of units for the relocation of families impacted by the removal of the property from inventory. Further, PHAs are required to estimate the market or residual value of a property in accordance with the proposed use, redevelopment, or sale.

Under the voluntary conversion approval process, HUD will review the proposed future use for the property, as well as the pre- and post-rehabilitation market analyses to determine the feasibility of the conversion. Additionally, PHAs must demonstrate the voluntary conversion is feasible by showing there is an adequate supply of rental units at or below the payment standard for impacted families to successfully "lease-up" using vouchers, and by showing that the conversion will not adversely impact the local supply of rental housing. These demonstrations

and approval procedures address the recommendations offered by this commenter.

HUD believes it is not feasible to include the unrealized residual property value of a property within the mandatory cost methodology. HUD is more interested in focusing the required conversion cost-test on assessing what are reasonable modernization costs to rehabilitate or redevelop a distressed property, more so than assessing the market value of a property and its impact on PHA decision-making in regard to exploring various asset management alternatives, including preservation, sale, demolition, or other re-capitalization strategies after its conversion and removal from the inventory.

*Comment: The final rule should not cap demolition, remediation, and relocation costs at 10 percent of the Total Development Cost limit.* The commenter wrote that this threshold should be based on real cost projections. The commenter wrote that demolition and remediation costs may be extensive and that in tight markets relocation costs will be higher than the allowable limit (under 10 percent).

*HUD Response.* HUD has not adopted this recommendation. HUD continues to believe that it is necessary to establish a reasonable limit on demolition, remediation, and relocation costs associated with preparing cost conversion estimates.

Based on a review of 2002 data from the HOPE VI program, average demolition costs are \$5,500 per unit. However, there are cases where per-unit demolition costs are higher due to the location, size, and type of development that is being demolished. Typically, demolition costs are higher in certain high-cost areas and for larger-scale complexes that require special demolition and remediation procedures due to their special infrastructure, deep basements, environmental hazards, or in close proximity to other buildings. Further, under the HOPE VI program, which contains extensive relocation requirements, relocation costs have averaged \$3,000 per unit, including supportive services. HUD expects relocation expenses to be less extensive under the voluntary and required conversion programs.

Based on HUD's experience with demolition in the overall public housing program, demolition, remediation; and relocation costs have typically been within the 10 percent of TDC threshold established by this final rule. However, in the event a property has extremely high demolition or remediation costs associated with a severe site hazard

within a development, the PHA should indicate this in its proposal for required or voluntary conversion. Demolition and remediation costs do not play a role in the cost-test for required conversion. Local rental market conditions and needs for remediation of environmental factors are issues that affect the feasibility of a conversion. These programmatic issues should be addressed within a conversion assessment and proposal.

*Comment: HUD should clarify the "remaining useful life" time period for public housing developments.* Several commenters wrote that the final rule should contain clearer guidance on "remaining useful life." One commenter suggested that HUD use a flat 30-year life for comparing public housing and voucher costs. The commenters wrote that other programs that involve preservation or triage decisions for multifamily-assisted properties provide statutory and regulatory determinations regarding the applicable "remaining useful life" period. The commenters wrote that in practice, any property could be maintained indefinitely if given large enough funding to cover maintenance and repair.

*HUD Response.* This final rule provides additional guidance regarding remaining useful life estimates to determine physical viability. The final rule retains the 20- and 30-year remaining useful life periods, but, if justified, the final rule permits extending the period to up to 40 years. There are two key assumptions built into the cost-test regarding the degree of modernization that may include redesign undertaken to preserve the viability of a property. For modernization that meets accumulated backlog and redesign needs that ensure viability, in tandem with accrual that meets yearly ongoing capital needs, HUD believes that 30 years is a useful starting point for the amortization period for the cost-test that determines whether reinvestment relative to public housing versus voucher costs is cost-effective, but if the modernization clearly brings the property to as-new condition in an easily maintained location, a 40-year amortization and remaining useful life period may be warranted. On the other hand, when the modernization falls short of meeting all backlog needs, though it meets many of these needs and also local code and viability standards, then a 20-year amortization period is more appropriate. Because of its realistic standards for accrual and modernization estimates and its addition of sales value to public housing costs in voluntary conversion, HUD has decided to eliminate the 15-



year time period for estimating remaining life under the voluntary conversion program.

*Comment: Concerns regarding the calculation of voucher costs.* Several commenters wrote that the proposed methodology appears to drive cost comparisons toward findings that public housing will be more expensive than providing voucher assistance. Other commenters wrote that the methodology results in distortions that understate public housing and overstate voucher costs. For example, some of the commenters wrote that the methodology incorrectly assumes the adequacy of the local rental market to absorb voucher holders from converted properties. Another commenter wrote that HUD should amend the cost methodology to include vacant units in the voucher cost calculations. One commenter wrote that HUD should exclude debt service from the calculation of voucher costs or add these to the cost of public housing. One commenter suggested that the methodology should consider the ongoing administrative fees a PHA earns from serving individual voucher families and the one-time fees earned for families to more accurately estimate administrative fees attributable to converting developments to vouchers.

*HUD Response.* The cost methodology already includes ongoing administrative costs as part of overall voucher costs, and the voucher cost-estimate factor has been adjusted to the payment standard a PHA establishes to project actual voucher costs in accordance with the local rental market. Aside from the revisions to the cost-test regarding the voucher and vacancy adjustment factor to project public housing operating costs, HUD has declined to make the other changes recommended by the comments. Some of the proposals are offsetting, and all are difficult to calculate. Moreover, HUD believes the final rule includes the appropriate adjustments and essential ingredients for a comprehensive cost comparison and will result in a balanced comparison of the cost of tenant-based assistance with the costs of continuing to operate developments as public housing.

## V. Findings and Certifications

### *Impact on Small Entities*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial

number of small entities. For the following reasons, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

(1) *A substantial number of small entities will not be affected.* The entities that will be subject to this rule are PHAs that administer public housing. Under the definition of "small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial. Further, HUD anticipates that no more than 10 percent of all PHAs will be subject to the requirements of required conversion. Most PHAs with developments large enough to be subject to required conversion are located in larger political jurisdictions. This is a result of the statutory direction to identify units subject to the requirements based on the criteria established by the National Commission on Severely Distressed Public Housing, which focused on larger troubled agencies. For all other PHAs, conversion would be undertaken on a voluntary basis.

(2) *No Significant Economic Impact.* The conversion plan will involve a one-time cost, and this cost can vary from development to development, depending on the scope of the assessment, location of the property, and other factors. A mitigating factor concerning the cost for PHAs whose properties are potentially subject to the requirements of required conversion is that they may request assistance from HUD in conducting the required analyses in order to offset the costs. HUD has provided such assistance in the past and intends to continue to do so, if resources are available. Therefore, the cost burden on small entities is not likely to be great.

### *Environmental Impact*

This final rule involves external administrative or fiscal requirements or procedures that relate to the discretionary establishment of cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

### *Federalism Impact*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This rule does not have federalism implications and will not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the executive order.

### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal government, nor on the private sector, within the meaning of the UMRA.

### *Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

*Catalog of Federal Domestic Assistance Number:* The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.850.

### *List of Subjects in 24 CFR Part 972*

Grant programs—housing and community development, Low and moderate income housing, Public housing.

■ For the reasons discussed in the preamble, HUD amends title 24 of the Code of Federal Regulations as follows:



## PART 972—CONVERSION OF PUBLIC HOUSING TO TENANT-BASED ASSISTANCE

■ 1. The authority citation for 24 CFR part 972 continues to read as follows:

**Authority:** 42 U.S.C. 1437f, 1437z-5, and 3535(d).

■ 2. Add an appendix to part 972 to read as follows:

### Appendix to Part 972—Methodology of Comparing Cost of Public Housing with the Cost of Tenant-Based Assistance

#### I. Public Housing-Net Present Value

The costs used for public housing shall be those necessary to produce a viable development for its projected useful life. The estimated cost for the continued operation of the development as public housing shall be calculated as the sum of total operating cost, modernization cost, and costs to address accrual needs. Costs will be calculated at the property level on an annual basis covering a period of 30 years (with options for 20 or 40 years). All costs expected to occur in future years will be discounted, using an OMB-specified real discount rate provided on the OMB Web site at <http://www.whitehouse.gov/OMB/Budget>, for each year after the initial year. The sum of the discounted values for each year (net present value) for public housing will then be compared to the net present value of the stream of costs associated with housing vouchers.

Applicable information on discount rates may be found in Appendix C of OMB Circular A-94, "Guidelines and Discount Rates for Benefit Cost Analysis of Federal Programs," which is updated annually, and may be found on OMB's Web site at <http://www.whitehouse.gov/OMB>. All cost adjustments conducted pursuant to this cost methodology must be performed using the real discount rates provided on the OMB Web site at <http://www.whitehouse.gov/OMB/Budget>. HUD will also provide information on current rates, along with guidance and instructions for completing the cost comparisons on the HUD Homepage (<http://www.hud.gov>). The Homepage will also include a downloadable spreadsheet calculator that HUD has developed to assist PHAs in completing the assessments. The spreadsheet calculator is designed to walk housing agencies through the calculations and comparisons laid out in the appendix and allows housing agencies to enter relevant data for their PHA and the development being assessed. Results, including net present values, are generated based on these housing agency data.

#### A. Operating Costs

1. Any proposed revitalization or modernization plan must indicate how unusually high current operating expenses (e.g., security, supportive services, maintenance, tenant, and PHA-paid utilities) will be reduced as a result of post-revitalization changes in occupancy, density and building configuration, income mix, and management. The plan must make a realistic projection of overall operating costs per occupied unit in the revitalized or modernized development, by relating those operating costs to the expected occupancy rate, tenant composition, physical configuration, and management structure of the revitalized or modernized development. The projected costs should also address the comparable costs of buildings or developments whose siting, configuration, and tenant mix is similar to that of the revitalized or modernized public housing development.

2. The development's operating cost (including all overhead costs pro-rated to the development—including a Payment in Lieu of Taxes (P.I.L.O.T.) or some other comparable payment, and including utilities and utility allowances) shall be expressed as total operating costs per year. For example, if a development will have 375 units occupied by households and will have \$112,500 monthly non-utility costs (including pro-rated overhead costs and appropriate P.I.L.O.T.) and \$37,500 monthly utility costs paid by the PHA, and \$18,750 in monthly utility allowances that are deducted from tenant rental payments to the PHA because tenants paid some utility bills directly to the utility company, then the development's monthly operating cost is \$168,750 (or \$450 per unit per month) and its annual operating cost would be \$5,400 (\$450 times 12). Operating costs are assumed to begin in the initial year of the 30-year (or alternative period) calculation and will be incurred in each year thereafter.

3. In justifying the operating cost estimates as realistic, the plan should link the cost estimates to its assumptions about the level and rate of occupancy, the per-unit funding of modernization, any physical reconfiguration that will result from modernization, any planned changes in the surrounding neighborhood, and security costs. The plan should also show whether developments or buildings in viable condition in similar neighborhoods have achieved the income mix and occupancy rate projected for the revitalized or modernized development. The plan

should also show how the operating costs of the similar developments or buildings compare to the operating costs projected for the development.

4. In addition to presenting evidence that the operating costs of the revitalized or modernized development are plausible, when the projected initial year per-unit operating cost of the renovated development is lower than the current per unit cost by more than 10 percent, then the plan should detail how the revitalized development will achieve this reduction in costs. To determine the extent to which projected operating costs are lower than current operating costs, the current per-unit operating costs of the development will be estimated as follows:

a. If the development has reliable operating costs and if the overall vacancy rate is less than 20 percent, then the development-based method will be used to determine projected costs. The current costs will be divided by the sum of all occupied units and vacant units fully funded under the Operating Fund Program plus 20 percent of all units not fully funded under the Operating Fund Program. For instance, if the total monthly operating costs of the current development are \$168,750 and it has 325 occupied units and 50 vacant units not fully funded under the Operating Fund Program (or a 13 percent overall vacancy rate), then the \$2,250,000 is divided by 335—325 plus 20 percent of 50—to give a per unit figure of \$504 per unit month. By this example, the current costs per occupied unit are at least 10 percent higher (12 percent in this example) than the projected costs per occupied unit of \$450 for the revitalized development, and the reduction in costs would have to be detailed.

b. If the development currently lacks reliable cost data or has a vacancy rate of 20 percent or higher, then the PHA-wide method will be used to determine projected costs. First, the current per unit cost of the entire PHA will be computed, with total costs divided by the sum of all occupied units and vacant units fully funded under the Operating Fund Program plus 20 percent of all vacant units not fully funded under the Operating Fund Program. For example, if the PHA's operating cost is \$18 million, and the PHA has 4,000 units, of which 3,875 are occupied and 125 are vacant and not fully funded under the Operating Fund Program, then the PHA's vacancy adjusted operating cost is \$385 per unit per month—\$18,000,000 divided by the 3,825 (the sum of 3,800 occupied units and 20 percent of 125 vacant units) divided by 12 months. Second, this amount will be

multiplied by the ratio of the bedroom adjustment factor of the development to the bedroom adjustment factor of the PHA. The bedroom adjustment factor, which is based on national rent averages for units grouped by the number of bedrooms and which has been used by HUD to adjust for costs of units when the number of bedrooms vary, assigns to each unit the following factors: .70 for 0-bedroom units, .85 for 1-bedroom units, 1.0 for 2-bedroom units, 1.25 for 3-bedroom units, 1.40 for 4-bedroom units, 1.61 for 5-bedroom units, and 1.82 for 6 or more bedroom units. The bedroom adjustment factor is the unit-weighted average of the distribution. For instance, consider a development with 375 occupied units that had the following under an ACC contract: 200 two-bedroom units, 150 three-bedroom units, and 25 four-bedroom units. In that example, the bedroom adjustment factor would be 1.127—200 times 1.0, plus 150 times 1.25, plus 25 times 1.4 with the sum divided by 375. Where necessary, HUD field offices will arrange for assistance in the calculation of the bedroom adjustment factors of the PHA and its affected developments.

c. As an example of estimating development operating costs from PHA-wide operating costs, suppose that the PHA had a total monthly operating cost per unit of \$385 and a bedroom adjustment factor of .928, and suppose that the development had a bedroom adjustment factor of 1.127. Then, the development's estimated current monthly operating cost per occupied unit would be \$467—or \$385 times 1.214 (the ratio of 1.127 to .928). By this example, the development's current operating costs of \$467 per unit per month are not more than 10 percent higher (3.8 percent in this example) than the projected costs of \$450 per unit per month and no additional justification of the cost reduction would be required.

#### B. Modernization

Under both the required and voluntary conversion programs, PHAs prepare modernization or capital repair estimates in accordance with the physical needs of the specific properties proposed for conversion. There are three key assumptions that guide how PHAs prepare modernization estimates that affect remaining useful life and determine whether the 20-, 30-, or discretionary 40-year remaining useful life evaluation period are used for the cost-test. When calculating public housing revitalization costs for a property, PHAs will use a 30-year period if the level of modernization addresses all accumulated backlog

needs and the planned redesign ensures long-term viability. For modernization equivalent to new construction or when the renovations restore a property to as-new physical conditions, a 40-year remaining useful life test is used. When light or moderate rehabilitation that does not address all accumulated backlog is undertaken, but it is compliant with the International Existing Building Codes (ICC) or Public Housing Modernization Standards in the absence of a local rehabilitation code, the 20-year remaining useful life evaluation period must be used.

Except for some voluntary conversion situations as explained in paragraph E below, the cost of modernization is, at a minimum, the initial revitalization cost to meet viability standards. In the absence of a local code, PHAs may refer to the Public Housing Modernization Standards Handbook (Handbook 7485.2) or the International Existing Building Codes (ICC) 2003 Edition. To justify a 40-year amortization cycle that increases the useful life period and time over which modernization costs are amortized, PHAs must demonstrate that the proposed modernization meets the applicable physical viability standards, but must also cover accumulated backlog and redesign that achieves as-new physical conditions to ensure long-term viability. To be a plausible estimate, modernization costs shall be justified by a newly created property-based needs assessment (a life-cycle physical needs assessments prepared in accordance with a PHA's Capital Fund annual or 5-year action plan and shall be able to be reconciled with standardized measures, such as components of the PHAs physical inspection and chronic vacancy due to physical condition and design. Modernization costs may be assumed to occur during years one through four, consistent with the level of work proposed and the PHA's proposed modernization schedule. For example, if the initial modernization outlay (excluding demolition costs) to meet viability standards is \$21,000,000 for 375 units, a PHA might incur costs in three equal increments of \$7,000,000 in years two, three, and four (based on the PHA's phased modernization plan). In comparing the net present value of public housing to voucher costs for required conversion, a 30-year amortization period will normally be used, except when revitalization would bring the property to as-new condition and a 40-year amortization would be justified. On the other hand, when the modernization falls short of meeting accumulated backlog and long-term

redesign needs, only a 20-year amortization period might be justified.

#### C. Accrual

Accrual projections estimate the ongoing replacement repair needs for public housing properties and building structures and systems required to maintain the physical viability of a property throughout its useful life as the lifecycle of building structures and systems expire. The cost of accrual (i.e., replacement needs) will be estimated with an algorithm that meets all ongoing capital needs based on systems that have predictable lifecycles. The algorithm starts with the area index of housing construction costs (HCC) that HUD publishes as a component of its TDC index series. Subtracted from this HCC figure is half the estimated modernization per unit, with a coefficient of .025 multiplied by the result to provide an annual accrual figure per unit. For example, suppose that the development after modernization will remain a walkup structure containing 200 two-bedroom, 150 three-bedroom, and 25 four-bedroom occupied units, and if HUD's HCC limit for the area is \$66,700 for two-bedroom walkup structures, \$93,000 for three-bedroom walkup structures, and \$108,400 for four-bedroom walkup structures. Then the unit-weighted HCC cost is \$80,000 per unit and .75 of that figure is \$60,000 per unit. Then, if the per unit cost of the modernization is \$56,000, the estimated annual cost of accrual per occupied unit is \$1,300. This is the result of multiplying .025 times \$52,000 (the weighted HCC of \$80,000) minus \$28,000 (half the per-unit modernization cost of \$56,000). The first year of total accrual for the development is \$487,500 (\$1,300 times 375 units) and should be assumed to begin in the year after modernization is complete. Accrual—like operating cost—is an annual expense and will occur in each year over the amortized period. Because the method assumes full physical renewal each year, this accrual method when combined with a modernization that meets past backlog and redesign needs justifies a 30- or 40-year amortization period, because the property is refreshed each year to as-new or almost as-new condition.

#### D. Residual Value (Voluntary Conversion Only)

Under the voluntary conversion program, PHAs are required to prepare market appraisals based on the "as-is" and post-rehabilitation condition of properties, assuming the buildings are operated as public or assisted,

unassisted, or market-rate housing. Section 972.218 requires PHAs to describe the future use for a property proposed for conversion and to describe the means and timetable to complete these activities. HUD will permit a PHA to enter the appraised market value of a property into the cost-test in Years 1 through 5 when a PHA anticipates selling a property or receiving income generated from the sale or lease of a property.

As a separate line item to be added to total public costs as a foregone opportunity cost, a PHA shall include in the voluntary cost-test calculations the appraised market or residual value (or net sales proceeds) from the sale or lease of a property that is to be voluntarily converted to tenant-based voucher assistance. The PHA must hire an appraiser to estimate the market value of the property using the comparable sale, tax-assessment, or revenue-based appraisal methods. PHAs are advised to select one or more of these appraisal methods to accurately determine the actual or potential market value of a property, particularly the comparable sales or revenue-based methods. The market or residual value is to be determined by calculating the estimated market value for the property based on the appraisal, minus any costs required for demolition and remediation. The residual value must be incorporated into the cost-test instead of the actual market value only when any demolition, site remediation, and clearance costs that are necessary are covered by the selling PHA. However, if the sum of the estimated per unit cost of demolition and remediation exceeds 10 percent of the average Total Development Cost (TDC) for the units, the lower of the PHA estimate or a figure based on 10 percent of TDC must be used. Suppose the estimated remediation and demolition costs necessary for conversion sale are \$7,000 per unit. Also, suppose the TDC limits are \$115,000 for a two-bedroom unit, \$161,000 for a three-bedroom unit, and \$184,000 for a four-bedroom unit. Then the average TDC of a development with 200 two-bedroom units, 150 three-bedroom units, and 25 four-bedroom units is \$138,000 (200 times \$115,000, plus 150 times \$161,000, plus 25 times \$184,000, the sum divided by 375) and 10 percent of TDC is \$13,800. In this example, the estimated \$7,000 per unit costs for demolition and remediation is less than 10 percent of TDC for the development, and the PHA estimate of \$7,000 is used. If estimated expenses had exceeded 10 percent of TDC (\$13,800 in this example), demolition

and remediation expenses must be capped at the lower amount.

#### *E. Accumulated Discounted Cost: Public Housing*

The overall cost for continuing to operate the development as public housing is the sum of the discounted values of the yearly stream of costs up for the amortization period, which can range from 20 to 30 to 40 years, depending on the extent of modernization relative to the current physical and redesign needs of the development. In calculating net present value for required conversion, the sum of all costs in each future year is discounted back to the current year using the OMB-specified real discount rate. For voluntary conversion, the discount rate is applied forward as a direct inflation factor. To assist PHAs in completing the net present value comparison and to ensure consistency in the calculations, HUD has developed a spreadsheet calculator that is available for downloading from the HUD Internet site. Using PHA data and property specific inputs (to be entered by the housing agency), the spreadsheet will discount costs as described above and will generate net present values for amortization periods of 20, 30, and 40 years.

#### **II. Tenant-Based Assistance**

The estimated cost of providing tenant-based assistance under Section 8 for all households in occupancy shall be calculated as the unit-weighted average of recent movers in the local area; plus the administrative fee for providing such vouchers; plus \$1,000 per unit (or a higher amount allowed by HUD) for relocation assistance costs, including counseling. However, if the sum of the estimated per unit cost of demolition, remediation, and relocation exceeds 10 percent of the average Total Development Cost (TDC) for the units, the lower of the PHA estimate or a figure based on 10 percent of TDC must be used.

For example, if the development has 200 occupied two-bedroom units, 150 occupied three-bedroom units, and 25 occupied four-bedroom units, and if the monthly payment standard for voucher units occupied by recent movers is \$550 for two-bedroom units, \$650 for three-bedroom units, and \$750 for four-bedroom units, the unit-weighted monthly payment standard is \$603.33. If the administrative fee comes to \$46 per unit, then the monthly per unit operating voucher costs are \$649.33, which rounds to an annual total of \$2,922,000 for 375 occupied units of the same bedroom size as those being

demolished in public housing. To these operating voucher costs, a first-year relocation is added on the voucher side. For per-unit relocation costs of \$1,000 per unit for relocation, then \$375,000 for 375 units is placed on the voucher cost side of the first year.

#### *Accumulated Discounted Cost: Vouchers*

The overall cost for vouchers is the sum of the discounted values of the yearly stream of costs up for the amortization period, which can range from 20 to 30 to 40 years, depending on the extent of modernization relative to the current physical and redesign needs of the development. The amortization period chosen is the one that was appropriate for discounting public housing costs. In calculating net present value for required conversion, the sum of all costs in each future year is discounted back to the current year using the OMB-specified real discount rate. For voluntary conversion, the discount rate is applied forward as a direct inflation factor.

To assist PHAs in completing the net present value comparison and to ensure consistency in the calculations, HUD has developed a spreadsheet calculator that will be available for downloading from the HUD Internet site.

#### **III. Results of the Example**

With the hypothetical data used in the examples, under an amortization period of 30 years, the discounted public housing costs under required conversion sums to \$69,633,225, and the discounted voucher cost under required conversions totals \$60,438,698. The ratio is 1.15, which means that public housing is 15 percent more costly than vouchers. With this amortization and this data, the PHA would be required to convert the development under the requirements of subpart A of this part, except in a situation where a PHA can demonstrate a distressed property that has failed the cost-test can be redeveloped by meeting each of the four factors that compose the long-term physical viability test to avoid removal from the inventory. With the same data, but a 40-year amortization period, public housing is still 11 percent costlier than vouchers, and with a 20-year amortization, public housing is 25 percent costlier than vouchers. In voluntary conversion, with the same hypothetical data, but a slightly different methodology (use of residual value as a public housing cost, inflating forward the discount numbers), the ratio of public housing costs to voucher costs would be 1.16 for the 20-year amortization period, 1.03 for the 30-year

amortization period, and .97 for the 20-year amortization period. Thus, in voluntary conversion, the appropriate amortization period would decide whether public housing is more costly or is slightly more costly, or less than vouchers. Under a 20-year amortization assumption and possibly under a 30-year amortization period, the PHA would have the option of preparing a conversion plan for the development under subpart B of this part. Different sets of data would yield different

conclusions for required and voluntary conversion determinations.

Dated: December 28, 2005.

**Orlando Cabrera,**

*Assistant Secretary for Public and Indian Housing.*

**Note:** The following sample pages will not be codified in the Code of Federal Regulations.

**Sample Pages from Spreadsheet Calculator**

As noted above in the preamble to this final rule, HUD has developed a

spreadsheet calculator to assist PHAs in the calculations and comparisons required for the conversion analysis. The spreadsheet calculator will be available for PHAs to download from the HUD Internet site (<http://www.hud.gov>). The following sample pages from the spreadsheet calculator illustrate the cost comparison methodology contained in this final rule.

BILLING CODE 4210-67-P

**NOTE: PLEASE FOLLOW INSTRUCTIONS ON THIS TAB  
BEFORE PROCEEDING TO THE COST COMPARISON CALCULATOR**

This spreadsheet contains macros that need to be enabled for the spreadsheet to have full functionality. Failure to enable the macros will result in the spreadsheet to function improperly. Follow these steps to enable the macros:

*You may see a "Security Warning" box when opening the file. If you see the "Security Warning" box, click on "Enable Macros."*

*If you do not see a "Security Warning" box when opening the file: Close the spreadsheet and change the security level setting. To change the security level in MS Excel, go to toolbar and click on Tools / Macro / Security. In the Security box, go to the "Security Level" tab and click on "Medium" then click OK. After changing the security level, open the spreadsheet again and follow the instruction above to enable macros.*



## Cost Comparison Spreadsheet Required and Voluntary Conversions under 24 CFR Part 972

### IMPORTANT: PLEASE READ THE START TAB FIRST

This spreadsheet is provided as a tool for public housing agencies conducting cost comparisons pursuant to 24 CFR Part 972, "Conversions of Public Housing to Tenant Based Assistance." The spreadsheet assists PHAs in comparing public housing costs to voucher costs using the methodology presented in the appendix to 24 CFR 972 for both Required Conversions (subpart A) and Voluntary Conversions (subpart B).

Spreadsheet cells shaded in green allow PHAs to enter information on the subject property's estimated market value, operating, modernization, and accrual costs, as well as information on voucher costs. A property's market or residual value is incorporated into the cost-test only for voluntary conversion determinations. Use the arrow keys to move from one cell to another. Enter numbers without commas and press "Enter" when you are done with each cell. Enter data only in the cells you need. Green cells may be left blank (you do not need to enter zeros). Cells shaded yellow contain formulas and cannot be changed.

The spreadsheet consists of seven tabs, including this introduction. To move from tab to tab, click on the tab name at the bottom of the screen.

**Tab 2 -- Public Housing Operating Cost.** At this tab, a PHA enters the projected operating costs for the revitalized property and also checks these costs for reasonableness by comparing them to current operating costs, using either the Development or the PHA-wide method.

**Tab 3 -- Public Housing Capital Cost.** At this tab, a PHA must indicate the degree of modernization necessary to keep a property viable based on the physical condition and repairs necessary to retain a viable property competitive in accordance with local, state, and Federal rehabilitation codes and its remaining useful life. A PHA will enter the anticipated costs of revitalization/modernization, relocation, and demolition (if any) and indicate the year in which costs are expected to be incurred based on a PHA's modernization plan for a property. Up to four years are permitted for this activity for the 30 and 40-year evaluation periods for required and voluntary determinations. If a PHA chooses to undertake light or moderate rehabilitation, a 20-year evaluation period must be used. PHAs will also enter data needed to estimate ongoing accrual costs and the estimated market or residual value for a property. The estimated market or residual value of a property must be included within these calculations as an addition to the public housing capital repair costs only for voluntary conversion determinations. This market value is calculated by PHAs who must hire an appraiser to determine the market value. The residual value for a property is determined by PHAs if demolition costs will be covered by a PHA.

Demolition and remediation costs are deducted from the estimated market value for a property to calculate any remaining residual value expected if a PHA were to sell a property proposed for conversion and removal from the inventory. However, under this cost-test, a property's market value is included within these capital costs whether or not a PHA intends to undertake a voluntary conversion and sell the proposed building or land.

**Tab 4 -- Voucher Cost.** At this tab, the PHA enters the average voucher cost (unit weighted average for the monthly payment standard for voucher units occupied by recent movers in the local area in accordance with the respective bedroom categories) and administrative fee in order to calculate annual Housing Choice Voucher (HCV) costs. PHAs will also estimate the relocation costs associated with a conversion.

**Tab 5 -- Cost Comparison.** At this tab, the PHA enters current OMB-specified discount rates found in Appendix C of OMB Circular A-94. These rates will be provided by HUD to PHAs by posting on the HUD website. Note that the rate used for 40-year evaluations is the same as for 30-year. Summary numbers are then presented from the previous tabs (e.g., first year operating cost, capital costs incurred in years 1 to 4, initial accrual, and voucher costs). Finally, the net present value of the costs is compared for Public Housing and for Vouchers.

**Tab 6 -- Net Present Value Calculations for Required Conversions.** This tab shows the costs of each line item in each year as well as the discounted totals for public housing and vouchers. The discounted totals are summed for the relevant period (20, 30, or 40 years) to create the cost comparison results at TAB 5.

**Tab 7 -- New Budget Authority Calculations for Voluntary Conversions.** This tab shows the costs of each line item in each year, including the effects of inflation. The inflated costs are summed for the relevant period (20, 30, or 40 years) to create the cost comparison results at TAB 5.

**Public Housing Operating Cost**

**1. Calculation of Projected Operating Cost for the Revitalized Development**

Enter the PHA's projected monthly costs for operating the development after revitalization or modernization in the green calls below. This estimate should reflect the costs of operating comparable developments and must be reasonable in light of the revitalization/modernization plan proposed.

- a. Non-utility costs (including pro-rated share of overhead costs)
  - Utilities
  - Utility Allowances
  - Total Projected Monthly Operating Costs for Revitalized Development
- b. Total Number of Units in Revitalized Development
- c. Projected Monthly Operating Costs Per Unit
- d. Total Projected Annual Operating Costs

**2. Reasonableness Tests**

Projected operating costs must be shown to be reasonable. This test compares projected monthly per-unit costs (above) with the current operating costs of the property. If projected costs are more than 10% lower than current costs, a narrative description must be provided detailing how this reduction in costs will be achieved. Current operating costs are calculated using either the development-based method or the PHA-wide method. If the development has a current vacancy rate of less than 20% and there is reliable development-level data on operating costs, use the development-based method (A). If the development has a current vacancy rate of 20% or greater or there is no reliable development-level data available, use the PHA-wide method (B).

What is the current vacancy rate of the development?  
is there reliable development based data available?

Enter vacancy rate here   
Enter Yes or No here:

Method to be used

Go to Section 2B (cell K50)

**2A. Development-Based Method**

A1 Total Current Operating Cost for the Development

\$2,250,000

A2 Calculation of Vacancy-Adjusted Units for the Property (Enter the number of units of each type.)

Occupancy Adjustment	Property Units - Current	
	Units	Adjusted
# of Occupied units (x1)	325	325
# of Vacant Fully Funded (x1)		0
# of Long-Term Vacant (x0.2)	50	10
Total	375	335

335

A3 Current Operating Costs Per Unit Per Month (PUM) ((A1/A2)/12)

\$560

**2B. PHA-Wide Method**

B1 Total Current Operating Cost for the Agency

\$18,000,000

B2 Calculation of Vacancy-Adjusted Units for the PHA (Enter the number of units of each type.)

Occupancy Adjustment	PHA Units	
	Units	Adjusted
# of Occupied units (x1)	3,800	3,800
# of Vacant Fully Funded (x1)		0
# of Long-Term Vacant (x0.2)	200	40
Total	4,000	3,840

\$3,840

B3 Current Operating Costs Per Unit Per Month (PUM) ((B1/B2)/12)

\$391

B4 Calculation of Bedroom Adjustment Factor (Enter the number of units of each type.)

Bedroom Adjustment	PHA Units		Property Units - Current	
	Units	Unit Cost Factor	Units	Unit Cost Factor
0 BR	500	350		0
1 BR	1400	1,190		0
2 BR	1600	1,600	200	200
3 BR	225	281	150	188
4 BR	75	105	25	35
5 BR		0		0
6 BR		0		0
Total	3800	3,526	375	423
Adjustment Factors		x 0.928		y 1.127

1.214

\$474

B5 Overall Bedroom Adjustment Factor (y/x)

B6 Current Monthly Operating Cost per Unit (B3\*B5)

3. Comparison of Projected and Current Operating Costs (and Justification)

Projected Operating Costs (from Section 1)	
Current Operating Cost	Using PHA-Wide Method
Percent difference	

\$450  
\$474  
5.4%

If current costs exceed the PHA's projection by more than 10 percent, the PHA must justify the use of the lower amount in the space below.

Not Applicable

---



---



---



---





### Voucher Cost

**Voucher Cost**

Enter the number of units in the revitalized development by bedroom size and corresponding voucher costs per month.

Unit Size Post Revitalization	a # of Units	b Voucher Costs	c Units X Cost
0BR	0		\$0
1BR	0		\$0
2BR	200	\$550	\$110,000
3BR	150	\$650	\$97,500
4BR	25	\$750	\$18,750
5BR	0		\$0
	375		\$226,250

- d Monthly Voucher Cost Per Unit ( c / a )
- e Monthly Section 8 Administrative Fee (per unit)

\$603
\$46.00

- f Annual Voucher and Administrative Costs

\$2,922,000
-------------

- g Per Unit Relocation Costs
- h Total Relocation Costs

\$1,000
\$375,000

**Cost Comparisons**

**Assumptions**

20 Year	30/40 Year
5.3%	5.2%
3.0%	3.0%
30	

OMB Nominal Discount Rate  
 OMB Real Discount Rate  
 Useful Life (20, 30 or 40 Years)

2.14%	1.021
3.00%	1.030

Initiation Rate for the Selected Useful Life  
 Real Discount Rate for the Selected Useful Life

375
-----

Units

**Uninflated/Undiscounted Cost Summary**

**Public Housing**

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Annual Operating Cost	\$2,025,000	\$7,000,000	\$7,000,000	\$7,000,000	\$0	\$0	\$0	\$0	\$0	\$0
Capital Cost	\$0	\$0	\$0	\$0	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000
Annual Accrual after Modification	\$0	\$0	\$0	\$0	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000
Residual Value	\$3,750,000									

**Vouchers**

Annual Voucher and Administrative Costs  
 Year 1 Relocation Costs

\$2,922,000
\$375,000

**PUM Cost Comparisons:**

Public Housing  
 Vouchers  
 Difference

Net Present Value  
 (Required Conversions Only)


New Budget Authority  
 (Voluntary Conversion only)

\$855
\$900
-1%

**Final Result**

--

Public Housing Cost is less than Voucher Cost

Required Conversion Calculation  
Net Present Value of the Stream of Costs

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	
Operating	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000
Initial Capital	\$0	\$7,000,000	\$7,000,000	\$1,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Accrual																
Residual	\$3,750,000	\$0	\$0	\$0	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000
<b>TOTAL</b>	<b>\$5,775,000</b>	<b>\$9,025,000</b>	<b>\$9,025,000</b>	<b>\$9,025,000</b>	<b>\$2,325,000</b>	<b>\$2,325,000</b>	<b>\$2,325,000</b>	<b>\$2,325,000</b>	<b>\$2,325,000</b>	<b>\$2,325,000</b>	<b>\$2,325,000</b>	<b>\$2,325,000</b>	<b>\$2,325,000</b>	<b>\$2,325,000</b>	<b>\$2,325,000</b>	<b>\$2,325,000</b>
Discount Rates	1.000000	0.910914	0.842596	0.815142	0.888487	0.868487	0.837484	0.813092	0.789409	0.766417	0.744094	0.722421	0.701360			
Discounted Costs	\$5,175,000	\$8,182,136	\$8,506,928	\$8,259,153	\$2,065,732	\$2,005,985	\$1,947,151	\$1,890,338	\$1,835,376	\$1,781,919	\$1,730,018	\$1,679,629	\$1,630,708			

Required Conversion Net Present Value:

Total \$69,338,853  
Per Unit \$184,900  
Per Unit Month \$314

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Voucher	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000
Revolucion	\$375,000														
<b>TOTAL</b>	<b>\$3,297,000</b>	<b>\$2,922,000</b>	<b>\$2,922,000</b>	<b>\$2,922,000</b>	<b>\$2,922,000</b>	<b>\$2,922,000</b>	<b>\$2,922,000</b>	<b>\$2,922,000</b>	<b>\$2,922,000</b>	<b>\$2,922,000</b>	<b>\$2,922,000</b>	<b>\$2,922,000</b>	<b>\$2,922,000</b>	<b>\$2,922,000</b>	<b>\$2,922,000</b>
Discount Rates	1.000000	0.910914	0.842596	0.815142	0.888487	0.868487	0.837484	0.813092	0.789409	0.766417	0.744094	0.722421	0.701360		
Discounted Costs	\$3,297,000	\$2,636,853	\$2,154,265	\$2,614,044	\$2,396,159	\$2,326,543	\$2,447,179	\$2,375,853	\$2,306,654	\$2,239,470	\$2,174,242	\$2,110,915	\$2,049,472		

Required Conversion Net Present Value:

Total \$38,365,844  
Per Unit \$158,308  
Per Unit Month \$440

Required Conversion Net Present Value DELTA:

Dollar \$74  
Percent 14%



	Year 04	Year 05	Year 06	Year 07	Year 08	Year 09	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	
Operating Initial Capital	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000	\$2,025,000
Accrual	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000
Residual	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000
TOTAL	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000	\$2,325,000

Discount Rates	0.437077	0.424346	0.411587	0.398887	0.386337	0.377076	0.365883	0.354532	0.344993	0.334993	0.325276	0.315754	0.306226	0.296883	0.287726	0.278754	0.269963	0.261354	0.252926	0.244676	0.236604	0.228704	0.220976	0.213414
Discounted Costs	\$1,016,203	\$965,605	\$917,869	\$875,970	\$832,884	\$806,586	\$782,200	\$759,835	\$739,483	\$721,151	\$704,746	\$690,276	\$676,746	\$664,163	\$652,536	\$641,871	\$632,176	\$623,451	\$615,696	\$608,921	\$603,126	\$598,301	\$594,446	\$591,561

	Year 04	Year 05	Year 06	Year 07	Year 08	Year 09	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25		
Voucher	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000
Recursion	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000
TOTAL	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000	\$2,922,000

Discount Rates	0.437077	0.424346	0.411587	0.398887	0.386337	0.377076	0.365883	0.354532	0.344993	0.334993	0.325276	0.315754	0.306226	0.296883	0.287726	0.278754	0.269963	0.261354	0.252926	0.244676	0.236604	0.228704	0.220976	0.213414
Discounted Costs	\$1,277,138	\$1,239,940	\$1,203,825	\$1,169,762	\$1,134,721	\$1,101,671	\$1,069,633	\$1,038,603	\$1,008,579	\$979,561	\$950,551	\$922,548	\$894,551	\$867,561	\$841,576	\$816,596	\$792,621	\$769,651	\$747,686	\$726,726	\$706,771	\$687,821	\$669,876	\$652,936



Voluntary Conversion Calculation  
New Budget Authority

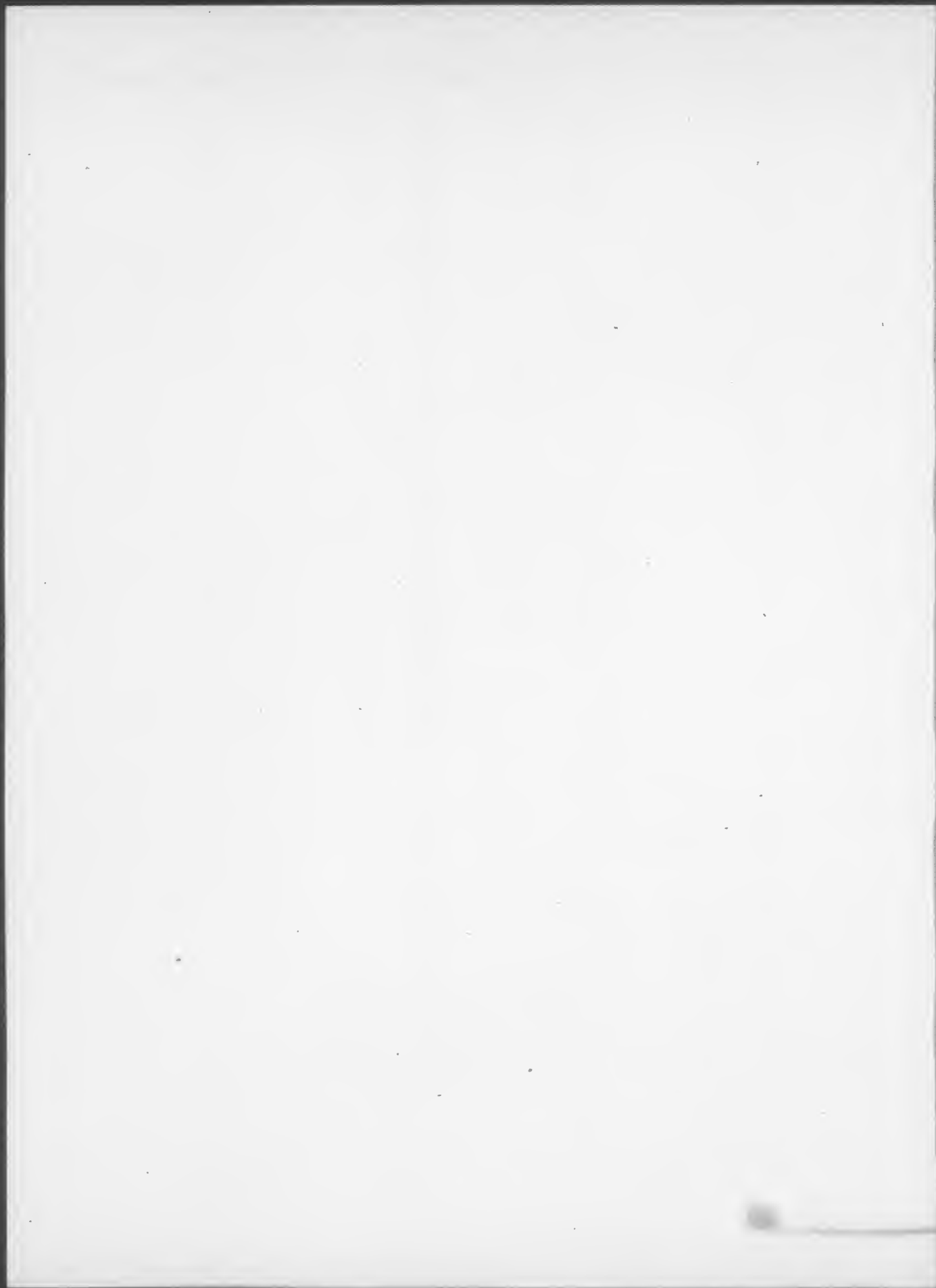
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Public Housing															
Operating	\$2,035,000	\$2,068,252	\$2,112,429	\$2,157,549	\$2,203,632	\$2,250,700	\$2,298,773	\$2,347,873	\$2,396,022	\$2,444,242	\$2,501,558	\$2,554,987	\$2,609,560	\$2,665,298	
Initial Capital	\$0	\$7,149,515	\$7,302,223	\$7,456,192	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Accrual		\$0	\$0	\$0	\$326,464	\$333,437	\$340,559	\$347,633	\$355,263	\$362,851	\$370,601	\$378,517	\$386,001	\$394,859	
Residual	\$3,750,000														
TOTAL	\$5,775,000	\$9,217,767	\$9,414,651	\$9,615,741	\$2,530,096	\$2,584,137	\$2,639,332	\$2,695,706	\$2,753,284	\$2,812,092	\$2,872,157	\$2,933,504	\$2,998,161	\$3,060,157	
Inflation Factor	1.000	1.0214	1.0432	1.0655	1.0882	1.1115	1.1352	1.1594	1.1842	1.2095	1.2353	1.2617	1.2887	1.3162	
Voucher															
Voucher	\$2,972,000	\$2,984,412	\$3,048,156	\$3,113,263	\$3,179,759	\$3,247,677	\$3,317,045	\$3,387,894	\$3,460,257	\$3,534,165	\$3,609,652	\$3,686,752	\$3,765,168	\$3,845,928	
Reallocation	\$375,000														
TOTAL	\$3,297,000	\$2,984,412	\$3,048,156	\$3,113,263	\$3,179,759	\$3,247,677	\$3,317,045	\$3,387,894	\$3,460,257	\$3,534,165	\$3,609,652	\$3,686,752	\$3,765,168	\$3,845,928	
Inflation Factor	1.000	1.0214	1.0432	1.0655	1.0882	1.1115	1.1352	1.1594	1.1842	1.2095	1.2353	1.2617	1.2887	1.3162	

Voluntary Conversion New Budget Authority

	20 Year	30 Year
Public Housing PUM	\$955	\$955
Voucher PUM	\$900	\$900
Delta Dollar	-\$5	-\$5
Delta Percent	-.1%	-.1%

	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30
<b>Public Housing</b>																
Operating	\$2,722,226	\$2,780,371	\$2,839,758	\$2,900,413	\$2,962,363	\$3,025,637	\$3,090,262	\$3,156,268	\$3,223,683	\$3,292,539	\$3,362,865	\$3,434,603	\$3,508,055	\$3,582,985		
Initial Capital																
Accrual	\$403,203	\$411,907	\$420,705	\$429,891	\$438,869	\$448,243	\$457,817	\$467,595	\$477,583	\$487,783	\$498,202	\$508,843	\$519,712	\$530,811		
Residual																
<b>TOTAL</b>	<b>\$3,125,519</b>	<b>\$3,192,278</b>	<b>\$3,260,462</b>	<b>\$3,330,103</b>	<b>\$3,401,232</b>	<b>\$3,473,879</b>	<b>\$3,548,079</b>	<b>\$3,623,863</b>	<b>\$3,701,266</b>	<b>\$3,780,322</b>	<b>\$3,861,067</b>	<b>\$3,943,536</b>	<b>\$4,027,767</b>	<b>\$4,113,797</b>		
Inflation Factor	1,3443	1,3730	1,4023	1,4323	1,4629	1,4941	1,5261	1,5587	1,5919	1,6259	1,6607	1,6961	1,7324	1,7694		
<b>Voucher</b>																
Voucher	\$3,928,072	\$4,011,972	\$4,097,665	\$4,185,188	\$4,274,580	\$4,365,862	\$4,459,134	\$4,554,378	\$4,651,666	\$4,751,011	\$4,852,489	\$4,956,135	\$5,061,894	\$5,170,111		
Relocation																
<b>TOTAL</b>	<b>\$3,928,072</b>	<b>\$4,011,972</b>	<b>\$4,097,665</b>	<b>\$4,185,188</b>	<b>\$4,274,580</b>	<b>\$4,365,862</b>	<b>\$4,459,134</b>	<b>\$4,554,378</b>	<b>\$4,651,666</b>	<b>\$4,751,011</b>	<b>\$4,852,489</b>	<b>\$4,956,135</b>	<b>\$5,061,894</b>	<b>\$5,170,111</b>		
Inflation Factor	1,3443	1,3730	1,4023	1,4323	1,4629	1,4941	1,5261	1,5587	1,5919	1,6259	1,6607	1,6961	1,7324	1,7694		

	Year 28	Year 29	Year 30	Year 31	Year 32	Year 33	Year 34	Year 35	Year 36	Year 37	Year 38	Year 39	Year 40
<b>Public Housing</b>													
Operating	\$3,659,514		\$3,737,679	\$3,817,513	\$3,899,052	\$3,982,332	\$4,067,392	\$4,154,288	\$4,243,000	\$4,333,927	\$4,428,190	\$4,520,730	\$4,617,290
Initial Capital													
Accrual	\$542,150		\$553,730	\$565,557	\$577,637	\$589,975	\$602,577	\$615,447	\$628,593	\$642,019	\$655,732	\$669,738	\$684,043
Residual													
<b>TOTAL</b>	<b>\$4,201,665</b>	<b>\$4,291,409</b>	<b>\$4,383,070</b>	<b>\$4,476,889</b>	<b>\$4,572,308</b>	<b>\$4,669,959</b>	<b>\$4,769,715</b>	<b>\$4,871,563</b>	<b>\$4,975,048</b>	<b>\$5,081,972</b>	<b>\$5,190,468</b>	<b>\$5,301,335</b>	
Inflation Factor	1.8072	1.8458	1.8852	1.9255	1.9668	2.0088	2.0515	2.0953	2.1401	2.1858	2.2325	2.2801	
<b>Voucher</b>													
Voucher	\$5,280,544		\$5,303,332	\$5,508,539	\$5,628,187	\$5,740,359	\$5,869,096	\$5,994,455	\$6,122,492	\$6,253,264	\$6,386,829	\$6,523,246	\$6,662,578
Rebation													
<b>TOTAL</b>	<b>\$5,280,544</b>	<b>\$5,303,332</b>	<b>\$5,508,539</b>	<b>\$5,628,187</b>	<b>\$5,740,359</b>	<b>\$5,869,096</b>	<b>\$5,994,455</b>	<b>\$6,122,492</b>	<b>\$6,253,264</b>	<b>\$6,386,829</b>	<b>\$6,523,246</b>	<b>\$6,662,578</b>	
Inflation Factor	1.8072	1.8458	1.8852	1.9255	1.9668	2.0088	2.0515	2.0953	2.1401	2.1858	2.2325	2.2801	



# Reader Aids

Federal Register

Vol. 71, No. 54

Tuesday, March 21, 2006

## CUSTOMER SERVICE AND INFORMATION

### Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids 202-741-6000

Laws 741-6000

### Presidential Documents

Executive orders and proclamations 741-6000

The United States Government Manual 741-6000

### Other Services

Electronic and on-line services (voice) 741-6020

Privacy Act Compilation 741-6064

Public Laws Update Service (numbers, dates, etc.) 741-6043

TTY for the deaf-and-hard-of-hearing 741-6086

## ELECTRONIC RESEARCH

### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: <http://www.gpoaccess.gov/nara/index.html>

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: [http://www.archives.gov/federal\\_register/](http://www.archives.gov/federal_register/)

### E-mail

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <http://listserv.access.gpo.gov> and select *Online mailing list archives, FEDREGTOC-L, join or leave the list (or change settings)*; then follow the instructions.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: [fedreg.info@nara.gov](mailto:fedreg.info@nara.gov)

The Federal Register staff cannot interpret specific documents or regulations.

## FEDERAL REGISTER PAGES AND DATE, MARCH

10411-10604.....	1
10605-10830.....	2
10831-11134.....	3
11135-11286.....	6
11287-11504.....	7
11505-12118.....	8
12119-12276.....	9
12277-12612.....	10
12613-12990.....	13
12991-13242.....	14
13243-13524.....	15
13525-13736.....	16
13737-13922.....	17
13923-14088.....	20
14089-14354.....	21

## CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 3 CFR

#### Proclamations:

7982.....	10411
7983.....	10413
7984.....	10793
7985.....	10823
7986.....	10825
7987 (See EO 11651).....	10827
7988.....	13243

#### Executive Orders:

EO 11651 (See Proclamation 7987).....	10827
12957 (See Notice of March 13, 2006).....	13241
12959 (See Notice of March 13, 2006).....	13241
13059 (See Notice of March 13, 2006).....	13241
13397.....	12276

#### Administrative Orders:

Notices:	
Notice of February 27, 2006 (See: EO 13288, 3/6/2003; EO 13391, 11/22/2005).....	10603
Notice of March 13, 2006.....	13241
Presidential Determinations:	
No. 2005-19 of January 27, 2005 (Amended by Presidential Determination No. 2006-10 of February 7, 2006).....	11137
No. 2006-09 of February 7, 2006.....	11135
No. 2006-10 of February 7, 2006.....	11137
No. 2006-11 of February 28, 2006.....	12119

### 5 CFR

730.....	13525
890.....	11287
Proposed Rules:	
534.....	10913
890.....	12438

### 7 CFR

56.....	12613
57.....	12613
301.....	11288, 12991, 12992, 13525, 13923
319.....	10605, 11288
718.....	13737
915.....	11294
932.....	12614

1207.....	11294
1415.....	11139
1437.....	13737
1439.....	10831
2902.....	13686

#### Proposed Rules:

210.....	10914
220.....	10914
225.....	10914
226.....	10914
246.....	10914
247.....	10914
251.....	10914
319.....	10924
457.....	14119
3550.....	11167

### 9 CFR

77.....	13926
93.....	12994
95.....	12994
312.....	12277
352.....	12998

#### Proposed Rules:

2.....	12302
390.....	11326

### 10 CFR

72.....	14120
---------	-------

#### Proposed Rules:

1.....	12782
2.....	12782
10.....	12782
19.....	12782
20.....	12782
21.....	12782
25.....	12782
26.....	12782, 13782
50.....	11169
51.....	12782
52.....	12782
54.....	12782
55.....	12782
72.....	12782, 14120
73.....	12782
75.....	12782
95.....	12782
140.....	12782
170.....	12782
171.....	12782
431.....	12634

### 11 CFR

300.....	13926
----------	-------

#### Proposed Rules:

100.....	13557
109.....	13306

### 12 CFR

202.....	11296
211.....	13934
227.....	11297



<b>Proposed Rules:</b>	416.....10419	190.....12280	51.....12240, 12592
611.....13040	<b>Proposed Rules:</b>	216.....12280	52.....10626, 10949, 11563,
619.....13040	404.....10456	221.....12280	12155, 12240, 12310, 13063
620.....13040	416.....10456	224.....12280	70.....12240
621.....13040	418.....10926	229.....12280	71.....12240
624.....13040	422.....12648	238.....12280	81.....13063
627.....13040	<b>21 CFR</b>	248.....12280	158.....12072, 13316
630.....13040	172.....12618	252.....12280	172.....12072, 13316
900.....13306	510.....13541	258.....12280	180.....11563
917.....13306	520.....13000, 13541	261.....12280	721.....12311
925.....13306	522.....13541	271.....12280	723.....11484
930.....13306	524.....13541	336.....12280	745.....10628, 11570, 13561
931.....13306	529.....13541	345.....12280	
934.....13306	866.....10433	347.....12280	<b>41 CFR</b>
<b>14 CFR</b>	1308.....10835	371.....12280	<b>Proposed Rules:</b>
23.....13245	<b>Proposed Rules:</b>	378.....12280	60-2.....14134
39.....10415, 10605, 10832,	866.....12653	388.....12280	60-300.....14135
11151, 11153, 11156, 11462,	<b>22 CFR</b>		102-118.....13063
12121, 12122, 12124, 12125,	96.....12132	<b>33 CFR</b>	<b>42 CFR</b>
12129, 12131, 12277, 12616,	104.....12132	100.....12132, 12135	405.....13469
12998, 13526, 13529, 13533,		117.....10433, 12135, 12621,	410.....13469
13538, 13747, 14092	<b>24 CFR</b>	13267	411.....13469
65.....10607	972.....14328	165.....10436, 11505, 12136	413.....13469
71.....10417, 10418, 10834,	<b>Proposed Rules:</b>	<b>Proposed Rules:</b>	414.....13469
11297, 11298, 11709, 13247,	200.....13222	100.....14132	424.....13469
14094, 14097	401.....13222	117.....11172	426.....13469
95.....13749	1000.....11464	165.....12654	<b>Proposed Rules:</b>
97.....11300, 11302, 13753,			412.....11027
13755	<b>25 CFR</b>	<b>36 CFR</b>	413.....11027
<b>Proposed Rules:</b>	162.....12280	219.....10837	<b>43 CFR</b>
25.....14122	<b>26 CFR</b>	223.....11508	1820.....10844
39.....10453, 11328, 11333,	1.....11306, 12280, 13001,	1001.....10608	<b>Proposed Rules:</b>
11335, 11341, 11343, 11345,	13003, 13008, 13766, 13767,	1002.....10608	3100.....11577, 11559
11349, 11546, 11549, 11551,	14099	1004.....10608	3160.....12656
11555, 12150, 12152, 12305,	301.....13003	1005.....10608	<b>44 CFR</b>
13050, 13053, 13055, 13058,	602.....13008, 14129	<b>Proposed Rules:</b>	64.....13773, 13775
13060, 13558, 13787, 14123,	<b>Proposed Rules:</b>	7.....13792	67.....12289, 12297, 12298
14126	1.....10940, 11462, 13062,	13.....10940	<b>Proposed Rules:</b>
13789	13560, 13791	228.....12656	67.....12324
71.....10924, 12647, 13789	31.....13899	<b>37 CFR</b>	<b>45 CFR</b>
91.....14122	301.....12307	1.....12281	2522.....10610
121.....14122	<b>28 CFR</b>	404.....11510	<b>Proposed Rules:</b>
125.....14122	16.....11308	<b>38 CFR</b>	60.....14135
129.....14122	50.....11158	<b>Proposed Rules:</b>	Ch. IX.....13563
<b>15 CFR</b>	<b>29 CFR</b>	17.....12154	2522.....10630
740.....14097	1611.....11309	<b>39 CFR</b>	<b>47 CFR</b>
744.....14097	2590.....13937	111.....13268	0.....10442
766.....14097	4022.....13258	230.....11160, 12285	1.....13279
770.....14097	4044.....13258	232.....11161	2.....13025
904.....12440	<b>30 CFR</b>	<b>Proposed Rules:</b>	15.....11539
<b>Proposed Rules:</b>	48.....12252	111.....11366	54.....13281
806.....10454	50.....12252	<b>40 CFR</b>	64.....13281
<b>16 CFR</b>	75.....12252	9.....10438, 13708	73.....11540, 13282, 13283,
312.....13247	250.....11310, 12438	52.....10838, 10842, 11514,	13284, 13285, 13286, 13287,
1633.....13472	948.....10764	12138, 12285, 12623, 13019,	13288
<b>17 CFR</b>	<b>Proposed Rules:</b>	13021, 13543, 13549, 13551,	<b>Proposed Rules:</b>
<b>Proposed Rules:</b>	203.....11557, 11559	135767	Ch. I.....13317
270.....11351	<b>31 CFR</b>	13767	52.....13323
<b>18 CFR</b>	10.....13018	12623	73.....11572, 13328, 13329,
35.....11304, 13000	103.....13260	10439	13330, 13331
39.....11505	<b>Proposed Rules:</b>	81.....11162, 13021	<b>48 CFR</b>
381.....13756	103.....12308, 14129	93.....12468	Ch. 2.....14101
<b>Proposed Rules:</b>	<b>32 CFR</b>	156.....10438	203.....14099
40.....11557	59.....12280	165.....10438	207.....14099, 14100, 14101,
<b>19 CFR</b>	62b.....12280	174.....13269	14102, 14104
10.....11304	73.....12280	180.....11519, 11526, 13274	208.....14102, 14106
12.....13757	158.....12280	271.....11533, 12141	209.....14099
<b>20 CFR</b>		272.....11533, 11536	210.....14104
404.....10419		282.....13769	215.....14108
		799.....13708	
		<b>Proposed Rules:</b>	
		50.....11561, 12592	

216 .....	14102, 14106, 14108	<b>49 CFR</b>	391 .....	13801	660 .....	10614, 10869, 13942
217 .....	14102	1 .....	578 .....	12156	679 .....	10451, 10625, 10870,
219 .....	14104	192 .....	1150 .....	13563		10894, 11165, 11324, 11541,
225 .....	14110	571 .....	1180 .....	13563		12300, 12626, 13025, 13026,
229 .....	14199	591 .....				13304, 13777
237 .....	14102	592 .....	<b>50 CFR</b>		697 .....	13027
252 .....	14099, 14110	594 .....	216 .....	11314	<b>Proposed Rules:</b>	
<b>Proposed Rules:</b>		661 .....	229 .....	11163	17 .....	10631, 11367
232 .....	14149	663 .....	300 .....	10850	600 .....	10459
252 .....	14149, 14151	1002 .....	600 .....	10612, 10867	622 .....	12662
1532 .....	12660	<b>Proposed Rules:</b>	622 .....	12148, 13304	648 .....	11060, 12665, 12669
1552 .....	12660	40 .....	648 .....	10612, 10867, 13776	680 .....	14153

**REMINDERS**

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

**RULES GOING INTO EFFECT MARCH 21, 2006****COMMERCE DEPARTMENT****Industry and Security Bureau**

Export administration regulations:  
 Corrections and clarifications; published 3-21-06

**DEFENSE DEPARTMENT****Defense Acquisition Regulations System**

Acquisition regulations:  
 Ball and roller bearings acquisition; published 3-21-06  
 Capital assets manufactured in United States; purchase incentive program; published 3-21-06  
 Component breakout; published 3-21-06  
 Contract requirements; consolidation; published 3-21-06  
 Contractor performance of acquisition functions closely associated with inherently governmental functions; published 3-21-06  
 Federal supply schedules and multiple award contracts; competition requirements; published 3-21-06  
 Service contracts and task and delivery orders approval; published 3-21-06  
 Technical amendments; published 3-21-06

**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

Class B airspace  
 Correction; published 3-21-06

**TRANSPORTATION DEPARTMENT****Federal Transit Administration**

Buy America requirements; definitions and waiver procedures amendments; published 3-21-06

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Interstate transportation of animals and animal products (quarantine):  
 Tuberculosis in cattle and bison—  
 State and zone designations; comments due by 3-31-06; published 1-30-06 [FR 06-00839]

**AGRICULTURE DEPARTMENT****Federal Crop Insurance Corporation**

Crop insurance regulations:  
 Peanut crop insurance provisions; comments due by 3-27-06; published 1-25-06 [FR E6-00855]

**COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration**

Fishery conservation and management:  
 Magnuson-Stevens Act provisions—  
 Bering Sea and Aleutian Islands king and tanner crabs; fishing capacity reduction program; industry free system; comments due by 3-31-06; published 3-1-06 [FR E6-02892]

**DEFENSE DEPARTMENT**

User charges; appropriate charges for authorized services; comments due by 3-27-06; published 1-26-06 [FR 06-00730]

**ENERGY DEPARTMENT****Federal Energy Regulatory Commission**

Electric utilities (Federal Power Act) and Natural Gas Policy Act:  
 Unbundled sales service, blanket marketing certificates, and public utility market-based rate authorizations; record retention requirements; revisions; comments due by 3-29-06; published 2-27-06 [FR 06-01721]

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollution; standards of performance for new stationary sources:  
 Stationary gas turbines; performance standards;

comments due by 3-27-06; published 2-24-06 [FR 06-01742]

**Air programs:**

Clean Air Act; alternate permit program approvals—  
 Guam; comments due by 3-29-06; published 2-27-06 [FR 06-01740]  
 Guam; comments due by 3-29-06; published 2-27-06 [FR 06-01741]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Arizona; comments due by 3-30-06; published 2-28-06 [FR 06-01850]

Air quality implementation plans; approval and promulgation; various States:

Iowa; comments due by 3-30-06; published 2-28-06 [FR 06-01787]

Pennsylvania; comments due by 3-29-06; published 2-27-06 [FR E6-02736]

Hazardous waste program authorizations:

New Hampshire; comments due by 3-29-06; published 2-27-06 [FR 06-01791]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Ascorbic acid, etc.; comments due by 3-27-06; published 1-25-06 [FR 06-00574]

Sorbitol octanoate; comments due by 3-28-06; published 1-27-06 [FR 06-00756]

**FEDERAL COMMUNICATIONS COMMISSION**

Radio stations; table of assignments:

Mississippi; comments due by 3-30-06; published 2-22-06 [FR 06-01519]

**HOMELAND SECURITY DEPARTMENT****Coast Guard**

Drawbridge operations:

Connecticut; comments due by 3-27-06; published 3-6-06 [FR 06-02105]

Florida; comments due by 3-27-06; published 2-23-06 [FR 06-01669]

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Alaska; high capacity passenger vessels and

marine highway system vessels; comments due by 3-30-06; published 2-28-06 [FR E6-02614]

Chesapeake Bay, MD; comments due by 3-29-06; published 2-27-06 [FR E6-02714]

**LABOR DEPARTMENT****Federal Contract Compliance Programs Office**

Affirmative action and nondiscrimination obligations of contractors and subcontractors:

Disabled veterans, recently separated veterans, etc.

Correction; comments due by 3-28-06; published 3-21-06 [FR 06-02769]

Equal opportunity survey

Correction; comments due by 3-28-06; published 3-21-06 [FR 06-02770]

**LABOR DEPARTMENT****Mine Safety and Health Administration**

Coal mine and metal and nonmetal mine safety and health:

Underground mines—

Rescue equipment and technology; comment request; comments due by 3-27-06; published 1-25-06 [FR 06-00722]

Coal mine and metal and nonmetal safety and health:

Underground mines—

Rescue equipment and technology; comment request; public meeting; comments due by 3-27-06; published 2-23-06 [FR 06-01748]

**MANAGEMENT AND BUDGET OFFICE****Federal Procurement Policy Office**

Acquisition regulations:

Insurance cost accounting; comments due by 3-27-06; published 1-26-06 [FR E6-00975]

**NATIONAL CREDIT UNION ADMINISTRATION**

Credit unions:

Federal credit unions; organization and operations; comments due by 3-28-06; published 1-27-06 [FR E6-00908]

**PERSONNEL MANAGEMENT OFFICE**

Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002; Title II implementation:

Reporting and best practices; comments due

by 3-27-06; published 1-25-06 [FR E6-00933]

**TRANSPORTATION  
DEPARTMENT  
Federal Aviation  
Administration**

**Airworthiness directives:**

Boeing; comments due by 3-27-06; published 2-8-06 [FR E6-01679]

Empresa Brasileira de Aeronautica, S.A. (EMBRAER); comments due by 3-28-06; published 1-27-06 [FR 06-00782]

Rolls-Royce plc; comments due by 3-31-06; published 1-30-06 [FR E6-01092]

Turbomeca S.A.; comments due by 3-27-06; published 1-24-06 [FR 06-00522]

**Airworthiness standards:**

**Special conditions—**

Cessna Aircraft Co. Model 501 and 551 airplanes; comments due by 3-30-06; published 2-28-06 [FR 06-01810]

Raytheon Aircraft Co. Model BAE 125 Series 800A airplanes; comments due by 3-30-06; published 2-28-06 [FR 06-01808]

Class D airspace; comments due by 3-30-06; published 2-28-06 [FR 06-01811]

Class D and E airspace; comments due by 3-30-06; published 2-28-06 [FR 06-01812]

**TRANSPORTATION  
DEPARTMENT  
National Highway Traffic  
Safety Administration**

**Consumer information:**

New car assessment program; safety labeling; comments due by 3-31-06; published 1-30-06 [FR 06-00827]

**Motor vehicle safety standards:**

Lamps, reflective devices, and associated equipment—  
Miscellaneous

amendments; comments due by 3-30-06; published 12-30-05 [FR 05-24421]

**TRANSPORTATION  
DEPARTMENT  
Pipeline and Hazardous  
Materials Safety  
Administration**  
Hazardous materials transportation:

International transport standards and regulations use; authorization requirements; comments due by 3-28-06; published 1-27-06 [FR 06-00516]

*index.html*. Some laws may not yet be available.

**H.R. 32/P.L. 109-181**

To amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks. (Mar. 16, 2006; 120 Stat. 285)

Last List March 16, 2006

---

**LIST OF PUBLIC LAWS**

---

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/>

---

**Public Laws Electronic  
Notification Service  
(PENS)**

---

**PENS** is a free electronic mail notification service of newly enacted public laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html>

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

# Public Laws

109th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 109th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at <http://www.gpoaccess.gov/plaws/index.html>

## Superintendent of Documents Subscriptions Order Form

Order Processing Code:

**\* 6216**

**YES**, enter my subscription(s) as follows:

Charge your order.    
It's Easy!

To fax your orders (202) 512-2250  
Phone your orders (202) 512-1800

\_\_\_\_\_ subscriptions to **PUBLIC LAWS** for the 109th Congress for \$317 per subscription.

The total cost of my order is \$ \_\_\_\_\_. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

\_\_\_\_\_  
Company or personal name (Please type or print)

\_\_\_\_\_  
Additional address/attention line

\_\_\_\_\_  
Street address

\_\_\_\_\_  
City, State, ZIP code

\_\_\_\_\_  
Daytime phone including area code

\_\_\_\_\_  
Purchase order number (optional)

May we make your name/address available to other mailers?  YES  NO

### Please Choose Method of Payment:

Check Payable to the Superintendent of Documents

GPO Deposit Account  -

VISA  MasterCard Account

(Credit card expiration date)

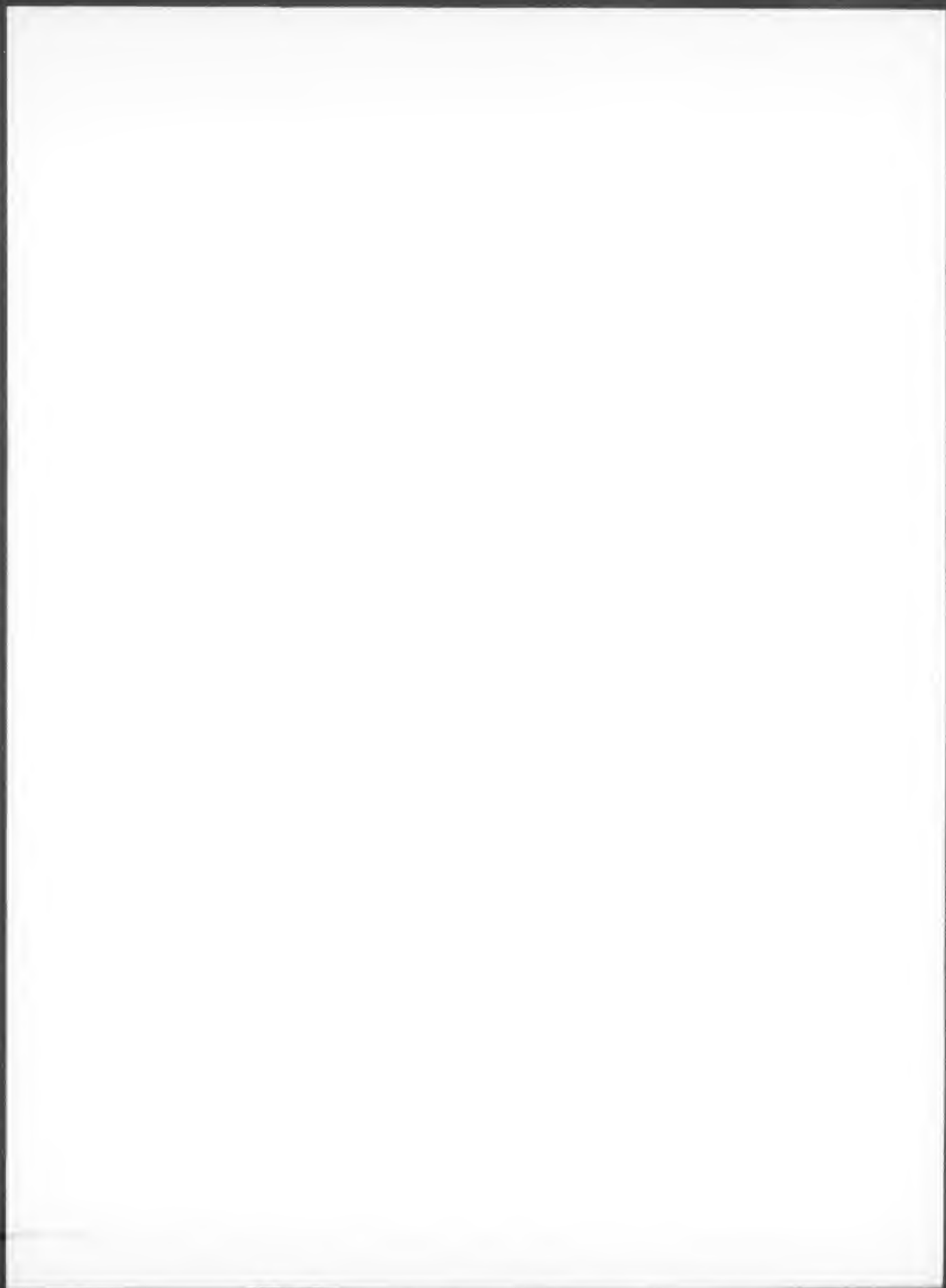
**Thank you for  
your order!**

\_\_\_\_\_  
Authorizing signature

6-05

Mail To: Superintendent of Documents  
P.O. Box 371954, Pittsburgh, PA 15250-7954







Printed on recycled paper

